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O.A.721/93

7.4.93

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Present: Sh.B.B.Raval, counsel for the applicant.

Heard on admission. Reserved for orders.

B.S.Negde

Member (J)

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(N.V.Krishnan)

Vice Chairman (A)

22-4-93.

Decided - pronounced by in
the court.

By
Mr. A. C. C. -
22/4/93.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O.A.721/93

Date of decision: 22.4.93

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Ganga Sahai .. Applicant.

versus

Delhi Administration

& another .. Respondents.

Sh.B.B.Raval .. Counsel for the applicants.

Coram:

The Hon'ble Sh.N.V.Krishnan, Vice Chairman(A).

The Hon'ble Sh.B.S.Hegde, Member(J)

1. Whether Reporters of the local papers may be allowed to see the judgement? ✓
2. Whether to be referred to the Reporters or not? ✓

J U D G E M E N T

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

The applicant is an Inspector in the 7th Bn. of the Delhi Armed Police. He is aggrieved by the news item dated 17.4.92 which appeared in the Statesmen (Annexure A-5) in which it is alleged that the applicant, alongwith certain other police officials, have been transferred to non-sensitive units " for falsely implicating Mohinder Ram, a local citizen, at the behest of a property dealer. Mohinder Ram was booked under the

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Narcotic Drugs and Psychotropic Substances Act (NDPS Act) in July 1990". He is also aggrieved by the Annexure B order dated 24.12.92 in which the Additional Commissioner of police, Armed police, Delhi, has ordered a regular departmental enquiry against him and four other police officials for grave misconduct negligence and misuse of authority by filing a false F.I.R. implicating Mohinder Ram under Section 18/61/85 of the N.D.P.S. Act. The applicant, therefore, prayed for the following reliefs:

i) To quash the adverse remarks against which representation at Annexure 'A' has been made as well as the order of Departmental Enquiry at Annexure 'B' being ultravires, violation of principles of natural justice and, therefore, violative of the Fundamental Rights of the applicant guaranteed under Articles 14, 16, 21 and 311 of the Constitution of India.

ii) Award exemplary cost for this petition with a request to pass any other order/orders or direction/directions or grant any other relief/reliefs as deemed fit in the light of the facts and circumstances of the case.

2. We have heard Sh.B.B.Raval, the learned counsel for the applicant, on admission.

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3. In so far as the annexure A-5 newsitem is concerned he contends that a perusal of that news item shows that it was published on information given to the newspapers by the Dy. Commissioner of Police (Vigilance). As a matter of fact, in one newspaper, his name has also been specifically mentioned in this connection. He contends that, therefore, this is an adverse remark without any basis'. He therefore, made a representation to the second respondent, the Commissioner of police on 24.4.1992, which has still not been disposed of. After quoting the news item in the Statesman the applicant has stated in the representation that the said Mohinder Ram is really a criminal who has been accused of serious offences under the N.D.P.S. Act, that he has already jumped bail and that the criminal case is still pending. He also pointed out that subsequently, after one year from the commencement of the case, the brother-in-law of Mohinder Ram complained to the Dy. Secretary (Home) that this was a false case and that the applicant's statement has been recorded and that it has been decided to proceed against him departmentally. He, therefore, prayed that the second respondent should look into the matter and save the applicant from being maligned and requested cancellation of the adverse comments. Nothing has been done by the Department in respect of the annexure 5 newsitem.

4. We have carefully considered this argument.

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5. The learned counsel has not cited any authority for the proposition that in the circumstances mentioned above, the newsitem should be construed to be 'an adverse remark'.

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6. No doubt, the annexure 5 newsitem cites the Dy. Commissioner of Police (Vigilance) as the source for the newsitem therein. However, that does not make it an adverse remark as understood in service parlance, for which purpose there are clear departmental instructions and even statutory rules in some cases. An adverse remark is recorded only in the Annual Confidential Roll of an employee. This is maintained on an yearly basis, and submitted to various authorities in the hierarchy and ultimately stored by some authority. If any adverse remark is entered in the roll, it is officially communicated to the employee to enable him to make a representation against such remark. Such a communication alone would be an order of a government official communicating adverse remarks. If, in respect of such an adverse remark, a representation is made and it is not disposed of, an application under the Administrative Tribunals Act, 1985 would lie. The Annexure A-5 newsitem cannot be treated as an adverse remark and hence, this application is not maintainable. If the applicant has any grievance against either the 'Statesman' which published the newsitem or the Dy. Commissioner of Police (Vigilance) who is alleged to have given the news, it is open to the applicant sue them in the appropriate court.

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7. That takes us to the next prayer relating to the proposed departmental enquiry. We have heard the learned counsel for the applicant. In substance, his case is that there is a move to see that the notorious criminal Mohinder Ram is somehow or other released from the clutches of law and to proceed with the applicant and other police officials for having falsely connived at the arrest of the said Mohinder Ram, the registration of a false criminal case against him showing false recovery of opium.

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8. We have seen the Annexure B order which recites the circumstances leading to the decision of the Additional Commissioner of Police to institute a regular departmental enquiry against the applicant and other police officials. It mentions that the action is being taken on the complaint of one Kulwant Rai, which was enquired into by the Vigilance Branch. We see no reason to interfere with the annexure B orders. If the applicant feels that he is being victimised for his honesty and courage in dealing with a criminal like Mohinder Ram, there are other administrative remedies open to him.

9. Lastly, the learned counsel for the applicant has drawn our attention to the annexure A-9 representation dated 21.1.93 to the Additional Commissioner of police seeking withdrawal of the order dated 24.12.92 (Annexure B) in so far as it concerns him.

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He alleges in the representation that, on the complaint of Kulwant Rai, the Commissioner of Police has, inter alia, ordered that letter of adverse notice be issued to Inspector Ganga Sahai i.e. the applicant and that an entry be also made in his Annual Confidential Report. He, therefore, contends that he has already been punished and therefore, a further departmental enquiry cannot be conducted. He relied on the judgement of the Tribunal in O.A.602/91, a copy of which is on record.

10. We have considered the matter. O.A.602/91 is a case where the proceeding for imposing a minor penalty of censure was dropped by the Department without assigning any reason and thereafter, a proceeding under rule 14 of the C.C.S. (C.C.A.)⁰ Rules to impose a major penalty was initiated. The Tribunal held that this is contrary to the Government of India's instructions which directs that unless reasons are given for dropping the first enquiry, a fresh proceeding cannot be initiated. That judgement has no application in the present case. Even if the alleged letter of adverse notice has been issued and the adverse entry in the confidential report has been made, these will not amount to imposition of penalty, and therefore, they do not bar the holding a departmental enquiry, the object of which is to impose a penalty.

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11. At a very late stage(i.e. after this O.A. was reserved for orders) the applicant filed M.P. (filing No.3335 dated 16.4.93) enclosing a copy of a memo dated 26.3.93 addressed ^{by} to the Dy. Commissioner of Police (Vigilance) and to Dy. Commissioner of Police, 7th Bn. informing him that the applicant's request for revoking the D.E. order ~~and~~ (the annexure 'B' memo) cannot be acceded to. We do not see any need to change the conclusions reached above despite this fresh order. This order only shows that the respondents are satisfied that on the complaint received by them there is a prima facie case to proceed against the applicant departmentally. In the circumstances, we do not see any justification to interfere at this stage.

12. In the circumstances, we find no merit in this application and it is dismissed at the admission stage.

B.S.Hegde
(B.S.Hegde) 22/4/93

Member(J)

N.V.Krishnan
22.4.93
(N.V.Krishnan)

Vice Chairman(A)

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