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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No. 610/92.

Date of decision : 29.11.1994

Hon'ble Shri N.V. Krishnan, Vice-Chairman (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Siri Chand,
S/o Shri Ram Lal,
r/o Village Khore,
P.S. Sector 58, NOIDA, U.P.,
Ex-Sub Inspector, .. Applicant
Delhi Police.

(By Advocate Shri J.P. Verghese)

versus:

1. Delhi Administration,
through Chief Secretary,
Delhi.

2. D.C.P. (Spl. Branch),
Police Headquarters,
I.P. Estate, New Delhi.

3. A.C.P. (CIO),
M.S.O. Building,
Police Headquarters,
I.P. Estate,
New Delhi. .. Respondents

(By Advocate Shri O.N. Trisal)

ORDER (ORAL)

The applicant is aggrieved by the Order of the
Disciplinary Authority dated 29.8.1991 (Annexure 'A')

by which he was dismissed from service on the basis of
a disciplinary proceedings initiated against him. The
appeal filed by the applicant has also been dismissed
by the order of the Additional Commissioner of Police

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2. The facts of the case are as follows :-

2.1 A summary of allegations was given to the applicant on the basis of a complaint dated 18.9.1990 and 19.9.1990 by one Hari Kumar and his sister Girija Kumari, who also is a Woman Head Constable in the Delhi Police. The substance of this complaint is that the applicant visited their residence at 64-A, DDA Flats, Gazipur P.S. Kalyanpuri on 16th September, 1990 to enquire into an application made by Hari Kumar for the grant of a passport. It is alleged that the applicant demanded a bribe of Rs. 200/- from Hari Kumar, who could give him only Rs. 50/- but he was not satisfied with this amount. The other complainant, Girija Kumari, gave Rs. 150/- to her brother to give it to the applicant, which was stated to be given by Hari Kumar.

2.2 A summary of allegation was issued on 13.9.1990 and after examining the four witnesses mentioned therein, a charge was framed against the applicant.

2.3 Thereupon, the applicant intimated on 24.2.1990 that he would like to examine K.S. Vasudevan Nair and Veer Pal as defence witnesses.

2.4 The enquiry officer, after conducting the enquiry, came to the conclusion that the charge in so far as it concerned the demand of bribe is proved but that the charge concerning the payment of Rs. 200/- is not proved.

2.5 A copy of the report was forwarded to the applicant

who submitted his representation and after considering all the relevant material, the disciplinary authority came to the conclusion that the applicant indulged in a corrupt act in the discharge of his official duties and hence he was dismissed from service.

3. The applicant has impugned this order on a number of grounds. However, during the course of hearing, the learned counsel for the applicant pressed only the following grounds :-

- (1) In his report, the Enquiry Officer has relied upon extraneous evidence, which was taken behind the back of the applicant to come to the conclusion that the applicant was guilty of demanding a bribe.
- (2) The defence witness Vasudevan Nair is an interested witness and, therefore, reliance cannot be placed on his testimony.
- (3) The whole story is cooked up by Hari Kumar and Girija Kumari, because the applicant had taken the stand at the time of the enquiry into the application for the passport, that relevant information needed for enquiry had not been furnished by Hari Kumar in his application.

4. We have carefully gone into these contentions.

5. In regard to the first ground, the learned counsel for the applicant draws our attention to the enquiry officer's report wherein the following observations

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have been made :-

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(iii) I had detailed SI Kaka Singh to verify ration card No. 734013 dt. 25.8.1989 from office of the Rationing Officer, Kalyan Vass and it has been confirmed that the same is not a forged one and the name of Shri Hari Kumar figures at S.No.3. The address given in the ration card is A-64, DDA Flats Ghajipur dairy (Report of SI Kaka Singh attached at page 119).

(iv) About bank account of Sh. Hari Kumar, the facts have been verified from the Bank of Baroda, Jawahar Nagar through SI Kaka Singh and it has been confirmed that the bank account number given by ASI Mohan Lal is not a false one and Shri Hari Kumar had opened his saving bank account No. 353 with Bank of Baroda Jawahar Nagar on 10.8.1988 giving his address A/6, Lawrence Road (Report of page 119)."

