

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1596/93

New Delhi, this the 19th day of August, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P.Biswas, Member (A)

Ex-Woman Constable Sumitra
No. 1420/E,
W/o Late Shri Ram Kumar
village & Post office Kanderi,
Distt. Meerut (UP).Applicant

(By Advocate: Mrs.Avnish Ahlawat)

Versus

Delhi Administration through

1. Commissioner of Police,
Delhi Police Headquarters,
MSO Building, IP Estate,
New Delhi.
 2. Additional Commissioner of Police,
(New Delhi Range)
Delhi Police Headquarters,
MSO Building, IP Estate,
New Delhi.
 3. Deputy Commissioner of Police,
(East District)
Delhi Police Headquarters,
MSO Building, IP Estate,
New Delhi.
 4. Inspector Mohinder Singh,
(Enquiry Officer)
S.H.O. Krishna Nagar,
Delhi Police,
Delhi.Respondents
- (By Advocate Shri D. Mukherjee proxy for Sh.Anoop Bagai)

O R D E R (ORAL)

[Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)]

The applicant in this case is challenging the order of dismissal passed on 13.12.1991 and the order passed in appeal dated 7.7.1992.

The allegation against the petitioner was that some of his colleagues who had committed certain cognizable offence amounting to murder and violation of Arms Act, was

in the knowledge of the petitioner and the petitioner, being a responsible officer, should have intimated this case to the higher authorities. After issuing a charge-sheet, departmental enquiry was conducted and the Enquiry Officer Shri Mohinder Singh returned a finding that the charges were proved. The disciplinary authority has passed the removal order on the basis of the enquiry report submitted to him.

The counsel for the petitioner is challenging the order of disciplinary authority on the ground that the said order has been passed without any evidence and the finding of the Enquiry Officer is also perverse to the extent that no evidence is shown to have been available to prove the charge. It was stated that the only evidence the Enquiry Officer is relying upon is the disclosure statement of one of the accused Shri Satish Kumar. Based solely on this piece of evidence, the Enquiry Officer has returned the finding that the charges were proved against the petitioner.

We have perused the record, heard the counsel appearing on behalf of both the parties. It was stated on behalf of the petitioner that said Shri Satish Kumar had presented himself as DW3 and gave a statement to the effect that on 16.9.1989 on the alleged day of incident, he had attended the School where he was employed as Teacher. The said Shri Satish Kumar is the brother of the petitioner's husband and was living in Rohini in the rented house. It was also stated by him that the involvement of those accused persons in the abovesaid murder case had come to their notice only when the local police came to their house for search. The said evidence of Shri Satish Kumar was not

subjected to any cross-examination and the disclosure statement stated to have been relied upon in order to utilise for confronting the said witness and no cross-examination has been done during the trial.

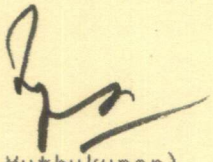
It was also stated that the alleged disclosure statement which was stated to be part of a criminal trial against Shri Satish Kumar, in fact ended up in acquittal. In the circumstances, such a disclosure statement could not have been relied upon by the Enquiry Officer, and the same should have been rejected as a mere hearsay and surmise.

In the absence of any other arguments advanced by the respondents in this case, we are of the opinion that the reliance of the Enquiry Officer only on the basis of the said disclosure statement, in our opinion, would render the finding as perverse and as one based on 'no evidence'. We are aware that the quality of the evidence required in departmental proceedings would not be as the one that is required at the criminal proceedings. But even applying the principle of pre-ponderance of evidence, we find that in this case the reliance of the so-called disclosure statement only for the purpose of returning a charge is in accordance with law. The case will have to be viewed as the one that of 'no evidence'.

In the result, we quash both the orders of dismissal dated 13.12.1991 and the appellate order dated 7.7.1992 and the applicant is entitled to all consequential benefits.

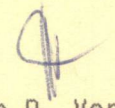
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In view of the facts and circumstances of this case, this O.A. is allowed with no order as to costs.



(K. Muthukumar)
Member (A)

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(Dr. Jose P. Verghese)
Vice-Chairman (J)