

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA NO. 1089-2000

1999

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New Delhi, this the 30th day of November, 2000

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN  
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Ex.Constable Tika Ram No. 2179/A,  
S/o Shri Hati Ram, aged 35 years,  
Previously posted at I.G.I. Airport  
in Delhi Police,  
R/o Vill. & P O - Jati Kalan,  
Distt - Sonipat, P.S. Rai,  
Haryana. .... Applicant

(By Advocate: Shri Shankar Raju)

VERSUS

Through, the Union of India

1. The Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi.
2. Commissioner of Police  
Police Head Quarter, I.P. Estate,  
M.S.O. Building, New Delhi.
3. Addl. Commissioner of Police, Operation  
Police Head Quarter, I.P. Estate,  
M.S.O. Building, New Delhi.
4. Dy. Commissioner of Police,  
I.G.I. Airport  
I.G.I. Airport, New Delhi. .... Respondents

(By Advocate : Shri Amit Rathi with Shri Devesh Singh)

ORDER (Oral)

Hon'ble Mr. S.A.T. Rizvi, Member(A):

In these disciplinary proceedings, the  
applicant (Constable) has been charged in the  
following terms:-

"It is alleged that on 18.5.97 at about 6:30  
AM, Sh. Braham Singh, ACP/Shift 'B' NITC went  
to security hold area gate No.3 for checking  
and observed that Constable Tika Ram No.1322/A  
Now 2179/A who was performing duty at belt for

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X-Ray Machine and found that the movement/activities of the Constable seems suspicious. He called Inspr. Shiv Kumar, I/C Gate and directed to search of the Constable. On search the following Indian/Foreign currency was recovered from the right pocket of the pant of Constable Tika Ram No. 1322/A-2179/A, which was taken by Inspr. Shiv Kumar and kept in a sealed envelop. Later on, Shri Braham Singh, ACP/Shift 'B' NITC enquired the matter and it has been found that the said money has been taken by the Constable from passengers. Constable Tika Ram No. 1322/A-2179/A has also accepted that the said money was taken by him from passengers, which is gross misconduct on his part. Such mistake laid down the position of Delhi Police:-

Sl.No. Details of note recovered

- |    |               |     |                   |
|----|---------------|-----|-------------------|
| 1. | Rs. 100 x 1 = | 100 | (Indian Currency) |
| 2. | Rs. 50 x 4 =  | 200 | -do-              |
| 3. | Rs. 20 x 1 =  | 20  | -do-              |
| 4. | Rs. 10 x 12 = | 120 | -do-              |
| 5. | Rs. 5 x 3 =   | 15  | -do-              |

455/-

6. One Dinar (Behram Monetary Agency)  
(Foreign Currency)

The above act on the part of Constable Tika Ram, No. 1322-2179/A amounts to grave misconduct, illegal gratification and unbecoming of a police officer by violating the provision of Rule-3 (1) (i)(ii)(iii) of CCS Conduct Rules-1964 which renders him liable to be dealt with departmentally under the provisions of section 21 of Delhi Police Act-1978."

2. Subsequently the proceedings have been completed in accordance with the procedure laid down for the purpose. The applicant has been dismissed from service by disciplinary authority's order dated 17.2.1998. The order of punishment was carried to the appellate authority which has rejected the appeal by its order of 5.5.1998. Later, the revisional authority has also rejected the revision petition by its order of 8th March, 1999.

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3. The learned counsel for the applicant has raised several contentions including some based on the rules included in the Delhi Police ( Punishment & Appeal) Rules 1980 and a reference to Section 161 of IPC has also been made. We will first deal with the rule position.

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4. The learned counsel has contended that the prior approval of the Additional Commissioner of Police as required under Rule 15 (2) of the aforesaid Rules has not been obtained. His contention is that such an approval was required in this case inasmuch as the applicant Constable is supposed to have committed a cognizable offence by collecting foreign currency as well as some Indian currency from the passengers at the Airport. He has, in this very context, referred to the aforesaid Section 161 of IPC which reads as follows:-

161 "Public servant taking gratification other than legal remuneration in respect of an official act. - Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament of the Legislature of any State (or with any local authority, corporation or Government company referred to in Sec.21), or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both"

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5. We have perused the rule position and find that this rule simply does not apply. The applicant Constable is indeed a public servant, but as provided in the aforesaid section 161, he could not have accepted the amounts, in question, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in the exercise of official functions favour or dis-favour to any person. In any case, there is no evidence on record to show that the applicant Constable collected the aforesaid sum of money for these very reasons. The respondents have also not made any such allegation. The respondents have simply raised a presumption largely on account of the availability on the person of the applicant Constable foreign currency to the tune of one Dinar and that too when he was on official duty at the Airport where he was in a position to obtain foreign currency, for whatever reason, from the international passengers. We are also inclined to view the recovery of foreign currency, even in a petty amount, in the peculiar circumstances of this case, with disfavour though the same may not have been procured in contravention of law.

6. The learned counsel for the respondents has, on the other hand, relied on Rule 14 (4) of the Delhi Police (Punishment & Appeal) Rules, 1980. According to this rule, disciplinary action can be initiated by the competent authority under whose disciplinary control the police officer concerned might be working at the material time. It is in the exercise of this elementary authority that the Deputy Commissioner of Police has charged the applicant and has proceeded

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departmentally against him. Thus the aforesaid contention of the learned counsel for the applicant cannot be sustained and is rejected.

