

Central Administrative Tribunal
Principal Bench

O.A. No. 407 of 2001

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New Delhi, dated this the 1st March 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Const. Rambir Singh,
No.429/NE, DCC,
Cell North-East District,
Delhi-110092.

.. Applicant

(By Advocate: Shri Arun Bhardwaj)

Versus

1. Union of India through
the Commissioner of Police,
Police Head quarters,
I.P. Estate,
New Delhi.

2. Jt. Commissioner of Police,
Delhi Police Headquarters,
I.P. Estate,
New Delhi.

3. Addl. Dy. Commissioner of Police,
North East District,
Delhi.

.. Respondents

(By Advocate: Ms. Jasmine Ahmed)

ORDER

Shanker Raju M(J)

Applicant impugns Disciplinary Authority's order dated 22.10.91 (Annexure A-1) and the Appellate Authority's order dated 24.4.2000 (Annexure A-2). He seeks restoration of service and grant of consequential benefits.

2. Applicant along with Constable Narender Kumar and Constable Ishwar Prasad were proceeded against departmentally on the allegation that while posted in P.S. Gokulpuri and performing their picket duties at Sabha Pur picket Yamuna Pusta on the night

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intervening 26//27.6.98 at about 2.15 A.M. they stopped two tractors with trolleys filled with wheat bags and demanded and accepted Rs.20/- from each driver as entry fees, and only then allowed them to proceed.

3. The defaulters were put under suspension on 8.9.98 and the same was subsequently revoked on 8.9.99. The E.O. in his findings dated 14.8.99 (Annexure A4) held the charge ad proved beyond doubt.

4. A copy of the E.O's report was furnished to applicant for representation, if any. Applicant submitted his representation on 6.9.1999. After considering the materials on record including applicant's representation and giving him an opportunity of hearing on 17.9.99, the Disciplinary Authority by impugned order dated 22.10.99 imposed the penalty of forfeiture of one year approved service temporarily for a period one year, entailing proportionate reduction in the pay with immediate effect, and the defaulters would not earn increment during the period of reduction and after the expiry of the period, [^]the reduction ^{^ would} ~~would~~ have the effect of postponing the future increments. Their suspension period from 8.9.98 to 8.8.99 was also treated as period not spent on duty.

5. Applicant's appeal was rejected by impugned order dated 24.4.2000 giving rise to the present O.A.

(11)

6. We have heard applicant's counsel Shri Arun Bhardwaj and Respondents' counsel Ms. Jasmine Ahmed.

7. Though various grounds have been taken in the O.A. applicant's counsel confined himself to two main legal pleas viz.

- (i) The findings of the E.O. were based on no evidence and the Disciplinary Authority had inflicted the punishment on suspicions and surmises;
- (ii) The Disciplinary Authority had imposed the punishment by taking into consideration the previously recorded statement of the complainants S/Shri Mukesh Kumar and Surinder Singh (who also figured as PW-1 and 2) before the ACP (Vigilance) and not in the D.E. itself which violated Rule 16(iii) Delhi Police (Punishment & Appeal) Rules, 1980.

8. Respondents' counsel denied these assertions and contended that the Enquiry was held in accordance with procedure envisaged under rules, and sufficient evidence was brought on record to establish the misconduct of applicant, he has been rightly held guilty and punished. ~~She~~ He contended that the orders passed were reasoned and cogent and even if the witnesses in the D.E. had resiled from their earlier statements that would not absolve applicant from his misconduct.

9. In so far as the first ground of challenge is concerned we note that the two tractor drivers who were PW-1 and 2 in the D.E. in their statements in the D.E., have denied the fact of

demand and acceptance of illegal gratification by the applicant. On cross-examination by E.O. they have denied their earlier statement recorded before the ACP (Vigilance) and have contended that the aforesaid statements were signed by them without their contents being read over to them. Similarly PW-3 Inspector Amarjit Singh during cross-examination has stated that as U.P. Police personnel were also posted at the picket the possibility of acceptance of the money by them could not be ruled out. Moreover, PW-4 ACP (Vigilance) Jagdish Singh in his testimony stated that he had been told by the drivers about giving Rs.20/- by each of them to the police, and he had seen the policemen talking with the drivers but he does not claim to have seen the money changing hands. In the absence of evidence advanced in the D.E. itself to establish the applicant's misconduct, it is clear that the charge cannot be said to have been substantiated against him.

10. It is true that the degree of proof required in a disciplinary proceedings is not the same as required in a criminal case, and it is sufficient for the purposes of disciplinary proceedings if the preponderance of probability points to the guilt of the delinquent, but even for that, there has to be some evidence against the delinquent led in the D.E. In the present case there is no such evidence. Hence the first ground advanced by applicant's counsel succeeds.

(13)

10. We then come to the second ground taken. A perusal of the enquiry officer's report reveals that in the absence of evidence in the D.E. he has relied upon the statements made by PWs before the ACP (Vig.) to hold applicant guilty of the misconduct. In this connection Rule 16(iii) Delhi Police (Punishment & Appeal) Rules is relevant. This rule provides that as far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The E.O. is empowered, however, to bring on record the earlier statements of witnesses whose presence cannot be procured without undue delay or inconvenience. In the present case when the PWs who gave their statements before the ACP (Vig.) were also examined during the D.E., and during such examination they have denied the allegations made against applicant, we hold that the statements made by them before the ACP (Vig.) could not have been used to hold applicant guilty of the alleged misconduct, as such action is clearly in violation of Rule 16 (iii) Delhi Police (P&A) Rules. Hence the second ground taken by applicant's counsel also succeeds.

12. In the light of the foregoing, the O.A. succeeds and is allowed. The impugned orders are quashed and set aside. Respondents are directed to restore to applicant, forfeiture of service, as if the impugned orders were not passed. Applicant shall ^{also} be entitled to ~~such~~ consequential benefits. These

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directions should be implemented within three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

S.R. Adige

(S.R. Adige)
Vice Chairman (A)

karthik