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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.966/2003

New Delhi, this the 16<sup>th</sup> day of April, 2004

HON BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON BLE SHRI S.A.SINGH, MEMBER (A)

Sh. Jai Bhagwan  
s/o Sh. Itwari Lal  
r/o Village & Post Office  
Mangol Pur  
P.S.Mangol Puri  
Delhi.

...

Applicant

(By Advocate: Sh. R.R.Ahlawat)

Versus

1. Commissioner of Police  
Police Head Quarter  
I.P.Estate  
New Delhi.
  2. Sh. Narinder Singh  
Addl. Commissioner of Police  
PCR 7 Communication, Delhi  
I.P.Estate, New Delhi - 110 001.
  3. Sh. Kewal Singh  
Dy. Commissioner of Police  
Communication, Old Police Line  
Rajpur Road  
New Delhi.
  4. Sh. Harjit Singh  
Asstt. Commissioner of Police  
(Erstwhile Inspr.)  
Old Police Line. Communication Unit  
Rajpur Road  
New Delhi.
- .. Respondents

(By Advocate: Sh. Ajesh Luthra for official respondents and Sh. Ashwani Bhardwaj for private respondents.)

O R D E R

Justice V.S. Aggarwal:-

Applicant was appointed as Head Constable in Delhi Police. He had been served with the following summary of allegations:

"It is alleged that on the night intervening 28/29.7.2001 Inspr. Harjeet Singh was night checking officer. HC Jai Bhagwan No.1212/Comn. was performing operator duty at Radio Station PS Patel

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Nagar from 2000 hrs. to 0800 hrs. on that night. The door of the wireless cabin was found locked when checked by the Inspr. at 0035 hrs. The Inspr. knocked the door many a times to get the door opened but no response was received. When he knocked the door with little force, the operator from the inside shouted in a very indisciplined manner "KYA DARWAJE KO TOREGA BE". After about 10 minutes the operator opened the door. The HC (AWO) was found in plain clothes. When he was asked as to why he was not in proper uniform and opened the door, the HC shouted in a indisciplined manner that he would do like this. You may do whatever you like. The Inspr. further asked him to show Log Book and SOD of the Station, but the HC refused to give. When the Inspr. checked the table and found SOD and Log Book the HC snatched the same from the checking officer and spoke in a insubordinate manners that he would talk to DCP/Comn. A SOD entry regarding his misbehaviour, misconduct and insubordination to his senior checking officer was lodged by the Inspr. vide SOD No.2 of Radio station PS Patel Nagar on 28/29.7.2001. The HC(AWO) has also made irrelevant transmission on Distt. Net at 0130 hrs. "INSPR. HARJEET SINGH AAI UNHONE AATE HI DARWAJE PAR LAT MARNI SHURU KAR DI AUR AATE HI BADTAMIZI SE BOLE. Inspr. informed DCP/Commn. at his residence for the irrelevant transmission on the act and misbehaviour, misconduct of HC Jai Bhagwan No.1212/Comn. who instructed him to suspend him immediately. A DD entry No.50 has also been lodged regarding his misconduct and his suspension in Rojnamcha of Comn. OPL on 28/29.7.2001.

The above act on the part of HC (AWO) Jai Bhagwan No.1212/Comn. amounts to gross misconduct and unbecoming a member of disciplined force for which he is liable to be punished under the provision of the Delhi Police (Punishment & Appeal) Rules, 1980."

2. The inquiry officer had been appointed, who almost on the same facts had framed the charge and thereafter recorded the findings that the assertions made have been proved. The disciplinary authority vide order of 29.10.2002 dismissed the applicant from

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service. The applicant preferred an appeal which was dismissed by the Additional Commissioner of Police on 9.1.2003.

3. By virtue of the present application, applicant seeks quashing of the orders passed by the disciplinary as well as the appellate authority with consequential benefits on reinstatement of the applicant and other benefits that could accrue. Various pleas have been raised which we shall consider hereinafter.

4. We have heard the parties counsel and have seen the relevant record.

5. MA No.371/2004 had been filed on behalf of Respondent No.4 stating that he was merely a complainant in the disciplinary inquiry and that he was not a necessary party. Almost on the same lines on behalf of Respondents No.2 and 3. namely, the appellate as well as the disciplinary authorities, it had been argued that they have been arrayed as parties by name and that is improper. It has to be remembered that Respondent No.4 is merely a complainant on the basis of whom the disciplinary proceedings had commenced. The ultimate order has been passed by Respondents No.3 and 2. In such a situation, even if a person has to complain regarding the correctness of the complaint, the complainant in such disciplinary proceedings like the one before us cannot be taken to be a party. It is not a good practice of impleading such persons as parties which could be encouraged.



Even Respondents No.2 and 3 had passed the order obviously in their official capacity and they should not have been arrayed as parties by name.

