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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2052/2003

New Delhi, this the 27th day of February, 2004

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

Biju Varghese (Ex-Constable)
3172/SD
s/o Sh. C.V. Varghese
r/o Qtr. No.402
Type-I, Police Colony
Ahata Kidara
Delhi. Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi
through its Chief Secretary
Players Building
I.P.Estate
New Delhi.
2. Jt. Commissioner of Police
Southern Range
Police Headquarters
I.P.Estate
New Delhi.
3. Addl. Commissioner of Police, Delhi
South District
Police Headquarters
I.P.Estate
New Delhi. Respondents

(By Advocate: Shri Rajan Sharma through Sh. Ashwani
Bhardwaj)

O R D E R (Oral)

Justice V.S. Aggarwal:-

Applicant Shri Biju Varghese was a Constable in Delhi Police. Departmental proceedings had been initiated against him with respect to a charge which reads:

"I Rakesh Kumar, Inpsr. E.O.
charge you Constable Biju Varghese
No.3712/SD(PIS No.28941819) and Bhagwati
Prasad No.1798/SD(PIS No.28860641) that
on 13.2.2002, while posted at Police
Station Hauz Khas you approached one Shri
Yahiya Khan R/o 3011, Naseeruddin Gali,
Kali Masjid, Turkman Gate, at evening
time while he was sitting with his wife

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Saira in Rose Garden, Hauz Khas. You threatened the complainant of false implication and demanded money and took out Rs.1000/- or Rs.1200/- with his driving licence from his pocket during his search and further demanded Rs.15,000/-. Accordingly a raid was organised by flying squad of Vigilance Branch on 18.2.02 and both of you were caught red handed while accepting Rs.3000/- from the complainant at Rose Garden Gate, Hauz Khas. The money was recovered from the possession of you constables alongwith the driving licence of complainant, which was being returned after acceptance of money. You Ct. Biju Verghese was also carrying a mobile phone No.9811327053 and its cash card was also seized. You Ct. Biju Verghese was also having a Motor Cycle No.DL-8S-R-0553. The above act amounts to gross misconduct and unbecoming of Govt. servant on the parts of constables Biju Verghese No.3712/SD and Const. Bhagwati Prasad No.1798/SD which renders you liable for departmental action under the provision of Delhi Police (Punishment & Appeal) Rules-1980."

2. The inquiry officer returned the findings that the charge against the applicant is proved beyond any iota of doubt. The disciplinary authority vide its order of 8.5.2003, agreeing with the findings of the inquiry officer, imposed a punishment of removal from the service taking it as a grave misconduct. The applicant preferred an appeal. It was dismissed by the Joint Commissioner of Police on 15.7.2003.

3. By virtue of the present application, the applicant seeks quashing of the orders passed by the disciplinary authority as well as the appellate authority with consequential reliefs.

4. The application has been contested. According to the respondents, a joint departmental inquiry was initiated against the applicant and another on the allegation that on 13.2.2002, while posted at Police Station Hauz Khas the applicant along

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with the co-defaulter constable had approached one Shri Yahiya Khan at the evening time while he was sitting with his wife Saira in Rose Garden. Shri Khan had complained that while he was sitting with his wife in the Rose Garden, the applicant and co-defaulter had threatened him of all these false implications and demanded money and the applicant took Rs.1000/- or Rs.1200/- with his driving licence from the pocket of Yahiya Khan. The applicant further demanded Rs.15000/-. A raid was organised by the flying squad of Vigilance Branch on 18.2.2002. The applicant along with his colleague were caught red handed while accepting Rs.3000/- from the complainant at the Rose Garden. The money recovered from the possession of the applicant along with the driving licence of the complainant, which was returned after accepting the bribe amount. As referred to above, it is pleaded that the departmental inquiry had been conducted and thereafter the penalty has been imposed in accordance with law. The assertions of the applicant were controverted.

5. We have heard the parties' counsel.

6. The first and foremost argument advanced was that in the present case, the departmental inquiry has been initiated and conducted violating Sub-Rule 2 to Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980. The said rule reads:

"15. Preliminary enquiries:-

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(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a

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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."

7. It clearly shows that the necessary ingredients before Sub-Rule 2 to Rule 15 comes into play are that (1) there should be a preliminary enquiry (2) it should disclose commission of a cognizable offence in relation with public (3) departmental inquiry shall be ordered after prior approval of the Additional Commissioner of Police is concerned and (4) the Additional Commissioner of Police has to see whether criminal case should be registered or inquiry should be held.

8. According to the learned counsel for the applicant, in the present case, there is no such decision of the Additional Commissioner of Police.

9. The respondents had produced the departmental file and it indicates that the Joint Commissioner of Police (Southern Range) had ordered that the incident relates to 13.2.2002. Since the case had not been registered earlier, it would not be proper to register a case because of the delay, and therefore, departmental action was initiated. It reveals clearly that a positive decision has already been arrived at in terms of Sub Rule (2) to Rule 15 that instead of initiating criminal proceedings, it would be proper to deal with the applicant in disciplinary proceedings.

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10. Taking clue from the aforesaid learned counsel for the applicant contended that the decision has been taken by the Joint Commissioner of Police and not by the Additional Commissioner of Police and therefore it would not be valid.

11. During the course of the submissions, it was not disputed that Joint Commissioner of Police is senior to the Additional Commissioner of Police.