7. The next rule on which the learned counsel has relied is Rule 16 (i) of the Delhi Police (Punishment & Appeal) Rules 1980. In terms of this rule, the list of witnesses supplied along with the summary of allegations should have displayed the gist of evidences to be given by each witness so listed. This gist has not been shown in the list of witnesses. However, the same has not resulted, in our view, in any prejudice to the applicant. The first two witnesses, namely, Shri Braham Singh, ACP and Inspector Shiv Kumar are the only material witnesses of recovery of the aforesaid sum. The summary of allegations served on the applicant fully and completely discloses whatever these two witnesses have had to say. In the same list, there are four others also listed, but these others appeared on the scene at a subsequent stage i.e. after the recovery had been affected by the ACP and the Inspector. For instance, the seizure memo drawn up in connection with the recovery of currency bears the signatures of Narad Ram, witness No.3 and Mrs. Poonam, witness No.2 in the list of witnesses and that of Inspector Shiv Kumar listed at No.5. All these witnesses including the aforesaid material witnesses have been cross-examined by the defaulter for which adequate and full opportunity had been made available and, therefore, it cannot be said that any prejudice has been caused on account of the gist of evidence in respect of these having not been given in the aforesaid list of witnesses.

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8. The learned counsel for the applicant has next raised certain factual issues such as seizure memo not having been signed by the ACP in whose presence the aforesaid sum was recovered, a number of documents he had asked for during the course of enquiry having not been supplied etc. In respect of the seizure memo, the learned counsel for the applicant alleges that the signatures of the applicant were also not obtained thereon. In regard to the activity and the movement of the applicant Constable being found to be of a suspicious nature, the learned counsel has alleged that no evidence has been produced in support of this particular allegation. The respondents have, in respect of the last mentioned allegation, asserted that the duty to keep a watch on the movements of the Constables and their activities has been assigned to the ACP and it is he alone who could keep a watch on the movements and activities of the Constables under his charge at the Airport. There is, therefore, nothing wrong if the ACP on his own found the movements and activities of the applicant to be of a suspicious nature and no specific independent evidence is required in support of this charge. In regard to the seizure memo, we cannot attach any importance to the allegation made on behalf of the applicant for the simple reason that the recovery of the aforesaid sum was made at ~~his instance~~ his instance & in the presence of PW-1. The signing of the seizure memo by the ACP might be a necessary requirement in terms of the Departmental Circular, which has been placed before us by the learned counsel, but the same cannot be cited to weaken the otherwise patent evidence made

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available by the respondents. In the same way, the fact that the defaulter's signatures were not obtained on the seizure memo again also cannot weaken the otherwise relevant and fool-proof evidence produced by the respondents. Regarding the contention of the learned counsel that documents were not supplied, a perusal of the letters written by the applicant to the enquiry officer asking for the same goes to show that in those letters the applicant has asked for certain documents, which are not relevant for the purpose of this enquiry. Referring to these documents, the learned counsel has, in particular, focussed on the copy of extract of MHCM register of PS NITC IGIA dated 18.5.1997 in which some alleged money has been shown as recovered from the applicant's possession after search was conducted by Inspector Shiv Kumar. The learned counsel has also referred to the yellow envelope in which the money recovered from the applicant was kept immediately after recovery. His contention is that neither the aforesaid extract of MHCM Register was supplied to him nor the yellow envelope was produced during the enquiry proceedings. We have given thought to this contention raised by the learned counsel and find that once the factum of recovery has been clearly established, it is no longer necessary to rely on the aforesaid extracts or the yellow envelope. The aforesaid plea, therefore, loses all force and stands rejected. The learned counsel has next raised a contention about the exact amount of recovery by saying that some of the witnesses have deposed that two Dinars were recovered and some others had said that a sum of Rs. 435/- was recovered and not Rs.455/-. According to us, even this plea will

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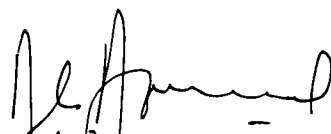
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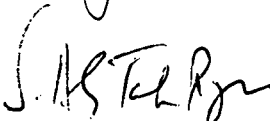
not assist the applicant inasmuch as it is natural for such a mistake to occur when evidence is taken long after the event. Human memory is likely to fail when it comes to remembering exact sum of money recovered a long time ago. The fact remains that money was recovered and foreign currency too was recovered as part of the entire sum, stands out and remains unrebutted.

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9. From the orders passed by the disciplinary authority and the report of the enquiry officer, we find that the applicant has himself admitted the fact of recovery from his person. He has not produced any defence witness. The order passed by the disciplinary authority is a very reasoned order and takes into account particularly all the contentions raised by the applicant during the course of the departmental trial. The same applies to the appellate authority as well as to the revisional authority. We are the least inclined to interfere with any of these orders.

10. In the result, the OA fails and is dismissed without any order as to costs.

  
(Ashok Agarwal)  
Chairman

  
(S.A.T. Rizvi)  
Member(A)

/pkr/