6. During the course of the submissions, learned counsel for the applicant had urged that Respondent No.4 is in the habit of making false complaints and reference was made to some such facts. On that account also, the contention necessarily must be repelled. Because presently the controversy is pertaining to the allegations against the applicant with respect to the alleged misconduct which we have already referred to above. The habit of respondent No.4 referred to is, therefore, irrelevant and incompetent which does not require any consideration. The authorities were basically concerned with respect to the controversy alive and, therefore, the past conduct, if any, of Respondent No.4 who was otherwise also not a necessary party is an irrelevant plea, which must fail.

7. Reverting back to the assertions, learned counsel for applicant eloquently pointed that after the incident. Respondent No.4 had given the following facts in writing. It was followed by another detailed statement of 2.8.2001. In the opinion of the learned counsel, the subsequent complaint is an improvement and, therefore, cannot be relied or acted upon.

8. It is true that initially Respondent No.4 had made the following complaint.

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"HC Jai Bhagwan 1212/Comn. found on duty. But HC was found without uniform and took ten minutes to open the door. When asked why he took so much time and also he has not supposed to lock inside the cabin he with an indisciplinary manner shouted and said he would do and what ever you do you can do. When checked log it was found no call received or transmitted in the log after 0019 hrs. The behaviour of the operator towards his senior is very indisciplined and deserve for severe punishment."

It was followed by the detailed complaint. copy of which is annexed as Annexure-A10:

I was night checking officer on 28/29-7-2001 vide letter No.858-59/ICT/DCP. Com dated 27.7.2001. After checking different stations I reached at 0035 hrs. on 28.7.2001 at PS. Patel Nagar where I found Wireless Cabin was locked from inside. The door was knocked many times but no response received. When I knocked with little force the operator from inside shouted in a very different way "Kya Darwaja Ko Torega Be". I repeatedly said to open the door but the operator did not care. After about ten minutes he opened the door and I found him in plain clothes. I asked him why he did not open the door, whether he was sleeping and also he was not wearing uniform. The operator on duty with an insubordinate manner shouted he would do like this. You may do whatever you like. When I asked him to show log & SOD of the station, he refused to give. Then I checked the table and found log & SOD of the station and start to check. He immediately snatched the log & SOD from my hands and said in a very insubordinate manner that he would talk to DCP/Comn. Then I again got the SOD & log from him. While checking I found his name HC, Jai Bhagwan, 1212/Comn who was deputed for duty from 2000 hrs to 0800 hrs for the date 28/29-7-2001. There I lodged the report in SOD of his misbehaviour, misconduct & insubordinate to his Senior checking officer while on duty and his disobey the orders of worthy DCP/Comn to wear proper uniform while on duty. On checking the West Distt C/Room it had come to my notice that HC. Jai Bhagwan, 1212/Comn made irrelevant transmission on Distt. net at 0103 hrs "Inspr. Harjeet Singh Aai Unhone Aate Hi Darwaje Par Lat



Marni Shuru Kar Di Aur Aate Hi Badtamizi Se Bole". It was log by W/HC/AWO Inder Mohan of W-50.

For his irrilavant transmission, insubordination, indiscipline, misbehaviour & misconduct act I informed DCP/Comn on phone at his residence who instructed me to suspend him immediately. I lodged the report in O.P.L vide D.D.No.50 dated 28/29-7-2001."

9. It is obvious that in sum and substance ~~of~~ both the complaints are <sup>similar</sup> ~~the same~~. The latter one is a little more in detail. Otherwise also in a departmental inquiry, this Tribunal will not sit as a Court of appeal and scrutinise the same. Unless the findings are perverse, erroneous or based on 'no evidence', this Tribunal will not interfere. In this backdrop, the said plea for the reasons recorded must be stated to be rejected, requiring no further probe.

10. Yet, another limb of the argument was that the applicant in fact was not at fault. It was Respondent No.4 who shouted at him and abused him and even the applicant had made a complaint in this regard. It was pointed out on behalf of the respondents that such complaint in writing has been received much later and was an afterthought. Since it is a matter for the disciplinary authority to consider to which we have already referred to above, we do not deem it proper in these circumstances to go into the same. Suffice to say, that the charge had been drafted against the applicant. As regards the words purported to have been uttered by Respondent No.4, the defence had been taken during the course of the inquiry and the inquiry officer had recorded the findings that charge stood proved. It is deemed,

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therefore, that the plea so much thought of by the applicant that Respondent No.4 used unparliamentary language against him necessarily must fail.

11. At this stage, it is relevant to mention that the applicant's learned counsel in this regard further pointed that the words used by Respondents No.4 were not only unparliamentary but it amounted to an offence under Section 3 (x)(ix) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In this regard, subject to what we have recorded above, if the applicant indeed had any grievance, necessarily it could be gone into by a Court of law pertaining to any offence purported to have been committed. Further opinion on that count would be embarrassing for either party at a subsequent stage.