12. Somewhat similar situation had arisen before the Delhi High Court in the case of Government of National Capital Territory of Delhi & Others v. Sube Singh & Ors. CWP No.6689/2001, decided on 30.4.2002. The question for consideration was whether Joint Commissioner could be a disciplinary authority of certain police officers. It was noted by the Delhi High Court that Delhi Police was constituted under Delhi Police Act, 1978. The Commissioner of Police holds the highest post whereas the Additional Commissioner of Police is lower than the said post. An order had been passed by the Joint Commissioner of Police. The post had been created by way of upgradation of the pay scale of Additional Commissioner of Police. This Tribunal had held that in the absence of any notification issued by the administrator, the Joint Commissioner could not have been empowered to initiate the departmental proceedings. The Delhi High Court had set-aside the said orders passed by this Tribunal.

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13. Identical would be the position on the logic of the decision referred to the above. Resultantly we hold that the Joint Commissioner of Police could pass the order contemplated under Sub-Rule (2) to Rule 15 of the Rules ibid.

14. In that event, it was urged that the inquiry officer in the report had clearly indicated that he got charge approved from the disciplinary authority. In view of the learned counsel, this is violating the principle of natural justice and acting on the dictation of the third person.

15. After carefully perusing the same we have no hesitation in rejecting the said argument. Rule 16 of Delhi Police Punishment and Appeal Rules (supra) prescribes the procedure to be observed in departmental inquiries. The disciplinary authority is empowered to appoint an inquiry officer. It is the inquiry officer who prepares the summary of statement, summarising the misconduct alleged against the accused officer and list of witnesses together with the brief details of the evidence. After the evidence is recorded, when the matter is contested, the inquiry officer has to frame a charge as prescribed under Rule 16(4) of the Rules. Even if the inquiry officer had got charge approved from the disciplinary authority, we find that it cannot be termed (permitted) that the proceedings would be vitiated. Reasons are obvious. The inquiry officer is a nominee of the disciplinary authority. If he has got charge approved, no prejudice is caused to the applicant. It cannot be

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termed that any extraneous factor has come into being so as to vitiate the whole proceedings. The contention therefore must be repelled.

16. One of the argument eloquently put forth is that while discussing the evidence, the inquiry officer had returned the findings:

"It has been prima facie proved that both the defaulters had common intention to take the illegal gratification with malafide intention by keeping the driving licence in their own possession."

17. On the strength of the same, it was contended that it was only a prima facie view. Prima facie view, according to the learned counsel, is a view expressed at first blush rather than a definite finding.

18. In our view the said submission is without any force. It has to be stated to be rejected.

19. The findings always have to be read as a whole. One cannot be read in isolation of the other.

20. Subsequently, the inquiry officer had concluded:

"It is also proved that the driving licence of the complainant was not deposited in the Makhana of Police Station Hauz Khas. Had the driving licence been found in the bushes it should have been deposited properly in the police station but both the defaulters kept the same with them with malafied intention to grab more money from the complainant."

CONCLUSION:

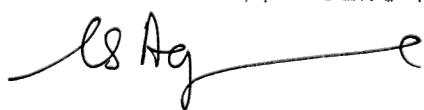


In view of the above discussion and other relevant material available on the face of record the charge against both defaulters Ct. Biju Verghese No.3712/SW and Ct. Bhagwati Prasad No.1798/SW stands proved beyond any iota of doubt."

21. This clearly shows that definite finding had been arrived at holding that the charge stood proved. Otherwise also the disciplinary authority has categorically held in this regard that charge stood proved and the involvement of the applicant was established. In face of the said finding, the only logical conclusion can be drawn is that expression 'prima facie' occurring in the report, was an expression which was not the final finding.

22. Confronting with that position, it has been urged that according to the charge, the complainant was in the Rose Garden with his wife Saira. It was contended that she has not been examined. A reference has been made to the fact alleged in the rejoinder that wife of the complainant was seeking divorce pertaining to the, (against the complainant) incident of the Rose Garden. It was urged, therefore, that if Saira was not there, obviously the complainant was with a third person. When the applicant had objected to, the said fact of now has been created in support of his contention. He relied upon the defence witnesses.

23. In our view, the argument is misconceived, in the peculiar facts of the case. The incident of the Rose Garden occurred on 13.2.2002. The complaint was made that the applicant had demanded illegal gratification. A raid has been organised on 18.2.2002 when the applicant had been apprehended and

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was caught red handed and money was even being recovered. It is this fact of demanding illegal gratification which is the subject matter of the main controversy. The findings have been arrived positively keeping in view what we have recorded above, and therefore, merely because if Saira had not been examined is not a tilting factor.

24. The last submission made was that the Assistant Commissioner of Police who was head of the raiding party was not examined. However, perusal of the record shows that other persons have been examined and once the factor is proved, the seriousness of the dereliction of duty noticed and established, merely because one witness is not examined cannot be a factor to conclude that charge was not established. In a serious matter, like, illegal gratification, in our opinion, the only penalty imposed would be removal/dismissal from service. It has rightly been imposed.

25. No other arguments had been advanced.

26. For these reasons, OA being with merit must fail and is dismissed. No costs.

Announced.

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

V. S. Aggarwal
(V. S. Aggarwal)
Chairman

/NSN/