

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

Q.A. No. 514 of 1993 decided on 24.11.1998. 20

Name of Applicant : Jagdish Ram Kataria

Versus

Name of respondent/s Union of India & others

By Advocate : Shri Amresh Mathur

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the reporter - Yes/~~No~~
2. Whether to be circulated to the other Benches of the Tribunal. - ~~Yes~~/No

Narasimhasahu
(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.514 of 1993

New Delhi, this the 24th day of November, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A. Vedavalli, Member (J)

Jagdish Ram Kataria son of Shri Nanak Ram Ram Kataria resident of C-2, Police Colony, PS Mangolpuri, Delhi-110083, last employed in the office of Deputy Commissioner of Police, Special Cell, C.S.S. Lodhi Colony Police Station, New Delhi-110003.

-APPLICANT

Versus

1. Union of India through its Secretary, Ministry of Home Affairs, North Block, New Delhi-110001.
2. The Administrator, Union Territory of Delhi, Delhi Administration, Delhi.
3. The Additional Commissioner of Police/CID, Police Head Quarters, New Delhi-110002.
4. The Deputy Commissioner of Police/Special Branch Police Head Quarters, New Delhi-110002.

-RESPONDENTS

(By Advocate Shri Amresh Mathur)

ORDER

By Mr. N. Sahu, Member (Admnv) -

The reliefs claimed in this Original Application are as under -

(i) The impugned orders issued vide no.10845-920/CR-SB dated 4-6-1991 by DCP/SB and 833-34/P.Sec. (CID) dated 21.2.1992 by Additional C.P. (CID) may kindly be set aside and also the respondents be directed to reinstate the applicant in service with treating him as spent on duty for the intervening period w.e.f. 18.12.1982 to the date of reinstatement for all purposes.

(ii) The respondents may kindly be restrained to pass any penalty in pursuance with the impugned show cause notice no.9031/CR-SB dated 18/9/1987.

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2. It is necessary to state briefly the background facts in this case. The applicant was posted in the Communist Section of Special Branch in the year 1982. The allegation was he defied the orders of the then Deputy Commissioner of Police, (in short 'DCP') Special Branch dated 16.11.1982. All the Special Branch Staff excluding a few who were given some other duties, were asked to report in Special Branch Control Room on 19.11.1982, which was a gazetted holiday. The applicant wrote down on that order that he would attend office on 19.11.1982, which was a gazetted holiday, only when there are clear instructions for grant of compensatory leave or payment of compensatory pay. The ACP personally called the applicant and directed him to comply with the DCP's orders. He was informed that if he failed to report for duty on that day, he would be treated as absent. Despite these orders and directions he, it is alleged, wilfully absented himself from attending the office on 19.11.1982. The second charge was that he distributed cyclostyled copies of leaflet in Hindi among the staff of Special Branch in the office highlighting the demands of Delhi Police personnel on 18.12.1982. There was a further allegation that he was trying to form a union of Delhi Policemen and he was found writing objectionable things with chalk on the PHQ pillars with an intention to create indiscipline in the force.



3. A preliminary enquiry was ordered on 24.12.82. Witnesses were examined but when the applicant did not cooperate, they could not be cross-examined. Eventually, the enquiry officer submitted his findings holding the applicant guilty of the charges. A charge sheet was framed with the approval of the disciplinary authority and served on the applicant on 22.3.1983. The service was ?? admitted in respect of the imputation of charges on 18.3.83. In response to this the applicant had given in writing that he tendered his resignation and he ceased to be a police officer. He also wrote that he might be removed from service as he had agreed with the allegations in full. Later on, he pleaded not guilty when the regular charge sheet was served on him on 22.3.1983. He did not put up any defence witnesses. He only submitted his written statement against the charges. The DCP passed the order on 24.8.1983 dismissing him from service with immediate effect. He also ordered that the period of suspension would not be treated as on duty. The applicant moved this Tribunal in TA 404/86 which was disposed of by an order dated 2.1.1987. This Court held that once the applicant pleads not guilty the enquiry officer is bound by Rule 16(iii) of Delhi Police (Punishment and Appeal) Rules, 1980 (in short 'DP(P&A)Rules') to record evidence in support of the charge. As this vital provision in the rule was side tracked, the applicant was denied a right to cross-examine the witnesses under Rule 16(iii) *ibid*. The Court observed that this enquiry under Rule 16(iii) *ibid* assumes importance because the applicant

had been distributing leaflets with the tacit approval of Shri Joginder Singh, ACP, who was examined by the enquiry officer behind his back as a prosecution witness. Accordingly, the respondents were directed to initiate the departmental enquiry afresh strictly in accordance with the Police Act and directed the applicant to be reinstated in service from the date of his dismissal on 24.8.1983. It was further directed that the applicant should be considered to be under suspension from the date of his reinstatement till the disciplinary proceedings are completed. The applicant was accordingly reinstated in service with effect from 25.3.1987 but was deemed to have been under suspension from the date of dismissal till the finalisation of the disciplinary proceedings.