12. It has further been pointed that Head Constable Sanjeev Kumar who appeared as PW-4, during the course of the inquiry, has not supported the case of the department and this fact has totally been ignored. Our attention was particularly drawn towards the cross-examination that was conducted. HC Sanjeev Kumar had deposed that his duty was with Respondent No.4 as Wireless Operator. When they reached at the Police Station Patel Nagar, the door of wireless cabin was found bolted from inside. Inspector knocked the door time and again but operator did not open it. After about 10 minutes it was opened. The applicant was in plain clothes. When Respondent No.4 had asked the applicant as to why he was sleeping, the applicant



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replied in a very indecent way that he was not sleeping and that he always keep the door locked from inside. When Inspector Sahib (Respondent No.4) demanded SOD. he refused to give the same. The applicant relied upon the cross-examination which reads:

"During cross examination by defaulter, HC Sanjeev Kumar replied that on that day he was on duty with Inspr. Harjeet Singh and had not made his departure in his own handwriting. He admitted that Inspr. Harjeet Singh had knocked the door but denied that he had kicked the door with full force. He further admitted that Inspr. Harjeet Singh did not mention anything in his night chekcing report. He admitted that Inspr. Harjeet Singh had used filthy language but denied that he uttered the words "Chura Chamar and Ghoru". He admitted that HC Jai Bhagwan had shown him medical slip in respect of dress excuse and at that time lock up sentry and one DHG was also present. He further admitted that HC Jai Bhagwan had explained to Inspr. Sahab that he was not sleeping. He further stated that Log Book was lying on the table and was snatched by HC Jai Bhagwan. He further made no comments in respect of previous conduct, misbehaviour and punishments given to Inspr. Harjeet Singh by senior officers."

Reading of the same clearly shows that Respondent No.4 is alleged to have used filthy language but denied that he uttered the words that had been attributed to him. The statement of witness always has to be read as a whole and not one line in isolation of the rest. Reading of the statement, as a whole, state that he supported the charge framed against the applicant.

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13. So far as the medical slip is concerned, as already referred to above, the charge was that the applicant was not properly dressed at the relevant time and in this regard permission had not been taken to remain in civil dress.

14. Taking stock of the totality of the facts and circumstances, it cannot be stated that the statement of PW-4 would upset the findings on the basis of which it can be stated that they are perverse.

15. It is true that whenever there are findings that are recorded, reasons must be recorded on all the charges and facts separately. On perusal of the report of the inquiry officer, it is clear that he had discussed the evidence on the record and held that the charge is proved.

16. If separate findings are not recorded, in that event only prejudice is caused and interference would be called for.

17. In the present case, the inquiry officer had discussed the evidence on the record and came to the conclusion. In the absence of any prejudice caused, the contention necessarily has to be rejected.

18. The Supreme Court in the case of CHAIRMAN & MANAGING DIRECTOR, UNITED COMMERCIAL BANK & ORS. v. P.C. KAKKAR, 2003(2) ATJ 601, held that reasons must be recorded. The findings of the Supreme Court are:

"15. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the

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punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union [1971] 1 ALL E.R. 11481 observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed "Failure to give reasons amounts to denial of justice." Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, be its silence, render it virtually impossible for the Courts to perform their appellate function of exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reason for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case, it per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

19. In the present case, we have already referred to above that the inquiry officer had recorded the findings. A perusal of the order of the disciplinary authority also indicates that the disciplinary authority has considered the evidence on the record. He has recorded reasons to arrive at the findings. Same is the case of the appellate

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authority. After recording the contentions reasons have been recorded and it, therefore, cannot be stated that in the present case it is a non-speaking order without recording any specific reasons.

20. At this stage, it would be relevant to take up the argument that was advanced that words that are stated to be uttered has to be appreciated in the light of the totality of the facts. The applicant's counsel relied upon the findings of the Supreme Court in the case of RAM KISHAN v. UNION OF INDIA & OTHERS, (1995) 6 SCC 157, wherein the Supreme Court indeed held that there is no strait jacket formula that can be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service.. In the present case, the language used was totally an act of insubordination and, therefore, in the backdrop in which it has been uttered particularly when applicant is alleged to have bolted the door of the wireless cabin, the gravity increases.

21. The last submission was that the penalty awarded was in any case disproportionate to the alleged misconduct. It is well settled principle that it falls within the domain of the authorities concerned. The scope for interference would only be available if the findings shock the conscience of the Court. In the present case. it was not only dereliction of duty but in fact insubordination. In a disciplined force, indeed it should not be allowed.

22. Taking stock of these facts, when no other arguments had been raised, we find that the

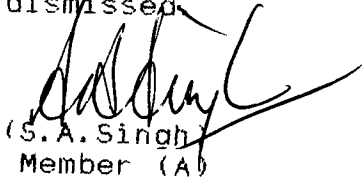


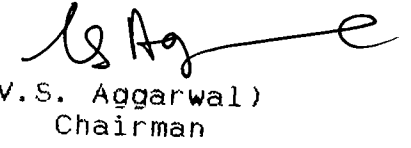
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application is without merit.

23. Resultantly, it must fail and is dismissed.

  
(S.A. Singh)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

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