

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1069/2003

MA No. 953/2003

New Delhi, this the 8th day of December, 2003

Hon'ble Shri Justice V.S. Aggarwal Chairman
Hon'ble Shri S.K. Naik, Member (A)

SI Amrit Raj,
s/o Shri Bijay Kumar Jha
R/o Qtr. No. 4, Type-III
Police Station Krishan Nagar,
Delhi - 110 051. ...Applicant

(By Advocate: Shri Arun Bhardwaj)

Versus

1. Union of India through
Commissioner of Police,
P.H.Q., I.P. Estate,
New Delhi.
2. Joint Commissioner of Police,
Operations,
P.H.Q., I.P. Estate,
New Delhi.
3. Dy. Commissioner of Police,
IGI Airport,
New Delhi. ...Respondents

(By Advocate: Shri Harvir Singh)

ORDER (ORAL)

Justice V.S. Aggarwal, Chairman -

The sole prayer made during the course of submissions was that the penalty awarded by the disciplinary as well as appellate authority is disproportionate to the alleged dereliction of duty on the part of the applicant.

2. To appreciate the said contention, we refer to some of the relevant facts.

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3. The applicant faced the following charge:

"I, V.R. Jethwa, ACP/IGIA/Lines, New Delhi, hereby charge against you, SI Amrit Raj, No. D/3375 that while posted at P.S. IGI Airport, New Delhi, you were entrusted the investigation of case FIR No. 494/2000 dated 26.11.2000 u/s 419/420/468/471-IPC and 12 Passport Act and 14 F. Act PS IGIA vide D.D. No. 9-A, dated 26.11.2000. During the investigation of this case, you arrested the accused Kiran Chopra, w/o Bikram Chopra, vide D.D. No. 21-A, dated 26.11.2000 and produced her before the Court of A.C.M.M., Patiala House, New Delhi vide D.D. No. 15-A, dated 27.11.2000.

Later on, a special team was constituted at P.S. IGIA to investigate the cases exclusively related to Afgan Nationals and all the concerned I.Os were directed to deposit the case files relating to Afgan Nationals with MHC(R) PS IGIA vide letter no. 3954/R/SO/P.S. IGIA dated 22.12.2000. So that such case files could be marked to the I.Os of newly constituted special team, for further investigation. But you, SI Amrit Raj failed to comply with the directions and did not submit the above said case file with MHC(R). On being asked, you submitted that I am unable to trace the said file.

The above act on the part of you SI Amrit Raj, No. D-3375 amounts to gross misconduct, carelessness, negligence, dereliction in the discharge of your official duties and an act of unbecoming of a Police officials in violation of Rule-3 (1)(i)(ii)(iii) of C.C.S. (Conduct) Rules, 1964 which renders you liable to be punished with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules, 1980."

4. The Enquiry Officer held that the charge had been proved. Resultantly, the disciplinary authority, recording its own reasons and accepting the report, imposed the penalty of forfeiture of two years approved

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service permanently for a period of two years. The applicant preferred an appeal. The Joint Commissioner of Police considered the contentions of the applicant which have been so recorded. He accepted two of the said contentions pertaining to that the applicant had investigated the case properly and loss of file in no way benefited the applicant. A lenient view was taken and the order was modified to forfeiture of two years approved service temporarily for a period of two years. *besides the penalty*

5. We do not dispute that awarding of penalty is within the domain of the disciplinary and the appellate authority. In judicial review, this Tribunal will not replace its own opinion in this regard. However, in a case where it appears that the penalty awarded is disproportionate to the alleged dereliction of duty, the matter indeed can be remitted back to the disciplinary authority for applying its mind afresh.

6. In the facts of the present case, we are of the opinion that herein it requires re-thinking by the disciplinary authority in this regard.

7. The facts of the present case clearly indicate, which were in fact not disputed, that the file in question, which is purported to have been misplaced by the applicant, had been recovered from the Police Headquarters within few months of the same being missing. It was not disputed that thereafter the accused in the said matter had been tried and

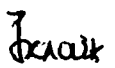
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convicted. Even the Joint Commissioner of Police had found that the applicant had investigated the matter in all sincerity and arrested the accused person. The loss of file in this way was not to benefit the accused in that case nor had any adverse effect on the fate of the investigation. Once such is the situation, it appears that it may be a case of inadvertent mistake rather than conscious dereliction of duty. Therefore, the penalty so awarded, in our opinion, does not commensurate with the alleged dereliction of duty.

8. In this view of the matter, we quash the impugned orders and direct that the disciplinary authority, taking stock of the position in law and what we have observed above, may pass a fresh order. The ratio deci dendi of the decision of the High Court of Delhi in the case of **Shakti Singh vs. Union of India** in CWP No. 2368/2000 decided on 17.09.2002 may also not be lost sight off.

9. Subject to aforesaid, the O.A. is disposed of.


(S.K. Naik)
Member (A)

/na/


(V.S. Aggarwal)
Chairman