

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2102/2001

New Delhi this the 27th day of August, 2002.

Hon'ble Dr. A. Vedavalli, Member(J)
Hon'ble Sh. Govindan S. Tampli, Member(A)

Sh. Jaiveer Singh,
Ct. No. 20902/A,
S/o Sh. Balbir Singh,
R/o H.No.451, Ward No.22,
Durga Colony,
Rohtak(Haryana). Applicant

(through Sh. Arun Bhardwaj, Advocate)

Versus

1. Union of India through
Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
2. Joint Commissioner of Police(Ops.),
PHQ, I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
IGI Airport,
New Delhi. Respondents

(through Mrs. Jasmine Ahmed, Advocate)

Order (Oral)
By Sh. Govindan S. Tampli, Member(A)

Heard Sh. Arun Bhardwaj, learned counsel for
applicant and Smt. Jasmine Ahmed, learned counsel for
respondents.

2. The relief sought for in this OA is the quashing
and setting aside the order dated 27.8.99 passed by the
Deputy Commissioner of Police and the appellate order
dated 29.11.99 passed by the Joint Commissioner of
Police.

3. The applicant working as Constable in Delhi Police since 1987 was proceeded against by chargesheet/summary of allegations dated 9.2.99 stating that he had, on the night of 15/16.4.1998, while performing his duty at X-Ray belt in Security Hold Area of I.G.I. Airport had extorted Rs.800/- from one Mohd. Shaqeeb Khan a passenger who was travelling on flight No.AI/134. On the passenger's complaint the matter was brought into the notice of the Deputy Manager, Air India Security Terminal-II and Sr. Manager, Air Terminal-II/ IGI Airport who in turn informed Inspector Satpal Sharma No.D/1827, resulting in the return of the amount. This amounted to conduct unbecoming of a Police official, inviting action under Section 21 of the Delhi Police Act, 1978. In the DE proceedings, it was found that charge was not proved against the applicant as per E.O's report dated 18.6.99. However, the Disciplinary Authority deferred from the same and issued a note of disagreement which was duly replied to by the applicant. After considering the same the Disciplinary Authority passed the impugned order dated 28.7.99 holding that the applicant was guilty of the offence referred to in the chargesheet and imposed on him the punishment of forfeiture of two years approved service permanently for a period of two years. Joint Commissioner of Police who heard the appeal by his order dated 29.11.99 upheld the order of the Disciplinary Authority and rejected the appeal. Hence this OA.

4. During the course of hearing before us, reiterating the points raised in the OA Sh. Arun Bhardwaj, learned counsel for applicant points out that this was a case of no evidence whatsoever still the Disciplinary Authority had imposed punishment on the applicant

forfeiture of two years approved service permanently for a period of two years. The entire case revolved around the complaint of one passenger Mohd. Shaqeeb Khan who was not summoned as prosecution witness. None of the witnesses during the course of enquiry deposed that they had intimated either receipt or return of the money. Even PW4 who is relied upon by the respondents had not stated that any transaction had taken place in his presence. Obviously therefore the Enquiry Officer had correctly held that the charge was not proved against the applicant. The Disciplinary Authority had, however, differed from the Enquiry Officer and held that the charge was proved and imposed the punishment on the applicant, by means of a non-speaking order which was endorsed by the Appellate Authority. These therefore have to be set aside with full relief to him, plead Shri Bhardwaj, learned counsel for the applicant.

5. Fervently arguing on behalf of respondents, the learned counsel Smt. Jasmine Ahmed states that the department (respondents) had acted correctly throughout and that the punishment was rightly imposed upon the applicant. In disciplinary proceedings, the specific rules of evidence need not be followed and the decision can be taken on the preponderance of probabilities and there was no ground to interfere with the order. Smt. Ahmed felt that the order deserved to be endorsed and the OA dismissed according to her.

6. We have carefully heard the learned counsel for both the parties and perused the pleadings placed on record. This is a case of alleged extortion of illegal gratification of an amount (Rs.800 or Rs.900) by the applicant from one passenger who lodged a complaint that an officer in the Security Hold Area I.G.I.Airport

had taken the money and after a complaint was made the same was returned. Interestingly the passenger/complainant was never available before the enquiry officer. No substantial evidence has been let in either in writing or by oral deposition that any money has changed hands between the passenger and the charged officer in this case. Therefore, the Enquiry Officer had correctly held that the charge was not proved. The Disciplinary Authority felt otherwise and recorded a note of disagreement with Enquiry Officer's report. After considering the representation from the applicant the Disciplinary Authority had passed the impugned order holding that the charge stood proved and therefore imposed the punishment upon the applicant. The relevant findings of the Disciplinary Authority are as below:-

" I have carefully gone through the statements of PWs, charge, defence statement, findings, representation as well as other relevant record brought on the DE file. I have also heard the delinquent in O.R. on 19.8.99. During appearance, the Const. did not put forth any fresh plea except that what he has already submitted in his representation in response to the copy of the findings of the E.O. and disagreement note. The delinquent Const. has stated in his representation that as per provisions contained in rule 15(3) and rule 16 (iii) of Delhi Police (Punishment & Appeal) Rules, 1980, the application of Shri Shakiv Khan cannot be taken into consideration as this complaint has not been attested by any officer. The plea put forth by the defaulter is not valid as full credence is given to the statement of the complainant. The preponderance of documentary proof based upon this written statement only leads to a very definite conclusion that the defaulter has taken money. Such type of activities cannot be tolerated in a disciplined force."

Perusal of the above does not point to any evidence whatsoever to relate the applicant with the alleged offence. The Disciplinary Authority according to his own words, had given full credence to the statement

of the complainant, who has made himself scarce. The authority had relied upon the untested statement of an interested party, who was never available during the hearing. In the circumstances, the Enquiry Officer was correct in holding that the charge against the applicant was not proved, but the Disciplinary Authority who had recorded a note of disagreement and decided accordingly ^{was} ~~who~~ clearly is the wrong. Order of the Disciplinary Authority cannot be sustained. When the order of the Disciplinary Authority is found to be wrong, the Appellate Authority's order which endorses the Disciplinary Authority's order follows suit.

7. In the above view of the matter the OA succeeds and is accordingly allowed. Impugned orders dated 27.8.99 passed by the Deputy Commissioner of Police and dated 29.11.99 passed by the Joint Commissioner of Police are quashed and set aside with full consequential benefits to the applicant.

No costs.

Govindan S. Tampli
Member (A)

/vv/

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)