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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1586/2003

Tuesday, this the 6th day of January, 2004

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

Asstt. Sub Inspector Bishan Chand No. 1196/D
s/o Shri Ram Singh aged about 60 years
Presently residing at A-4/4-73, Amer Colony
East Gokul Pur, Delhi-94

..Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India through its Secretary
Ministry of Home Affairs, North Block
New Delhi
2. Joint Commissioner of Police
Special Branch
Police Headquarters, IP Estate
MSO Building, New Delhi
3. Dy. Commissioner of Police
Special Branch
Police Headquarters, IP Estate
MSO Building, New Delhi

..Respondents

(By Advocate: Shri Mohit Madan for Smt. Avinash Ahlawat)

O R D E R (ORAL)

Justice V.S. Aggarwal:

The applicant (Bishan Chand) was an Assistant Sub Inspector in Delhi Police. Disciplinary proceedings had been initiated against the applicant and the charge framed against him reads:-

"CHARGE

I, S.K. Sharma, ACP/E.O. charge you ASI Bishan Chand, No. 1196/D (PIS No. 29650085) that while posted in North-East Zone/SE you were entrusted with the verification of personal particulars of passport applicant Sh. Gurpal Singh S/o Sh. Tarsem Singh, r/o 1/3510, Ram Nagar, Shahdara, Delhi bearing RPO's File No. A-000838 dated 11.1.2000 received in this office vide APP Branch Dy. No. 1546-A dated 13.1.2000. You verified the stay of the above applicant as more than one year at the above address.

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Accordingly, a clear report was sent to RPO office vide No.2556-A dated 31.1.2000.

Later on receipt of a D.O. letter No. A/000838/2000 dated 12.2.2000 from RPO, Delhi, requesting therein for re-enquiry about the stay of the above applicant at the given address as he did not turn up to collect his passport though he had requested for issuance of Passport under Tatkal Scheme.

On this, the matter was got re-enquired by Insp. R.K.Budhiraja, Hindu Section/ SB which revealed that the verification conducted by you was totally false/bogus as neither the above applicant for passport nor the referees cited by you during verification resided at the given/verified addresses. The owner of H.No.1/3510, Ram Nagar, Shahdara, Delhi on which you verified the stay of the applicant totally denied about the stay of the applicant there and even any acquaintance with the applicant. The documentary evidence collected by you during verification i.e. photo copy of Ration Card was also found bogus.

The above facts indicates that you have conducted false/bogus verification with an ulterior motive without visiting the given address of the passport applicant. Had you visited the given address the real facts would have been detected at the initial stage and a negative report would have been sent to R.P.O. office in this case.

The above act on your part amount to gross negligence, carelessness and unbecoming of a Govt. servant in the discharge of your official duties which renders you liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules, 1980."

2. The inquiry officer had returned the findings holding that the charge stood proved. The disciplinary authority, namely, the Deputy Commissioner of Police, Special Branch, Delhi recorded that the applicant has misused his official position and involved in malpractice and dishonesty in the Department. The verification was

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held to be an important task. Accordingly, the disciplinary authority dismissed the applicant from service. He preferred an appeal which was dismissed on 30.10.2002.

3. By virtue of the present application, the applicant assails the orders passed by the disciplinary as well as the appellate authorities.

4. The petition has been contested. In the reply filed, the basic facts, which we have enumerated from the charge framed against the applicant, have been re-mentioned. Suffice to say that the respondents contended that the applicant had verified the stay of the passport applicant Shri Gurpal Singh for more than a year at a particular place, while in fact he had never stayed at that place, as contended. The matter was re-inquired through Inspector R.K. Budhiraja who revealed that verification conducted by the applicant was false and bogus. According to the respondents, the proceedings have been conducted in accordance with the law and the procedure, and the penalty awarded is also commensurating with the dereliction of duty attributed to the applicant.

5. We have heard the parties' learned counsel.

6. Learned counsel for applicant, in the first instance, had drawn our attention to sub-rule 2 to Rule 15 of Delhi Police (Punishment & Appeal) Rules, 1980 to contend that as per the charge, that has been framed, it has been asserted that the applicant had verified the

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form with ulterior motive and, therefore, the cognizable offence would be drawn. The respondents had not taken the permission of the Additional Commissioner of Police in this regard while initiating the disciplinary proceedings.

7. Sub-rule 2 to Rule 15 of the Rules referred to above unfolds its position in the following words:-

"(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

8. Perusal of the above clearly shows that before the rigours of sub-rule 2 to Rule 15 come into play, there should be a preliminary inquiry which discloses the commission of a cognizable offence. Sub-rule 1 to Rule 15 of the Rules makes it clear that a preliminary inquiry is a fact finding inquiry to establish the nature of default, to collect prosecution evidence, to judge quantum of default and to bring relevant documents on record.

9. In the present case before us, no preliminary inquiry had been held and only Inspector R.K. Budhiraja had been sent to re-inquire the matter, keeping in view that it was felt that the report made by the applicant was not correct. When there is no preliminary inquiry,

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we have no hesitation in holding that sub-rule 2 to rule 15 of the Rules would not be attracted.

10. Confronting with this position, learned counsel for applicant urged that there is no gross misconduct in the present case and keeping in view the same, the penalty of dismissal from service is excessive.

11. Under Rule 8 of the aforesaid Rules, the punishment of dismissal or removal from service has to be awarded only in matters of grave misconduct rendering the person unfit for police service. Rule 10 of the said Rules further makes the position clear that if the record of the concerned person shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service.

12. It was pointed that the applicant had rendered thirty five years of service and he had in any case attained the age of superannuation during the pendency of the present proceedings. Our attention was further drawn to the fact that ^{only} ~~though~~ the applicant derelicted in duty by not visiting the site and properly verifying the ration card of the person who applied for the passport. Therefore, according to the learned counsel for applicant, it was not a case of gross misconduct to entail the penalty of dismissal from service.

13. We have carefully considered the said submissions. We are conscious of the fact that in the

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case of B.C. Chaturvedi v. Union of India, 1995 (8) SCC 65, it has been held in an ambiguous terms that awarding a particular penalty is within the domain of the disciplinary/appellate authorities. This Tribunal may only interfere if penalty awarded is totally disproportionate to the alleged misconduct. We have mentioned the mitigating facts and circumstances. The applicant had served the Department for more than thirty years. There is no dispute that verification of the passport is a serious affair and should be taken up with due diligence. The applicant only acted on the ration card that was produced. There is little material on the record that there was any ulterior motive in this regard, besides that he was careless, negligent and improper in discharging his duties. Keeping in view these factors, we are of the considered opinion that extreme penalty of removal or dismissal from service should not have been imposed, in the facts and circumstances of the present case.

14. Resultantly, though on merits of the matter, there is no scope for interference, but we remit the matter to the disciplinary authority to pass any other order, as may be deemed proper, other than removal or dismissal from service.

15. Subject to aforesaid, OA is disposed of.

Naik
(S. K. Naik)
Member (A)

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(V.S. Aggarwal)
Chairman