

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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OA NO. 92/2001

New Delhi, this the 23rd day of November, 2001

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. GOVINDAN S. TAMPI, MEMBER (A)

1. Mr. Omprakash
HC No. 1360/PCR
PIS No. 28822037
S/o Shri Tejram
G-19, Police Colony
Model Town-II, 6th Bn.
Delhi-110 009.

2. Vikram Singh
Const. No. 2160/PCR
PIS No. 28824157
S/o Shri Sardar Singh
House No. 4422
Pahadi Dheeraj
Sadar Bazar
Delhi-110 006.

(By Advocate: Sh. M.P.Raju)

Versus

1. The Commissioner of Police
Police Headquarters
I.P. Estate
New Delhi-110 002.
2. Addl. Dy. Commissioner of Police
Police Control Room,
Police Headquarters
I.P. Estate
New Delhi-110 002.
3. Addl. Dy. Commissioner of Police
Police Control Room,
Police Headquarters
I.P. Estate
New Delhi-110 002.

(By Advocate: Sh. George Paracken)

O R D E R

By Sh. Kuldip Singh, Member (J)

This OA has been filed by two Constables of Delhi Police as both of them are aggrieved by an order dated 2.7.99 passed by Additional Dy. Commissioner of Police imposing a major penalty on the applicant No.1 & 2 for forfeiting 5 years of approved service with cumulative effect and reducing their pay by five stages. Both of them are proceeded under departmental

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enquiry on the allegations that during the course of another departmental enquiry initiated against ASI Raghunath Singh and others where the said defaulters had taken a plea in their defence that on the night of 12/13.10.97 they had gone at the place of incident, i.e., at Sant Nagar, Burari on the request of one women, namely, Smt. Jaswant Kaur who met incidently on the road as that lady was allegedly beatern up by her husband and she wanted action against him. The defaulters in the said enquiry pleaded that before proceeding for the place of incident they had informed Oscar-4 and obtained permission to attend the call as the place of incident was out of their jurisdiction. The defence plea was taken by them was an after thought and was aimed to justify their presence at the place of incident where they were not supposed to go. For this purpose they got manipulated the entry in the record of the call book register of Oscar-4 through applciant Om Parkash and Vikram Singh who were on duty at Oscar-4 as wireless operators at that time. On the scrutiny of the relevant record it was found that the entry in the record at 9.31 p.m. about the incident was manipulated later on by the applicant Om Parkash and Vikram Singh at the instance of ASI Raghunath Singh and others to cover up their misconduct. The applicant submitted the defence denying the manipulation of the entry, so enquiry was initiated. The enquiry officer after recording the evidence returned his findings holding that the charge against the applciants could not be proved. However, the disciplinary authority did not accept the findings recorded by the enquiry officer and recorded disagreement note which was got served on the applicants and they were asked to give their reply in their defence and after considering their defence the disciplinary authority vide impugned order passed the punishment order against which an appeal was taken before the appellate authority. The appellate authority also vide

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impugned order Annexure A-2 rejected the appeal of the applicants and confirmed the order passed by the disciplinary authority. In order to challenge the punishment the applicant had submitted that the disagreement note recorded by the disciplinary authority infact is not a disagreement note but the rejection of the complete enquiry on record and the disciplinary authority has relied on an ulterior and extraneous and altogether new statement of a person who were not even notified as a witness. Even no opportunity was given to the applicants to cross-examine the said witness. The applicant submitted that the disciplinary authority relied upon the statement made by DCP communication at behest of the disciplinary authority and the statement of DCP Communication has not been supplied to the applicants nor it is a part of record of the enquiry nor any opportunity was given to the applicants to test the veracity and correctness of the statement within the entire principles of natural justice have been violated and the dissent note recorded by the disciplinary authority is vitiated to that extent and on the basis of that dissent note the applicants cannot be punished.

2. Contesting this OA the respondents submitted that the disciplinary authority had simply sought clarification to fortify his own findings based on the evidence recorded during the enquiry. The respondents also submitted that the applicants had recorded the entry in the register maintained at Oscar-4 station at 9.30 p.m. on the relevant day but the register itself shows that the entry was interpolated and infact no communication was ever received at Oscar-4 station. Even otherwise, Raghunath Singh was supposed to inform Oscar-1 if his party wanted to out step the area of jurisdiction he has no business to inform Oscar-4.

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3. The statement of DCP Communication is merely a clarification and a technical report to clarify the depositions made in this regard and to find out the truth but the disagreement note is quite judicious and reasoned. there is no substance in the plea taken by the applicants. Respondents also plead that as regards the other procedural aspects the same were fully followed and principles of natural justice and not violated and to that extent there is no set of allegation.

4. We have heard the learned counsel for the parties and gone through the record.

5. The short question involved in this case is whether the statement of DCP Communication as taken note of by the disciplinary authority in his dissent note Annexure-9 amounts to bringing in extraneous evidence or extraneous material on record which has influenced the disciplinary authority to record the dissent note. And in these circumstances, we are of the opinion that opportunity should have been given to the applicants before taking note of the statement/clarification of DCP Communication. We have gone through the dissent note which is at page 77 of the paper book. The disciplinary authority while assessing the report submitted by the enquiry officer recorded that the conclusion arrived at by the enquiry officer is not based on the evidence and the record available as the enquiry officer has not properly analysed the evidence. Since it was not possible to communicate with Oscar-4 by Oscar-98, if there was another communication being made by Oscar-1 at that time. However, the dissent note categorically records that DCP Communication has clarified that no communication between two stations is possible if the controlling station, i.e., Oscar-1 is communicating at that

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time, and therefore, the depositions made by all of them are false and they have tried to help each other to save from the punishment. Thus, the disciplinary authority on the basis of the opinion taken by him from DCP Communication has rejected the entire evidence which has come before the enquiry officer. This fact shows that the disciplinary authority had exclusively on the basis of the statement of DCP Communication rejected the other evidence which had come before the enquiry officer whereas the statement of DCP Communication was not before the enquiry officer and the delinquent officials had not been given any opportunity to test the veracity of the statement of DCP Communication.

6. Thus we have no hesitation to hold that the conclusions arrived at by the disciplinary authority are based on the statement of DCP Communication to whom he consulted in private at the back of the delinquent officials and that statement of DCP Communication could not form the basis to reject the statement of witnesses recorded by the enquiry officer. It is a well-known principle that the material recorded at the back of delinquent official cannot be made the basis for holding him guilty.

7. Thus, we are of the considered opinion that the impugned order of punishment cannot be sustained and the same are liable to be quashed. Accordingly, we quash the same and direct that the applicant be restored their pay and increments in accordance with law. No costs.

(GOVINDAN S. TAMPI)
Member (A)

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(KULDIP SINGH)
Member (J)