

Central Administrative Tribunal
Principal Bench

O.A. No. 2225 of 1993

New Delhi, dated this the 28 th October, 1999

30

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. P.C. Kannan, Member (J)

ASI Chander Pal No. 809/D,
S/o Shri Kundan Singh,
C/o IX Bn, DAP, Pitam Pura,
Delhi. ... Applicant
(By Advocate: Shri Shankar Raju)

Versus

1. Delhi Administration
through the Addl. Commissioner
of Police, Northern Range,
Police Headquarters, M.S.O. Building
New Delhi.
2. Dy. Commissioner of Police (NW Dist),
Ashok Vihar,
Delhi. ... Respondents

(By Advocate: Shri Anil Singhal
proxy counsel for Shri Anoop Bagai)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns the Disciplinary Authority's order dated 22.9.92 (Annexure 6) and the Appellate Authority's order dated 14.7.93 (Annexure A-8).

2. Applicant was proceeded against departmentally on the charge that while posted in Crime Against Women Cell, investigation of case FIR No. 61/91 u/s 498A/406 IPC was entrusted with him. He demanded Rs.7500/- from Shri Kukreja to show favour to him and not harass his relativesw Shri Pritam Singh, resident of Rohini, Delhi his wife etc. It is alleged that he took Rs.4500/- in instalments

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from Shri Kukreja and was pressing for payment the remaining amount of Rs.3000/-. It was settled that he would collect Rs.2000/- from the residence of Shri Kukreja at about 2.30 p.m. on 10.5.91. The matter was reported to Ani Corruption Branch by Shri Kukreja and a raiding party was organised. At about 3.30 p.m. applicant came to the residence of Shri Kukreja and stopped his scooter in front of the his house and went inside to receive the money but upon seeing the 'panch' witness and apprehending that a raid has been arranged, he immediately left the place after directing the complainant to come on the main road where he would collect the money.

3. In the Departmental Enquiry, the I.O. held the charge proved beyond doubt. A copy of the I.O. report was furnished to the applicant for submission of representation if any. Applicant submitted his representation, and after going through the materials on record and also giving the applicant a personal hearing, the Disciplinary Authority imposed the impugned punishment which has been upheld in the impugned appeal.

4. The punishment inflicted upon the applicant reads thus:

"Keeping in view the gravity of the misconduct four years approved service of ASI Chanderpal No. 2517/NW is forfeited permanently entailing reduction in the pay of Rs.1440/- to Rs.1320/- p.m. (Minimum basic pay of ASI) in the time scale of pay w.e.f. the date of issue of the order. The reduction in pay will have permanent effect on his future of pay."

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32

5. The first ground taken by applicant's counsel Shri Shankar Raju is that the statement of witnesses recorded in the preliminary enquiry were not supplied to applicant as a result of which he was gravely prejudiced in the Departmental Enquiry as he could not effectively examine the PWS. In this connection reliance has been placed on the Hon'ble Supreme Court's judgment in State of U.P. Vs. Shatrujan Lal & Anr. JT 1998 (6) SC 55.

6. Respondents' in their reply have pointed out that no preliminary enquiry was conducted and the matter was referred to for permission to conduct the Departmental Enquiry on the basis of raid report of Anti Corruption Branch, a copy of which was supplied to applicant along with the summary of allegations. Respondents have also stated that copies of the complaint and statement of 'Panch' witnesses were supplied to applicant, and in the absence of any preliminary enquiry the question of supplying applicant copies of statement of witnesses made during the Preliminary Enquiry does not arise. There is no mention of any preliminary inquiry having been conducted in the I.O's report. Applicant has also not been able to establish that in fact a preliminary inquiry was conducted, and if so by whom. Hence this ground fails and the ruling relied upon by applicant's counsel in Shatrujan Lal's case (Supra) does not help applicant.

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6. The next ground taken is that the punishment constitutes violation of Rule 8(d)(ii) Delhi Police (P&A) Rules. It is contended that under Rule 8(d)(ii) pay can be reduced or increment(s) deferred (permanent or temporary) but the impugned punishment entails both reduction in pay as well as deferment of increments which is violative of Rule 8(d)(ii) Delhi Police (P&A) Rules. This ground is, however, no longer Res Integra in view of the C.A.T. Full Bench order dated 18.5.99 in this very O.A. wherein it has been held that the impugned punishment does not constitute any violation of Rule 8(d)(ii) Delhi Police (P&A) Rules. Hence this ground also fails.

7. It has next been argued that applicant had never proceeded to the residence of the complainant as alleged in the D.E. and in fact had remained in the Office premises all along. This argument cannot be accepted in view of the fact that the evidence of several witnesses establishes the visit of applicant to the residence of Shri S.Kukreja at House No. A-16, Nanda Road without recording any entry in the daily diary.

8. Lastly, it has been emphasised that applicant has been exonerated of the first part of the charge that is of demanding and accepting Rs.4500/-. However, that does not necessarily imply that applicant is innocent of the remaining part of

7

the charges also, namely visiting the house of Shri Kukreja with the ulterior motive of collecting illegal gratification from Shri Kukreja. Nothing else can explain the presence of applicant at the residence of Shri Kukreja on 10.5.91.

9. It is well settled that in a departmental proceeding it is not necessary for the degree of proof to be of an order equal to that in a criminal case where the guilt of the accused person has to be proved beyond all reasonable doubt. In a departmental proceeding the charge of misconduct can be fastened on the defaulter on the ^{basis of} preponderance of probability.

10. In the present case there can be no doubt that ~~on~~ the above basis, the charge of visiting the house of Shri Kukreja on 10.5.91 with the ulterior motive of collecting illegal gratification from Shri Kukreja is established against applicant. In this case the principles of natural justice have been observed, no infirmity has been detected in the conduct of the proceedings to warrant our judicial intervention and the impugned orders have been passed by the authorities competent to do so. ^{Furthermore,} the penalty is also not disproportionate to the misconduct proved.

11. The O.A. is dismissed. No costs.


(P.C. Kannan)
Member (J)

/GK/


(S.R. Adige)
Vice Chairman (A)