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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO 3151/2001

New Delhi this the 24th day of September, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI M.P.SINGH, MEMBER (A)

Umesh Kumar
Constable No.11583-DAP
10th Battalion
P.S. I.P.Estate
Central District
New Delhi.

..... Applicant

(By Shri Anis Suhrawardy, Advocate)

-versus-

1. Commissioner of Police
Delhi Police Headquarters
I.P. Estate
New Delhi.
2. Joint Commissioner of Police
Northern Range
Delhi Police Headquarters
I.P.Estate
New Delhi.
3. Deputy Commissioner of Police
Central District
Delhi.
4. Station House Officer
PS: Paharganj Sub-Division
Delhi.

.... Respondents

(By Mrs.Renu George, Advocate)

O R D E R (ORAL)

Justice V.S.Aggarwal:-

The applicant had been awarded the punishment of forfeiture of two years' approved service temporarily for a period of two years entailing



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proportionate reduction in his pay and that the applicant was not to earn increment during the period of reduction and after expiry of the period, this was not to have affect on postponing his future increments. The suspension period was decided as period not spent on duty. The said order had been upheld in appeal and is being assailed in the present application.

2. The facts giving rise to the above controversy are that Shri Ishwar Singh, Assistant Commissioner of Police had sent a confidential communication to the Deputy Commissioner of Police on the subject of black marketing of cinema tickets at Shiela Cinema. He had mentioned that on 7.8.1998 at 9.40 PM, he had apprehended one Irfan and recovered 5 balcony tickets from him. On interrogation, he confessed that he was a regular black-marketeer and he was carrying on this activity in connivance with local police. The Assistant Commissioner of Police stated that he had called the applicant who was a beat Constable and enquired from him as to why large scale black marketing of cinema tickets was going on. The Assistant Commissioner of Police noted that one of the front shirt pocket of the applicant was heavy and asked him what does it contain and to his utter surprise, there were Rs.1500/- in his pocket in different currency notes of Rs.20, 50 and 100 denominations. The applicant confessed before him

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that he had received money from black marketeers.

3. The applicant was put under suspension for his grave misconduct and a departmental enquiry had been started. The imputation of charge stated that one Irfan had been apprehended and 5 balcony tickets of cinema were recovered from him. He confessed that he was carrying on this activity of black marketing with the connivance of local police. On search of the applicant, Rs.1500/- referred to above were recovered and he confessed that he had received the money from the black marketeers.

3. The enquiry officer after recording the statements of the witnesses concluded that it has not been established that the Assistant Commissioner of Police had apprehended Irfan. The recovery of Rs.1500/- from the pocket of the applicant was established. He returned the finding the charge was partly proved.

4. The disciplinary authority on consideration of the findings of the enquiry officer had imposed the abovesaid punishment. Hence the present application after dismissal of the appeal.

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5. The learned counsel for the applicant raised only one pertinent argument, namely that there was no material on record so as to establish that the applicant had been conniving with Irfan in the black marketing of the cinema tickets outside Shiela Cinema. In this connection, he strongly relied upon the report of the enquiry officer.

6. It is well-settled in law that the disciplinary authority has a right to differ from the report of the enquiry officer. The disciplinary authority can record its own findings in this regard. It is not always necessary that the disciplinary authority must record a note of dissent separately. If after the said difference of opinion, a finding is recorded in the order so passed then it tantamounts to recording a note of dissent.

7. The Deputy Commissioner of Police Central Distt. clearly records:-

"In fact, the defaulter Constable has confessed before ACP that the money in his pocket was collected from the black marketeers whereas he either in his reply/representation or in O.R. did not mention anything about the presence of about Rs.1500/- in his pocket which was noticed by ACP/Pahar Ganj. It shows that the Constable had actually collected the money from the black marketeers and thus was in connivance with black marketeers. Keeping in view over all circumstances of the case, Constable Umesh Kumar, No.1570/C is hereby awarded a punishment of forfeiture of two years approved service temporarily for a period of two years entailing proportionate reduction in his

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pay with immediate effect. He will not earn increment during the period of reduction and after expiry of period this will have no effect on postponing his future increments. His suspension period is decided as period not spent on duty."

8. The abovesaid finding categorically shows that it had been recorded as a fact that the applicant collected the money from the black marketeers and was in connivance with them. This finding is based on fact and the evidence of Irfan and the Assistant Commissioner of Police besides the recovery of the money. This has been arrived on preponderance of probabilities. It cannot be termed that this is a case of no evidence. Therefore, the plea of the learned counsel necessarily must fail.

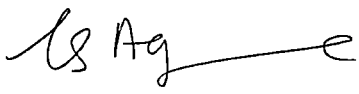
9. No other argument was raised.

10. For these reasons, the application being without merit must fail and is dismissed. No costs.

Announced.


(M.P. Singh)
Member (A)

/sns/


(V.S. Aggarwal)
Chairman