

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.4189/2013

**Reserved On:31.07.2018
Pronounced on:13.09.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Madan Pal
HC in Delhi Police
PIS No.28841089
Aged about 48 years
S/o Shri Chandki Ram
D/o D-31/626,
East Gokul Puri,
Delhi-94.

...Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Govt of NCT of Delhi
Through Commissioner of Police,
PHQ, IP Estate, New Delhi.
2. Joint C.P. (South Eastern Range),
PHQ, IP Estate, New Delhi.
3. DCP (North-East Distt.)
Through Commissioner of Police,
PHQ, IP Estate, New Delhi.

...Respondents

(By Advocate: Ms. Sangita Rai with Shri Pradeep Singh Tomar)

ORDER

By Mr. V. Ajay Kumar, Member (J)

The applicant, a Head Constable in the respondent-Delhi Police, filed the OA seeking quashing of the findings and Disciplinary and Appellate Orders whereunder he was imposed with

a punishment of forfeiture of 4 years of approved service permanently and entailing proportionate reduction in his pay from Rs.11480 + Rs.2800/- Grade Pay to Rs.9870/- + Rs.2800/- Grade Pay with immediate effect and in deciding the suspension period from 17.11.2011 to 19.01.2012 as period not spent on duty for all intents and purposes.

2. Brief facts of the case are that the respondent-Delhi Police initiated Departmental Enquiry against the applicant vide order dated 18.01.2012. The Departmental Enquiry was initially entrusted to Inspector Sewak Ram. The said Inquiry Officer prepared the Summary of Allegations, list of documents and memo, but even after several efforts, the same could not be served on the applicant. In the meanwhile, in view of the transfer of the said Inspector Sevak Ram, the Departmental Enquiry was entrusted to Inspector Ramesh Chander and the said Inquiry Officer served the Summary of Allegations prepared by Inspector Sevak Ram on 11.03.2012. On denial of the allegations by the applicant, he was allowed to engage Shri Baleshwar Singh, as his defence assistant which was accepted and accordingly, enquiry was conducted. 5 Prosecution Witnesses were examined by the Inquiry Officer and the applicant was given opportunity to cross-examine them and thereafter, the Inquiry Officer prepared the charge against the applicant, which was duly approved by the Disciplinary Authority and was served on the applicant on 26.08.2012. The applicant

submitted 4 names of his defence witnesses and the Inquiry Officer examined all of them and the applicant denied the charge and submitted his statement of defence on 11.09.2012. The Inquiry Officer, vide the Annexure A-1 finding dated 08.11.2012 held that the charge levelled against the applicant is proved. The applicant submitted his representation against the said findings on 05.12.2012 and he was heard in OR on 19.12.2012 and the Disciplinary Authority vide Annexure A-2 Order dated 31.12.2012 imposed the penalty, as referred above. The appeal of the applicant was dismissed by the Appellate Authority vide Annexure A-3 Order dated 21.08.2013.

3. The charge levelled against the applicant and as mentioned in the Annexure A-1 finding dated 08.11.2012, reads as under:-

“I, Inspector/Enquiry Officer, Ramesh Chander Charge, you, HC Madanpal No.1972/NE (PIS No.28841089) that while you were posted at PS Seema Puri/NED, on dated 17.11.2011 a secret information was received that one Premwati W/o Ram Manohar R/o P-21, Dilshad Garden, Seema Puri, Delhi, B.C. of P.S. Seema Puri is running prostitution racket at the given address. IPS Shri Ved Prakash Surya, ACP, Seema Puri along with his office staff HC Vineet No.524/NE & CT Anil Kumar No.247/NE reached near the premises of Premwati for conducting raid. You HC Madanpal No.1927/NE along with other Beat Staff were found present on duty at Post Police Post of PS Seema Puri. You, HC Madanpal No.1927/NE, had informed Premwati by your Mobile Phone No.9015466066 regarding raid by ACP. As a result, Girls & Men who were indulged in business of prostitution succeeded to escape. When ACP, Shri Ved Parkash Surya checked your Mobile Phone No.9015466066, on checking telephone conversation by you with Premwati was noticed & Mobile Phone No.9810575023 of Premwati was found present in your Mobile Phone screen. Call details of your Mobile Phone & Mobile Phone of Premwati also collected. During inquiry, your convenience with Premwati has been established.

The above act on your part amounts to gross negligence, misconduct, carelessness & dereliction of your official duty which renders you liable to be punished under the provision of Delhi Police (Punishment & Appeal) Rules, 1980”.

4. The conclusion of the Inquiry Officer as mentioned in the said finding, reads as under:-

“Departmental enquiry against HC Madanpal No.1972 (PIS No.28841089) has been conducted by me. During enquiry, statements of PWs have been recorded. Charge sheet served upon the delinquent. Statements of DWs also recorded. Finally delinquent submitted his defence statement. After examination and perusal of all statements, charge and summary of allegation finally it concluded that HC Madanpal No.1972/NE (PIS No.28841089) found connived with the B.C. Premwati (who was running a sex racket at her residence house P-21, Dilshad Garden, Delhi), the BC of PS Seema Puri, Delhi. There was secret information that Premwati is running a sex racket at her residence. ACP Shri Ved Prakash Surya, ACT sub division Seema Puri, Delhi along with his team went there to raid on that racket. But HC Madanpal No.1972/NE informed to Premwati on her mobile phone No.9810575023 regarding raid of ACP Shri Ved Prakash Surya, by his mobile phone number 9015466066, hence the raid was failed and the sex racket could not be busted. All criminals ran away from the spot due to connivance of HC Madanpal No.1972/NE.