4. A departmental enquiry was ordered according to the order of this Court on 25.3.1987. The same was completed again holding the applicant guilty of the charge. A show cause notice of dismissal from the force was again issued. He responded to the same with a request for personal hearing. At this stage he again preferred an O.A. in the Tribunal against the proposed punishment of dismissal in OA 1396/87. Another OA No.1370/87 was filed wherein the applicant questioned the order dated 24.6.1983 reopening the earlier case but communicated after four years. The subject matter of the enquiry in OA 1370/87 was different and the show cause notice was issued in that case on 18.9.1987. With regard to OA 1396/87 the Tribunal wrote as under -

"The applicant was given all the documents etc. on 1.4.1987 along with the summary of allegations and there is a receipt available in the departmental file produced before us under the signature of the applicant. The applicant was allowed to cross-examine all the witnesses and the proceedings lasted till 6.8.1987 after which a charge was framed against the applicant as required under Section 16 Sub-Clause IV(b) of the Delhi Police (Punishment and Appeal) Rules, 1980. The applicant was asked to give his defence statement and list of witnesses out of his 7 witnesses who were summoned. After going through the statement of defence dated 2.9.1987, the Inquiry Officer submitted the report to the Disciplinary Authority on 7.9.1987 on which the Disciplinary Authority issued the impugned show-cause notice dated 18.9.1987. The applicant has replied to the notice by the petition dated 7.10.1987. The Disciplinary Authority also permitted the applicant to place his case, if he so desires, personally for him."

5. OA 1370/87 was with respect to the misconduct of late coming on two occasions, namely, 11.12.82 and 14.12.82 and also on the ground that he absented himself from duty on 21.11.1982. After going through all the contentions of the applicant, both the OAs were dismissed as devoid of merit and the stay orders were vacated. The Tribunal order was dated 26.4.1991. The contentions of the applicant before the disciplinary authority as well as the appellate authority are more or less similar relating to non-furnishing of documents; non-granting of 7 days' time to submit his reinstatement and the enquiry officer submitting his finding without recording the evidence again and without giving him opportunity to cross-examine the witnesses. He alleged violation of Rule 14(iv) of the DP (P&A) Rules. These were met by the appellate authority as under -


I have meticulously gone through the record of DE as well as comments furnished by DCP, Special Branch, Delhi on the pleas raised by the Appellant in his appeal. Scrutiny of record reveals that the copies of the relevant documents were delivered to the Appellant along with summary of allegations against his proper receipt and he was allowed seven days time to submit his statement by the E.O. The E.O. has submitted his findings after recording the evidence again and giving him full opportunity to cross examine the witnesses. Before passing final orders in the D.E. he was heard in the Orderly Room on 14.5.91 by the Punishing Authority. In the instant case, the disciplinary action against the Appellant was initiated by the competent authority i.e. DCP, Special Branch, New Delhi and not by an ACP, hence there is no violation of rule 14.4 of Delhi Police (P&A) rules, 1980 and article 311(2) of Constitution of India. The punishment order is based on evidence and has been issued in accordance with the provision contained in Delhi Police (P&A) rules, 1980 which is applicable to all enrolled police personnel i.e. from the rank of Consts. to Insprs. Since we have our own set of rules, the question of observing the provisions of CCS(CCA) rules, 1965 does not arise. It is fact that the Appellant had filed a memorial addressed to Lt. Governor, Delhi challenging the validity of Delhi Police (P&A) rules, 1980 with the request to annul, alter or reverse the same. Since Delhi Police (P&A) rules, 1980 was framed by the Administrator i.e. Hon'ble Lt. Governor, Delhi, being separate issue, necessary action in the matter was required to be taken by the authority concerned i.e. Hon'ble Lt. Governor, Delhi and not by the Punishing Authority. His plea that the Punishing Authority gave the effect to the punishment order from the date of its issue instead of its receipt by him is incorrect."

6. Before us, the applicant besides the oral argument submitted written arguments as well. He challenges all the steps in the enquiry proceedings beginning with the appointment of the enquiry officer. In particular he states that Rule 14(iv) ibid has been violated. The competent authority had not ordered the enquiry according to law. The enquiry officer gave to the applicant only provisional list of witnesses and provisional list of

