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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2217 of 2001

New Delhi, this the 19th day of April, 2002

**HON'BLE MR. V. K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)**

1. Ishwar Singh
ASI (Driver) No. 4103/D
R/o Village & P.O. Mohd. Heri,
District Gurgaon, Haryana.
2. Karan Singh
HC No. 188/PCR
R/o RZ-G, 357,
Raj Nagar Part-II,
Gali No. 2, Bhagat Singh Marg,
Palam Colony, New Delhi-110 045. . . Applicants

(By Advocate: Shri Anil Singhal)

Versus

1. Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
2. Additional Commissioner of Police (PCR &
Commn)
Police Headquarters,
I.P. Estate,
New Delhi.
3. DCP (PCR)
Police Headquarters,
I.P. Estate, New Delhi. **-RESPONDENTS**

(By Advocate: Mrs. Sumedha Sharma)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicants have challenged the following orders and have asked for quashing of the same:-

(i) Order initiating the DE dated 22.9.98
(Annexure A-2).

(ii) Summary of Allegation dated 6.10.1998
(Annexure A-3).

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(iii) Charges dated 8.2.99 (Annexure A-4).

(iv) Show cause notice dated 1.4.99 (Annexure A-6).

(v) Final order of punishment dated 29.7.99 (Annexure A-8). Forfeiture of two years approved service with cumulative effect.

(vi) Appellate order dated 8.5.2000 (Annexure A-10).

2. Applicants was proceeded departmentally on the following allegations:-

It has been alleged that H.C. Karan Singh No.188/PCR, 1/CVan, ASI (Driver) Ishwar Singh No.4103/D and Constable Yad Ram, No.2118/PCR were detailed for duty at PCR Van Z-50 based at Dwarika, near Madhu Vihar from 8 PM to 8 AM on the night intervening 5/6-7-98. Around 4-30 AM they reached at Block No.16, Sector-5 Dwarika and started beating the Chowkidar Narain Singh and other labourers. This beating was done by HC Karan Singh and SI (Driver) Ishwar Singh Tyagi. They also overturned a drum full of mobil oil. The Supervisor Om Parkash gave his statement to Shri Ranvir Singh, ACP/South-West/Zone, PCR during the enquiry that the PCR staff demanded Rs.5000/- from him. During the enquiry it was verbally told by one Ajay Raj Karan, the site Engineer that the PCR staff had taken Rs.100/- from him on 4.7.98. They have been placed under suspension w.e.f. 15.7.98 vide office order No.14526-50/HAP (P-11)/PCR dated 15.7.98.

The above act on the part of HC Karan Singh No.188/PCR, 1/C Van, ASI (Driver) Ishwar Singh No.4103/D and Constable Yad Ram No.2118/PCR amounts to grave misconduct involving themselves in corrupt activities and dereliction of duty which render them liable for departmental action under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980".

3. The Inquiry Officer recorded the findings vide Annexure A-5, which is reproduced as under:-

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" From the above discussion of evidence, only the allegations of beating is proved but with reasonable doubt because none of the persons were subjected to any medical examination and further the name of the private doctor was also not intimated so that the doctor can be examined either as a PW or as a CW. The other allegations do not stand proved".

4. From the above it can be concluded that though the allegations against the applicants were of corruption as well as giving beatings to labourers but the conclusion arrived at by the Inquiry Officer had held that no evidence was available on record to prove the allegation of corruption and the other allegations regarding beating was stated to be proved with reasonable doubt.

5. When this report was forwarded to the disciplinary authority, the disciplinary authority held that there is sufficient evidence to prove the charge and called upon the applicants to make representation against the findings of the Inquiry officer and simultaneously had also issued notice as to why the suspension period w.e.f. 15.7.98 to the date of finalisation of DE be not treated as period not spent on duty which was issued vide Annexure A-6. The applicants thereafter made a representation against the said order. However, vide order Annexure A-8 punishment was awarded to the applicants and pay of all of them were reduced by 2 stages in the time scale of pay. Pay of Head Constable Karan Singh was reduced from Rs.4050/- to Rs.3880/-, pay of ASI Ishwar Singh was reduced from Rs.5000 to Rs.4800/- and pay of Yad Ram, another delinquent was reduced from Rs.3575/- to Rs.3425/-. The applicants preferred an appeal against the said order, but the appellate

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authority vide his order Annexure A-10 rejected the same. Revision was also filed but the same was returned informing the applicants that the Commissioner of Police, Delhi has no longer revisional powers so petitioners may move the appropriate court.

