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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1687/2003

New Delhi, this the 24th day of February, 2004

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

Narender Singh
s/o Sh. Joginder Singh
D-8 Type-II New Police Line
Kingsway Camp
Delhi.

... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Union of India through
Ministry of Home Affairs
North Block
New Delhi.
2. Commissioner of Police
Police Head Quarter
I.P.Estate
New Delhi.
3. Addl. Commissioner of Police
Armed Police
PHQ, I.P.Estate
N. Delhi.
4. Deputy Commissioner of Police
1st Bn., DAP
PHQ, I.P.Estate
New Delhi.

.. Respondents

(By Advocate: Sh. Ram Kaur)

ORDER

Justice V.S. Aggarwal:-

The applicant joined as Constable in Delhi Police. By virtue of the present application, he seeks quashing of the orders passed by the disciplinary as well as the appellate authority.

2. Some of the relevant facts are that the applicant was served with the following charges.

"I, Insp. Ajit Singh, charge you Const Narender Singh No.730/DAP that on 04.9.97, Harvinder Singh S/O Sh. Surat Singh R/O Praladhpur Gharoli, P.S.Kharkhoda, Sonapat and Deepak S/O Sh.

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Raghubir Singh R/O Ghoga, P.S.Narela, Delhi were arrested in case FIR No.371/97 u/s 186, 307, 353 IPC sec. 27 Arms Act P.S.Narela, Delhi. Both the accused made confessions regarding the supply of Arms by Const. Narender Singh, 612/DAP, 730/DAP posted at CPR Vijayghat, on this you Const Narender Singh were arrested by special staff North Distt. on 05.9.97 u/s 41.1 CrPC and were produced before Court on 06.9.97. Two days P.C. remand was also obtained by Crime branch in case FIR case No.717/97 u/s 409, 380, 457 IPC P.S. Kotwali in which two revolvers and one pistol were stolen from Kot of CPR Vijayghat/Ist Bn.

On interrogation you Const Narender Singh 730/DAP confessed that while you were at CPR Vijayghat, you had committed theft of two revolvers and pistol from the Kot on intervening night 22/23.6.97 along with Raju, Jasvinder Jassu and Dhannu after stealing keys of Kot from the pillow of Const. Narender Singh (Not Munshi).

The above act on your part amounts to grave misconduct and unbecoming of a Police Officer which renders you liable to be dealt under the provisions of Delhi Police (Punishment & appeal) rules, 1987."

3. The inquiry officer held that the charge stood proved on basis of the admission of the applicant. The report of the inquiry officer was accepted and the disciplinary authority imposed penalty of dismissal from service. He preferred an appeal. It was dismissed on 29.5.2003. Hence, the present Original Application.

4. The application has been contested. The respondents plead that disciplinary proceedings had been initiated against the applicant under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980. The charge was pertaining to the fact that two accused had made statement regarding supply of fire arms by the applicant. On this the applicant was arrested by the Special Staff, North District. On

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interrogation by the Crime branch the applicant confessed that while he was posted at CPR Vijayghat, he had committed theft of two revolvers and one pistol from the Kot on intervening night 22/23.6.1997 after stealing keys of Kot from the pillow of Const Vijender Singh [Kot Munshi].

5. According to the respondents there is no departure from the procedure. The charge stood proved.

6. During the course of the submissions, learned counsel for the applicant highlighted the fact that facts have not been stated correctly in the charge and further the theft is stated to have been taken place on 22/23.6.1997 while the findings are that they took place on 23/24.6.1997. The learned counsel further contended that the confession during the interrogation should not be made relevant. He also urged that in any case the same cannot be acted in the facts of the present case and is not a genuine document. He contended that the same was got recorded under coercion and threat.