documents and the memorandum of enquiry was issued without issuing a charge-sheet. The enquiry officer who signed the summary of allegations had no jurisdiction because he violated Rule 14 (iv) and Rule 16(iv)(b) of DP(P&A) Rules. It is alleged that the enquiry officer denied the summoning of the defence witnesses. It is further argued that the enquiry officer himself picked up and chose 7 witnesses arbitrarily out of the list of 27 defence witnesses submitted by the applicant. He also states that the enquiry officer did not afford adequate opportunity to present his defence to the applicant. He alleges that the enquiry officer was biased with the applicant. He accuses the enquiry officer of assuming the role of prosecutor by volunteering to examine prosecution witnesses on behalf of the prosecution. He further stated that the enquiry officer did not complete the enquiry proceedings within a period of six months and as such violated the instructions of the Government of India on the subject. The findings of the enquiry officer were stated to be not objective. In his additional arguments it is submitted that the enquiry order issued by the disciplinary authority was motivated by bias and malafide. He challenges the preliminary enquiry report on several grounds stated in the additional written arguments. The disciplinary authority as well as the appellate authority have not applied their minds and have not considered the submissions of the applicant before passing the impugned orders.

7. The respondents have denied all the claims and arguments of the applicant. All the claims made in the relief sought have been denied on the grounds that the respondents have followed the due procedure established and approved in law and have not violated any of the provisions.

8. With regard to the claims of relief, we have carefully consulted the record and we find that the charge was served upon the applicant on 12.8.1987 and he was directed to submit his defence witnesses. He was given full opportunity to produce the defence witnesses. The enquiry was conducted in accordance with the provisions of Rule 16(i) of the DP (P&A) Rules. The charges were served upon the applicant with the direction to submit his reply within 7 days and the enquiry was conducted in accordance with the direction of this Court. The defence witnesses declined to appear as they had no knowledge about the facts of the case according to the respondents, though all the defence witnesses were summoned. We are satisfied that the final orders were passed after considering the reply to the show cause notice and all relevant record brought on the enquiry file. We are also satisfied that the summary of allegations; list of witnesses and documents were given to him against a proper receipt. No doubt there are some contradictions in the statement of some prosecution witnesses but we are satisfied that these contradictions do not have a bearing on the substance of the finding. It was proved that the applicant flouted the written orders of the DCP. It was also



established that he committed misconduct by distributing leaflets to instigate the members of the police force.

9. It is unnecessary to go into all the grounds raised by the applicant which were concluded by the earlier OAs. While dismissing the OAs 1396/87 and 1370/87 the Tribunal had observed that the respondents had followed the proper procedure in law, gave opportunity to cross-examine and also handed over all relevant documents. The enquiry was ordered afresh according to the directions of this Court. We are satisfied that the disciplinary authority as well as the appellate authority have applied their mind to all the facts and all the material on record and arrived at the impugned findings.

10. With regard to the allegation of bias, it is held by the Hon'ble Supreme Court in High Court of Judicature at Bombay Vs. Shirishkumar Rangarao Patil and another, (1997) 6 SCC 339 that the allegation of bias against the enquiry officer which was not made at the inception of the enquiry but made when show cause notice issued to the charged officer after the enquiry report can only be held to be an after thought. Relying on this decision, the allegation of bias is rejected. We must remember that the departmental authorities are not like civil courts and, therefore, the applicant's objection that reasons were lacking is unsustainable. In the case of Shirishkumar Rangarao Patil (supra) the Hon'ble Supreme Court held that although on the basis of the

evidence gathered in the departmental enquiry it may be possible to arrive at a different conclusion, it is not for the Court to examine the sufficiency of evidence and the correctness of conclusions drawn in a departmental enquiry. In the case of High Court of Judicature at Bombay Vs. Udai Singh, (1997) 5 SCC 129 their Lordships had held that technical rules of evidence and proof are not applicable to a departmental enquiry. We observed above that there were some contradictions between prosecution witnesses. A mere inconsistency will not entitle us to hold that there was any infirmity in the approach of the competent authority in appreciating the evidence. On the ground of inconsistency the Tribunal was held incompetent to interfere with the order of punishment. [Commissioner of Police Vs. Jayasurian and another, (1997) 6 SCC 751]. It is clear law that the disciplinary authority is only competent to pass appropriate punishment. The civil courts cannot substitute its own view to that of the disciplinary authority as well as the appellate authority on the nature of the punishment to be imposed on the delinquent official. [State of Punjab Vs. Bakhshish Singh, AIR 1997 SC 2696].

11. This is a case where the applicant himself initially gave in writing that he was guilty of the charges. Later on, he took a different plea. Both the preliminary enquiry and the enquiry on the basis of this Court's orders in 1987, were held in accordance with law. We have not found any violation of the rules of procedure. We are also satisfied

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that the disciplinary authority as well as the appellate authority have applied their mind and arrived at the findings. We do not find any substance in any of the arguments advanced by the applicant both orally as well as in his written submissions. We have no other alternative except to dismiss the O.A.

12. In the result, the O.A. is dismissed. In the circumstances of the case, the parties shall bear their own costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

N. Sahu
(N. Sahu)
Member (Admnv)

rkv.