6. In order to challenge these orders passed by the disciplinary authority as well as the appellate authority, the applicants have taken a ground that the order of punishment passed by the appellate authority is perverse inasmuch as it is against the established principles of law and the disciplinary authority has illegally exercised the power of disagreement since there was no evidence whatsoever of accepting of illegal gratification nor there was any evidence to prove that the applicants had beaten anyone or Shri Om Prakash. Even the PWs had stated that no money was demanded by the applicants nor any money was paid by Shri Ajay Raj Karan.

7. It is further stated that the Inquiry Officer has given reasons and had come to the conclusion that the charges against the applicants were not substantiated but the disciplinary authority had not given any reason and the appellate authority has also mechanically agreed with the conclusion arrived at by the disciplinary authority.

8. The OA is being contested by the respondents. The respondents pleaded that there is sufficient evidence to prove the guilt and the disciplinary authority had, therefore, rightly held that the applicants had given beating to one of the labourers and had also demanded money from them.

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9. The respondents further pleaded that the applicants were given an opportunity, as provided under the rules and they were also offered to be heard in the orderly room, but these applicants did not avail that opportunity so the punishment order was rightly passed.

10. We have heard the learned counsel for the parties and gone through the records of the case.

11. The learned counsel appearing for the applicants submitted that it was a joint enquiry against these applicants and one Shri Yad Ram. Shri Yad Ram had filed a separate OA which came up before another Bench of this Tribunal and this Tribunal have quashed and set aside the punishment order passed in respect of Yad Ram so these applicants are also entitled for the same relief and the impugned orders passed against the applicants should also be quashed.

12. The learned counsel for the applicants then further contended that the disagreement note issued by the disciplinary authority was final in nature and not a tentative one and the same did not assign any reason whatsoever.

13. The next ground taken up by the applicants is that Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules, 1980 has been violated by the disciplinary authority because the disciplinary authority had relied upon the statements recorded by the ACP Ranbir Singh during the fact finding enquiry which is not permissible

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under the rules. Since the statements of those very persons which were recorded by the ACP during the fact finding enquiry is not of those persons who were not available rather those persons had appeared during the enquiry and as per the disciplinary authority itself they had resiled from the earlier statements but instead of relying upon the statements of those witnesses made before the Inquiry Officer, the disciplinary authority preferred to rely upon their statements made during the fact finding enquiry before ACP Ranbir Singh, which is prohibited under Rule 15(3) so on that score the order passed by the disciplinary authority is liable to be quashed.

14. As against this the learned counsel appearing for the respondents submitted that though the charges with regard to corruption has not been proved but the fact that these two applicants had given beating to the labourers and had spilled the drum of mobil oil stands proved, so the charge against the applicants to that extent stands proved.

15. It was also contended by respondents that the judgment in the case of Yad Ram as cited by the learned counsel for the applicants is concerned that is not applicable to the facts of the present case because in that case there was no charge levelled against the petitioner for giving beating to the labourers so it is on that ground his OA was allowed.

16. We have considered the rival contentions of the parties.

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17. First of all we may mention that the disciplinary authority while issuing the dissent note on the show cause notice had not given his reasons as to why he differed with the opinion of the Inquiry Officer. Merely saying that there is sufficient evidence that is not enough to prove the charge. Had he given some reasons, then the applicants would have a reasonable opportunity to explain as to why the findings recorded by the Inquiry Officer are preferable than the dissent note. The fact that there is sufficient evidence available on record as recorded by the disciplinary authority in its note is belied, because while passing the final order the disciplinary authority had referred to the earlier statements made by the PWs before the ACP Ranbir Singh which goes to show that on record of the DE file there was no sufficient evidence that is why the disciplinary authority had to seek support from the statements of those very witnesses recorded by ACP Ranbir Singh during the fact finding enquiry.

18. The learned counsel for the applicants has heavily relied on Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules and submitted that Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules, 1980 gives a clear mandate that the statement made by witnesses during the fact finding enquiry can be relied upon if the witnesses are no longer available and the copy of the same had been supplied to the delinquent officials earlier. The summary of allegations, as placed on record, do not show if the copy of the statement of witnesses recorded by the ACP Ranbir Singh had ever been

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supplied to the delinquent officials so the use of those statements is also an extraneous material which has been used by the disciplinary authority without affording any opportunity to the delinquent officials. It is also submitted that in this case the principles of natural justice has also been violated. Thus from whatever angle this case may be examined, the impugned orders cannot be sustained and the same are liable to be quashed.

19. Accordingly we hereby quash the impugned orders and direct the respondents to restore the pay of the applicants to the stage from which it was reduced. They shall also be paid arrears. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs.


(KULDIP SINGH)
MEMBER (JUDL)


(V.K. MAJOTRA)
MEMBER (A)

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