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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1155/2003

New Delhi, this the 14 day of October, 2003

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

Preet Pal Singh
Ex.HC in Delhi Police (PIS No.28822001)
Qr.No.H-26, PS Mandir Marg
New Delhi .. Applicant

(Shri Anil Singal, Advocate)

versus

Government of NCT of Delhi, through

1. Commissioner of Police
Police Hqrs., IP Estate, New Delhi
2. Joint Commissioner of Police
(New Delhi Range) PHQ, New Delhi
3. DCP(North Delhi Dist)
Police Hqrs., New Delhi
4. DCP (Vigilance)
Police Hqrs., New Delhi .. Respondents

(Shri Ram Kahwar, S., Advocate)

ORDER

Shri S.K. Naik

A departmental enquiry was instituted against the applicant vide order dated 11.10.2001 under Section 21 of Delhi Police Act, 1978 and Rule 4(iv) of Delhi Police (Punishment & Appeal) Rules, 1980 on the allegation that while performing picket duty at Minto Road Picket, Police Station Connaught Place on 29.6.2001 from 4 PM to 12 night, the applicant and other Constable Pritipal Singh were found indulging in corrupt practice of unauthorised checking of papers and driving licences of scooterists/motor cyclists and demanding/collecting money from them on the pretext of exempting from challan. They were also caught red handed by Vigilance Staff of PHQ while accepting Rs.100 from one scooterist Shri Ajay

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Joshi whose initial was found in the said Rs.100 note. Subsequent enquiry also revealed that they demanded/collected Rs.630 from other scooterists/motorcyclists.

2. After the enquiry and based on evidence of witnesses, the enquiry officer concluded that the charge against the applicant and the other constable has been proved. Agreeing with the findings of the enquiry officer and on the basis of proof available on record against the applicant, the disciplinary authority vide his order dated 26.7.2002 dismissed the applicant from service. Appeal preferred against this order was also rejected by the appellate authority vide his order dated 20.3.2003. Applicant has assailed these orders and sought a direction to the respondents to reinstate him in service with all consequential benefits.

3. We have heard the counsel for the parties and perused the records.

4. Learned counsel for the applicant has mainly concentrated his arguments before us on the following grounds to assail the impugned orders. According to him, the findings of FC are beyond the summary of allegations and are in violation of Rule 16(iv) of the aforesaid Rules; the third charge of misbehaviour on the part of the applicant was added which was not part of allegation and therefore extraneous; demand and acceptance of money was not proved and that it is a case of no evidence. He

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has also contended that Rule 15(3) and 16(3) have been violated inasmuch as statements made during preliminary enquiry could not have been brought to the departmental enquiry when witnesses have been examined in DE. In this connection he has drawn our attention to the decisions of this Tribunal dated 17.5.2001 in OA 1944/1999 and dated 27.9.2001 in OA 105/2001.

5. On the other hand, learned counsel for the respondents has denied the aforesaid averments. According to him, no preliminary enquiry was conducted under Rule 15(1) of the aforesaid Rules. However, the DE was initiated as per the order of Jt.CP/NDR dated 12.9.2001. Thus there was no violation of Rule 15(3) or 16(3) as alleged by the applicant. The disciplinary authority has rightly observed in the punishment order that the PWs have been won over because during vigilance enquiry PWs clearly deposed that the police personnel demanded/accepted money from them for not challaning whereas during DE proceedings they did not depose so, which showed that these PWs have been won over by the applicant and his co-defaulter to save him. The EO framed the charge on the basis of evidence of PWs and thus there is no violation of Rule 16(iv) either. He has further stated that the applicant along with the co-defaulter misbehaved and demanded/accepted illegal gratification from the complainant which is of very serious nature. Therefore, it cannot be termed as a case of no evidence. According to him, both the disciplinary and appellate authorities have passed reasoned and speaking order which do not suffer from any illegality.

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6. We have carefully considered the averments made by the parties.

7. We are aware of the legal position that the Tribunal cannot reappreciate the evidence adduced during the course of departmental enquiry and also cannot interfere with the quantum of punishment imposed unless the same shocks the conscience of the court. Perusal of material available on record reveals that in the summary of allegations dated 13.10.2001, there is no mention of misbehaviour by the applicant, while the same is mentioned in the charge dated 8.3.2002. The EO in his findings has not discussed the evidence relating to misbehaviour of the applicant but has simply concluded that charge has been proved. However, disciplinary authority in his order dated 26.7.2002 has mentioned that the applicant misbehaved with Shri Ajay Negi. The basis on which the disciplinary authority has arrived at this conclusion in the absence of any evidence thereon has not been indicated. Again, though the respondents maintain that no preliminary enquiry was conducted, it is not disputed that certain vigilance enquiry was conducted, pursuant to which the charge sheet was issued. Argument of the learned counsel for respondents that no formal order as such for initiating PF under the Rules was issued and that the vigilance enquiry based on which the DE was ordered cannot be treated as a preliminary enquiry, in our view, is totally misconceived. ^{It} ~~It is not~~ necessary ~~that~~ ³ The enquiry held prior to ordering of DE

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by whatever name may it be called has to be treated as preliminary enquiry as it forms the basis for the authority to arrive at a decision as to whether or not to initiate DE. We, therefore, hold that the so-called vigilance enquiry has to be treated as preliminary enquiry.

8. Having held that the so-called vigilance enquiry was indeed a preliminary enquiry, the statements recorded during the vigilance enquiry could have been brought on record and considered only if the witnesses were no longer available. In the instant case, we find that the witnesses have in fact been examined in the DE but their versions have been disbelieved on the ground that they ~~have~~ been won over and therefore earlier statements recorded in the vigilance enquiry/preliminary enquiry were brought on record and the findings have been based on them. Under the circumstances, we have no hesitation to hold that provisions of Delhi Police (Punishment & Appeal) Rules, 1980 have been violated by the respondents, while imposing the penalty.


9. Thus, we find that the impugned orders as well as the findings of enquiring authority suffer from serious infirmities inasmuch as extraneous charge which did not find mention in the summary of allegations has been brought on against the applicant and further Rule 15(3) and 16(3) have been grossly violated, since the disciplinary authority has ignored the statements of


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witnesses recorded during the DE and relied on their statements recorded during the vigilance enquiry, which is not permissible under the law.

10. In view thereof, we allow the present OA and quash ~~the~~ ^{the} ~~and~~ orders passed by the disciplinary and appellate authority. The case is remitted back to the disciplinary authority to take appropriate action in accordance with Rules/instructions from the stage of issue of charge-sheet and pass suitable orders accordingly. Needless to state the applicant shall be reinstated in service and the period from the date of dismissal to date of reinstatement shall be decided in accordance with Rules.

OA is disposed of in the aforesaid terms. No costs.


(S.K. Naik)
Member(A)


(V.S. Aggarwal)
Chairman

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