He points out that the facts that SI Kaka Singh was sent to verify the ration card and the bank account of Hari Kumar is not a part of the summary of allegations or the charge. Yet, the Enquiry Officer took upon himself the responsibility of collecting this additional evidence behind the back of the applicant and used it against him. Therefore, the entire enquiry report is initiated.

6. This is, indeed, a valid objection which can be raised in respect of the report of an Enquiry Officer. For,

an Enquiry Officer ought not to have taken such steps to collect further evidence. That ought to have been done by the disciplinary authority, before the enquiry was initiated. However, the question is whether this ^{V way,} has, in any, prejudiced the case of the applicant. The Enquiry Officer has come to the conclusion that there is proof of the demand made by the applicant for Rs.200/- as bribe. The extraneous enquiry made did not concern such demand. The purport of that enquiry is to get a revalidation of the subsequent decision of the authorities to issue a passport to Hari Kumar on the basis of the report of Mohan Lal SI that a further enquiry was made in this case, after the applicant had reportedly ~~unfor-~~ ^{It already u} ~~confidentially~~ ^{unfor-} ~~tunately~~ on the application of Hari Kumar, has come out in the evidence of PW 2, Inspector Vidya Prakash, ^{who} stated that on making further enquiries, Mohan Lal found that the applicant had a bank account. Therefore, it is not as if the applicant has been taken by surprise for the E.O. in this regard. Nevertheless, it was not to gather this evidence. However, that by itself, has not prejudiced the applicant in any way.

7. In regard to the second point, we notice that the applicant himself requested that Vasudevan Nair be examined as one of the defence witnesses. On examination, Vasudevan Nair has specifically mentioned that the applicant demanded Rs. 200/- and he also saw Hari Kumar placing Rs. 50/- on the table. The learned counsel submits that Vasudevan Nair is an interested witness

in this case because he had verified the passport

application given by Hari Kumar. Therefore, we are unable
to appreciate this contention of the counsel.

Vasudevan Nair might have verified the passport of the

applicant. But he was also a witness to the enquiry

conducted by the applicant at the site, for which

reason alone he was cited by the applicant as a defence

witness. The evidence of this witness alone is

sufficient to hold the applicant guilty.

8. In so far as the third ground is concerned,

the learned counsel draws our attention to the defence

statement given by the applicant at the conclusion

of the enquiry, after DWs were examined. He states therein

that he had pointed out to Girija Kumari, one of the

two complainants, that no documentary proof of stay in

Delhi, excepting the ration card, has been produced and

that column No.17 relating to previous address in the

passport had also not been given in the application form.

Therefore, the applicant had valid reasons for not

certifying the eligibility of Hari Kumar for the grant of

passport. He further stated that Girija Kumari threatened

the applicant that she would teach him a lesson because

it is pointed out that Girija Kumari and her husband were

staying in the house of the Asstt. Commissioner of Police. In other words, the applicant has attributed motives to the complaint.

9. We have considered this aspect of the matter. In our view, we cannot contemplate a situation where a junior official like Girija Kumari, the woman Head constable, would dare to make serious allegations of this nature against a S.I. If, per chance, her allegations had been found untrue, she could have been proceeded against for making a false complaint against the applicant, sub-inspector. In the circumstances, the complaint would not have been made if Girija Kumari had not been on strong grounds. The allegation against the applicant could have been considered to be motivated, if the subsequent enquiry ^{u was} revealed that Hari Kumar, not eligible for a passport.

10. The learned counsel for the applicant submits lastly that if Girija Kumari, a woman constable had given Rs 150/- to her brother to be given as a bribe to the applicant that also amounts to a mis-conduct. That is not the issue involved in the present case.

But the fact, that Girija Kumari ran such a risk in not only paying the amount, but also making an allegation, only strengthens the probability ~~in part~~ that this money too was/it is only to be mentioned that the Enquiry Officer has discounted this probability, on his reasoning that, if the applicants illegal demands had been fully met, ~~Q. in~~ he would not, perhaps, have given an/adverse report on Hari Kumar's application.

11. In the circumstances, we do not find any merit in the O.A. Therefore, the application is dismissed.

No costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

N.V. Krishnan
29.11.84
(N.V. Krishnan)
Vice Chairman (A)