Act of HC Madanpal No.1972 amounts gross negligence, misconduct, carelessness and dereliction in discharge of his official duties. Charge is proved against delinquent”.

5. Heard Shri Anil Singal, learned counsel for the applicant and Ms. Sangita Rai with Shri Pradeep Singh Tomar, learned counsel for the respondents and perused the pleadings on record.

6. Shri Anil Singal, the learned counsel appearing for the applicant, inter alia, submits that as per the charge levelled against the applicant, “a secret information was received on 17.11.2011” and the applicant, who was present on duty along with other beat staff at Dost Police Post of PS Seema Puri, “had informed Premwati by his mobile regarding raid by ACP and as a result, the girls and

men who were indulged in the business of prostitution succeeded in escape”, but the prosecution has not examined any witness who said to have received the said secret information on 17.11.201. Even ACP Shri Ved Prakash Surya, who conducted the raid was also not examined. On the alleged statement/report of ACP Ved Prakash Surya, the applicant was dealt with departmentally and non-examining of the said ACP Ved Prakash Surya itself vitiates the whole enquiry.

7. The learned counsel for the applicant further submits that one Premwati was a known ‘Bad Character’ of the area and checking the activities and whereabouts of all the ‘Bad Characters’ was part of the duty of the beat constables as per the oral instructions issued by the Station House Officer and the said fact was proved from the Daily Diary, vide Annexure A-6 (Colly) and the same was also proved by the statement of DW-1 HC Ajit Singh, to a specific question put to him by way of cross-examination by the prosecution, which is uncontroverted by any of the Prosecution Witnesses. Hence, calling Premwati, a known ‘Bad Character’ in the area by the applicant cannot be found fault, per se.

8. The learned counsel further submits that it was not proved in the enquiry that the applicant gave any information to Premwati about the raid of ACP Ved Prakash Surya, in advance. No witness was examined to prove the call details of the mobiles of the applicant as well as of Premwati. There were other Beat Constables

who were present along with the applicant when the raid party was proceeding to Premwati's house. No other Constable's call details were checked to know the exact truth that who gave information to Premwati. In the absence of examination of any witness to prove the call details of the applicant to state that whether the applicant called Premwati at all at the relevant point of time and even if called, whether he simply verified her whereabouts or given any information about the raid by the ACP, it cannot be held that the charge is proved.

9. The learned counsel also submits that the Inquiry Officer violated Rule 16(viii) of the Delhi Police (Punishment & Appeal) Rules, 1980 inasmuch as he has not examined any Court witnesses, after the defence evidence was recorded for clarifying the crucial facts that who received the secret information and that who proved the call details of the applicant vis-à-vis Premwati.

10. The learned counsel further submits that the evidence of the Defence Witnesses more so the evidence of the depositions of DW-2 to 4 was uncontroverted as the respondents not even chose to cross-examine them.

11. Per contra, Ms. Sangita Rai, the learned counsel appearing for the respondents would submit that the respondents have followed all the rules and principles of natural justice and procedure enumerated for conducting the departmental enquiries and full and

fair opportunity was given to the applicant at every stage and hence, there is no illegality in the action of the respondents.

12. It is further submitted that since the submissions of the Defence Witnesses 2 to 4 did not mention anything against not informing by the applicant to Premwati about the raid to be conducted by the police, they were not cross-examined. As per the CDR of the mobile phone reveals that the applicant had made a telephone call to Premwati at the relevant point of time and informed about the raid, no further evidence is required to prove the charge. She also submits that though there were number of 'Bad Characters' in the beat area of the applicant, but the fact of calling Premwati only at the relevant point of time by the applicant clearly proves that it was he, who had informed her about the police raid.

13. The applicant was not part of the raid team headed by the ACP Shri Ved Prakash Surya but the applicant was present along with other beat staff and was on duty at Dost Police Post PS Seema Puri at the relevant point of time and date. It was also revealed in the enquiry that there was a call from the applicant's mobile phone to the mobile of Premwati at the relevant time. It was not seriously disputed by the respondents that calling 'Bad Characters', such as, Premwati by the persons who were on beat duty in a particular area to know their whereabouts and movements, was in practice.

Hence, as rightly submitted by the applicant's counsel that even if it was proved that the applicant called Premwati at the relevant point of time, it cannot be found fault with per se, in view of the practice of calling 'Bad Characters' by the persons on beat duty. But whether the applicant himself informed Premwati about the ACP's raid or she came to know about the same through some other source or that there was no illegal activity was being conducted by her at all, at the relevant point of time, are to be proved, before imposing any punishment on the applicant. As rightly pointed out by the learned counsel for the applicant, no Prosecution Witness to prove the call details of the applicant were examined. No Prosecution Witness also spoke that in his presence the applicant informed Premwati about the raid through phone. In the absence of the same, and in view of the fact that calling 'Bad Characters' by the persons on beat duty was in practice, it cannot be said that the charge that the applicant himself informed Premwati about the raid, is proved, on the sole fact that he called her from his mobile. The submission of the respondents that none of the Defence Witnesses deposed anything against not informing by the delinquent to Premwati about the raid to be conducted by the police, is unsustainable, as the onus to prove the charge is on the respondents.

14. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned orders are quashed with all consequential benefits. No costs.

15. Original record submitted by the respondents shall be returned.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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