

Central Administrative Tribunal, Principal Bench

O.A.No.819/2003

New Delhi, this the 13th day of October, 2003.

Hon'ble Mr. Justice V.S. Aggarwal, Chairman

Hon'ble Mr. Sarweshwar Jha, Member (A)

Constable Naresh Kumar,  
S/o Shri Prithvi Singh,  
R/o B-55, Harijan Basti,  
Kundli, Delhi-96

....Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India,  
Through its Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi

2. Jt. Commissioner of Police,  
New Delhi Range

3. Addl. Dy. Commissioner of Police,  
East District, Delhi

....Respondents

(By Advocate: Shri Harvir Singh)

Order (Oral)

By Hon'ble Mr. Justice V.S. Aggarwal, Chairman

The applicant is a Constable in Delhi Police. Disciplinary proceedings had been initiated against him on the following summary of allegations:

"It has been alleged that you Ct. Naresh Kumar, 925/E while posted at P.S. Trilok Puri was assigned the duty as Santary in the Police Station. Two persons were rounded-up by a team from a Bus on Kotla Road on 4.3.2001, who were brought to the Police Station for verification. You had dishonestly accepted Rs.500/- from the mother of one of those apprehended persons namely Vinod and Duli Chand and arranged their release. You also admitted to have accepted Rs.500/- before the SHO and other Police personnel in the Police Station which is a grave misconduct on your part.

Later on you prepared the copy of D.D. Entries in your own hand without seeking permission from appropriate authority and procured copies of FIRs from the Police Station record and handed over to the office bearer of a political party to falsely implicate and harass your senior officer and other police personnel. You had tried to put unnecessary political pressure

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through your relative namely Sh. Anup Sagar, Genl. Secretary, Samajwadi Party, Delhi Pradesh, against your senior officer to seek your transfer back to Police Station. The above act on the part of Ct. Naresh, amounts to grave mis-conduct, dereliction of duty, unbecoming of a member of Delhi Police which renders him to be liable for departmental enquiry for major penalty under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980."

2. The enquiry officer so appointed, had split the charges based on the summary of allegations which reads:

"1. That on 4.3.2001 he dishonestly accepted Rs.500/- from the mother of one of the two boys namely Vinod and Duli Chand and arranged their release. He had admitted to have accepted Rs.500/- before the SHO and the other police personnel.

2. He prepared the copies of DD entry and FIRs in his own handwriting from police station record and handed over to the office bearer of a political party to falsely implicate and harass his senior officer and other police personnel.

3. He tried to put unnecessary political pressure through his relative namely Anup Sagar, General Secretary, Samajwadi Party on his senior officer to seek his transfer back to police station."

3. Ultimately the enquiry officer had recorded a finding that allegations at no.1 and 2 do not stand proved but the applicant was held to have derelicted in his duty and it was proved that he had tried to put unnecessary political pressure on officers through his relatives who were officials of political party for his transfer from Distt. Line back to Police Station. When the matter came up before the disciplinary authority, it was recorded that the applicant had committed a serious misconduct as besides committing the midconduct, he made false allegation against

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the senior officer through political party.

4. On the strength of these facts, besides other pleas with which we are not concerned for the present, learned counsel for the applicant urged that the disciplinary authority has taken into consideration the misconduct of making false allegations against the senior officer though the enquiry officer has exonerated the applicant and no note of disagreement has even been recorded on that count.

5. At this stage, we are not dwelling into the detailed facts and the position in law. Suffice to say that the disciplinary authority has a right to differ from the findings of the enquiry officer. However when the disciplinary authority differs from the findings of the enquiry officer, he must record a tentative note of disagreement and communicate it to the alleged delinquent and thereafter on consideration of the reply if any, pass an appropriate.

6. In the present case before us, no note of disagreement has been recorded but a fact regarding which the applicant was exonerated, had been taken into consideration regarding which we have made a reference in the preceding paragraphs. When such is the situation, the impugned order and also the order dismissing the appeal cannot be sustained.

7. For these reasons, we accept the present application and quash the impugned orders. We make it clear:

- (a) the disciplinary authority from the stage the report of the enquiry officer was received, would be competent to pass a fresh

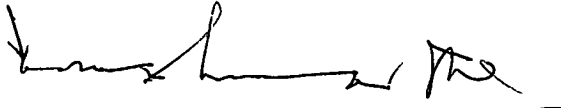
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order in accordance with law; and

(b) we are not expressing ourselves on any other plea on the merits of the application.

O.A. is disposed of.

  
(Sarweshwar Jha)  
Member(A)

  
(V.S. Aggarwal)  
Chairman.

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