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Central Administrative Tribunal
Principal Bench

O.A.No.1231/92

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri R.K.Ahooja, Member(A)

(1)

New Delhi, this the 18th day of August, 1997

Shri Mam Raj Singh
ASI No.18/E
Gali No.8, House No.558
Harijan Basti
Loni Border, Shahdara
Delhi. Applicant

(By Shri E.M.S.Nathchippin, Advocate)

Vs.

1. Delhi Admn.
through its Chief Secretary
Old Secretariat
Delhi.
2. The Commissioner of Police
Police HQ
I.P.Estate
New Delhi - 110 002.
3. Shri Mohinder Singh
SHO
PS Krishna Nagar
Delhi. Respondents

(By Shri Vijay Pandita, Advocate)

O R D E R (Oral)

Hon'ble Shri R.K.Ahooja, Member(A)

The allegation against the applicant was that while posted at Police Station Krishna Nagar he was entrusted with DD No.8-A dated 3.4.1990 regarding the quarrel that took place between two parties. The applicant rushed to the spot and took one Shri Vijay Kumar Mehra (Tenant) and Shri Surender Kumar Sharma (Land-Lord) to the Police Station, and arrested them under Section 107/151 of Cr.P.C.. During the enquiry conducted by the Additional Deputy Commissioner of Police (in short ADCP), it was found that the applicant favoured the land-lord and also used his Ambassador Car while performing the official duties. Further, instead of arresting the aggressive party, i.e., Land-Lord and his son, he arrested both the parties under Section 107/151

Cr.P.C.. He also did not mention the sword which was handed over to the applicant by one Shri Satpal Malik after taking it from the son of the Landlord. The Enquiry Officer concluded that the arrest under Section 107/151 Cr.P.C. of both the parties was not justified and the ASI should have registered a case under appropriate section of law, i.e., trespass against the aggressive party. However, he found that the use of the Ambassador Car of the Land-lord was in a routine way and the applicant was not put under any blame. Thereafter, the Disciplinary Authority, accepting the findings of the Enquiry Officer, issued the order dated 22.8.1991, Annexure A-1 whereby two years approved service of the applicant was forfeited with cumulative effect for a period of two years. The appeal filed by the applicant was also rejected vide order of the Additional Commissioner of Police, Annexure-2.

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2. The applicant has come before the Tribunal impugning the orders of imposition of penalty and rejection of his appeal on various grounds. Firstly, he submits that the complaint on the basis of which the enquiry was initiated by the ADCP was primarily against the SHO and the Sub-Inspector who had, according to the complainant, declined to take action on the complaint of the tenant. The applicant in the present case had been deputed to make enquiries on the basis of the DD entry and he had proceeded to the spot and brought the parties to the Police Station and got the cases registered under the relevant Section on the basis of his understanding of the circumstances. No sword was recovered nor he had favoured the Land-lord. Secondly, in regard to the enquiry itself the applicant submits that the various prosecution witnesses contradicted themselves since all of them separately claimed to have taken the sword from the hands of the son of the Land-lord and handed over the same to the applicant. Thirdly, if there was any shortcoming noticed

regarding the relevant provisions of law under which the two parties had been booked, it was open to the superiors to rectify his mistake. Finally, the applicant also submits that the punishment of forfeiture of two years approved service is disproportionate to the alleged default.

3. The respondents in their reply controvert the various allegations made by the applicant and state that enquiry had been properly conducted and the impugned punishment had been correctly awarded.

4. We have heard the counsel on both sides. The learned counsel for the applicant has taken us through the complaint of one Shri Jaswant Singh Jain, who had written to the Deputy Commissioner of Police against the SHO and Sub-Inspector of Police Station Krishna Nagar. The learned counsel pointed out that the complaint was against the SHO and the Sub-Inspector of Police and not against the applicant who was only an ASI posted with the Police Station and to whom the DD entry had been referred for further enquiry. The learned counsel also referred to the evidence of Prosecution Witness No.1, Shri Subhash Chand who claimed to have recovered the sword from the son of the Land-Lord before handing it over to the applicant. The same claim was made by PW2, Shri Satpal Malick who also stated that he had recovered the sword and handed over to the applicant. The learned counsel pointed out that clearly the evidence of PW1 and PW2 was ⁱⁿ contradiction to each other and could not therefore be relied upon; if the evidence of these prosecution witnesses was ignored there was nothing left and no case was made out against the applicant. He also submitted that the provisions of the Indian Arms Act ~~were~~ very clear and action under the said Act could not be taken unless there were solid reasons to that effect. In the present case, no sword was recovered by the

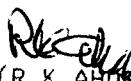
applicant and therefore, there could not be any question of taking action under the Arms Act. Finally he submitted that it was for the senior officers, in case they found any lacunae in his action to remedy the same and to put the appropriate sections of law in the FIR against the Landlord and the tenant. The learned counsel emphasised that the nature of the complaint filed by Shri Jaswant Singh Jain clearly indicated that his grievance was against the action of the SHO and SI and not that of the applicant. While no action had been taken against the SHO and the SI, the applicant had been made a scapegoat and the proceedings against the applicant were thus ~~were~~ actuated by malafide.

5. We have carefully considered the pleadings on record and the arguments advanced on behalf of the applicant. The question before us is whether this is a case of no evidence and whether the conclusions of the enquiry officer are perverse and the punishment imposed, on the face of it, is also perverse and arbitrary. We do not agree with the applicant that the contradictions pointed out by him in the statements of the Prosecution Witnesses, Shri Subhash Chand and Shri Satpal Malick are such as would totally nullify their consistency and veracity. PW3, Shri V.K.Mehta has stated that PW1 and PW2 had together taken the sword from the son of the Landlord. In any case, there are two witnesses who have stated that the Landlord's son had come to the shop of the tenant with a sword. In view of this, it cannot be said that there was no evidence whatsoever. As to whether the available evidence was sufficient ~~for~~ the conclusion reached by the Enquiry Officer, it is not open to this Tribunal in judicial review to reappreciate the evidence and to substitute its judgment in place of that of the enquiry officer.

11

6. As regards the argument of the learned counsel for the applicant that action has not been taken against the SHO and SI and the applicant has been made a scape goat, we find that the investigation was entrusted to the applicant, and not to SHO and SI, and it was he who proceeded to the place of incident. The allegation is that the sword was recovered and handed over to the applicant as the investigating officer. For this reason, there is no question of the SHO and SI being part of the departmental proceedings. We are also of the view that once we decide not to interfere with the conclusions of the enquiry officer regarding the recovery of the sword, the allegation against the applicant as regards non-inclusions of provisions of the Arms Act in the charges against the Land-lord and his son, would also stand. As regards the question of punishment, nothing has been made out to show that the forfeiture of the two years approved service is disproportionate and unjustified in the circumstances of the case.

7. In the light of the above discussion, we do not find that there is any ground for interference. The OA is accordingly dismissed. No costs.


(R.K. AHUJA)
MEMBER(A)

/rao/


(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)