7. There is little controversy that in judicial review the findings of the inquiry officer/disciplinary authority should not ordinarily be upset even when they are based on preponderance of probabilities. It is not a Court of appeal, and strict rule of evidence is not applicable in the departmental inquiries. However, the allegations must be established by such evidence acting upon which a reasonable person acting reasonably. We need not

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delve in detail into all the precedents but refer with advantage to the decision of the Supreme Court in the Bank of India & Anr. v. Degala Suryanarayana, JT 1999 (4) SC 489 wherein the said principle had been re-mentioned:

"11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of malafides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel, 1964 (4) SCR 718 the Constitution Bench has held:-

"the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

8. It is on the touch stone of the aforesaid that we have to delve to the facts of the present case before us.



9. To keep the record straight. we deem it necessary to mention that on an earlier occasion, the applicant was dismissed from service invoking Article 311(2)(b) of the Constitution but the said order was set aside. It is thereafter that the disciplinary proceedings had been initiated.

10. As already pointed above, the charge framed against the applicant was that he committed the theft of fire arms referred to above on the intervening night of 22/23.6.1997. The learned counsel for the applicant highlighted the fact that the inquiry officer on the contrary recorded otherwise. He read to us certain portions from the evidence recorded by the inquiry officer.

11. On this ground, we find that the submissions made are totally devoid of any merit. In final conclusions, the inquiry officer clearly indicate that the theft of the fire arms took place on the intervening night of 22/23.6.1997 after stealing keys of Kot from the pillow of Const. Vijender.

12. However, the other fact which cannot be lost sight of in the facts of the present case is that it was pointed that the recovery had already been effected of the fire arms and the so called evidence of the applicant so recorded after the said recovery is of no consequence.



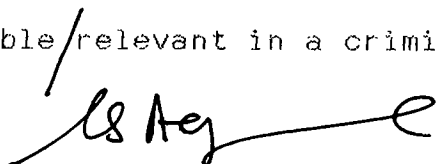
13. On behalf of the respondents, reliance was being placed on Exhibit PW-8/A which was a document proved by Inspector Bhalle Ram during the course of the inquiry.

14. Inspector Bhalle Ram had stated that he was posted as Inspector CPR/Vijay Ghat. The applicant had made a Nisandehi in Kot and disclosed that on the intervening night of 22/23.6.1997 had stolen the fire arms.

15. Inspector Tej Pal Singh. PW-12 had further appeared and testified that he had investigated the matter. During the investigation, the applicant had taken him to Vijay Ghat where Nisandehi was prepared on his instance which is exhibited PW-8/A. It is on the strength of the Nisandehi that the respondents have concluded that this is an admission made by the applicant about the said theft.

16. We deem it necessary to mention that even if such a confession is made during the course of investigation, it may not be relevant before a Court of law but there is no such embargo to read the same in departmental inquiry. Since the said statement made did not relate to any recovery, the learned Additional Sessions Judge has discharged the applicant.

17. However, as already referred to above, still in departmental inquiry an evidence which is not admissible/relevant in a criminal Court still before a

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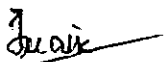
person can be held to have misconducted himself there must be some evidence to arrive at conclusion based on preponderance of probabilities.

18. In the present case the recovery of the fire arms had already been effected. Section 27 of The Indian Evidence Act, 1872 makes a part of the statement relevant excluding the confessional aspect of the same. Once the recovery had been effected earlier we fail to understand as to what was the purpose of recording the Exhibit PW-8/A. This had been recorded during the course of the investigation of FIR No.717 dated 30.6.1997. Therefore, while examining the present matter in the light of the above subject, it does not look reasonable to act upon such a statement. This is for the added reason that there is no date fixed on the statement of Exhibit PW-8/A. One fail to understand as to why the date, when the applicant is alleged to have taken the police party to the site, was not mentioned. This led applicant's counsel to contend that his assertion that no such voluntary statement had been made, should be accepted. We find no reason to ignore the same. The totality of the facts clearly indicate that even the preponderance of probability once the Exhibit PW-8/A is ignored there is no evidence against the applicant that he had stolen the fire arms as was the charge against the applicant.

19. In the absence of there being any evidence even if we consider that the charge was serious, still the law must take its own course.

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20. Resultantly, we allow the present application and quash the impugned order. The applicant shall be entitled to the consequential benefits in accordance with law and rules. No costs.


(S.K. Naik)
Member (A)


(V.S. Aggarwal)
Chairman

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