

Central Administrative Tribunal
Principal Bench : New Delhi

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O.A. No. 2050/1999

ëNew Delhi this the 26th day of March 2001

Hon'ble Shri S.R. Adige, Vice Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Ex. Head Constable Ghansham Singh,
No. 193/PCR,
S/o Shri Gopal Bam Meena,
Previously employed in Delhi Police,
R/o Village Meena Pur, PO Bamboli,
PS M.I.Area, Distt. Alwar,
Rajasthan. Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India,
Through Its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Addl. Commissioner of Police,
P.C.R. & Communication,
Police Headquarters, I.P. Estate,
MSO Building, New Delhi.
3. Dy. Commissioner of Police,
Police Control Room
Police Headquarters, I.P. Estate,
MSO Building, New Delhi. . . . Respondents

(By Advocate: Ms. Jasmine Ahmed)

O R D E R (Oral)

Hon'ble Shri S.R. Adige, Vice Chairman (A)

Applicant impugns the disciplinary authority's order dated 22.5.1998 (Annexure A-1) and the appellate authority's order dated 29.7.1999 (Annexure A-2) and prays for a direction to respondents to reinstate him in service w.e.f. 22.7.1998 with all consequential benefits including back wages, seniority and promotion.

2. Applicant and one Constable Rajbir Singh were proceeded against departmentally on the allegation that while detailed for duty at PCR Van V-10 from 8.00 AM to 8 PM on 30.6.1997 as Incharge Van cum Driver and Gunman respectively, they received a call from V-I regarding a quarrel in lottery bazaar behind Regal Building, Connaught Place, New Delhi. They reached the spot at 7.05 PM and reported to V-I to wait regarding the detail. Thereupon, they found a quarrel between Smt. Bindu, W/o late Shri Ganesh and her son Rajinder. They took Smt. Bindu and her son Rajinder and Manoj in PCR Van and demanded Rs. 1,000/-, threatening them if they did not pay the money, the son of Bindu would be involved in a knife case. Finally the applicant and constable Rajbir Singh released them after extorting Rs. 700/-, from Smt. Bindu who asked the PCR staff to take her to hospital since there was injury on her right fore-arms but the PCR staff advised her to take private treatment. Thereupon they left the spot

without handing over them to local police. After the PCR Van left the spot, Smt. Bindu was taken to RML Hospital by her son Manoj Kumar and a fracture was found on her fore-arms after getting X-Ray. Smt. Bindu reached her house at midnight and reported the matter to her elder son who informed PCR on phone No. 100 at 00.15 AM on 1.7.1997.

3. In the departmental enquiry, the enquiry officer, after examining the PWs framed the following charges against applicant and constable Rajbir Singh.

that while detailed for duty at PCR Van V-10 from 8 AM to 8 PM on 30.6.1997 as Incharge Van-cum-Driver and Gunman respectively, around 7 PM they received a call from V-I regarding a quarrel in lottery bazaar behind Regal building, Connaught Place, New Delhi. They reached the spot at 7.05 PM and reported to V-I to wait regarding the details. They found a quarrel between Smt. Bindu W/o Late Shri Ganesh and her son Rajinder. They left the spot without handing them over to the local police. Later Smt. Bindu was taken to RML Hospital by her son".

4. The Enquiry Officer in his finding dated 9.3.1998 (copy taken on record) found applicant as well as Constable Rajbir Singh guilty of the charges.

5. A copy of the Enquiry Officer's report was furnished to applicant, on receipt of which applicant submitted his representation and was also given personal hearing in ~~orderly~~ ^{orderly} room on 15.5.1998. Thereupon,

considering the material on record, the disciplinary authority in his order dated 22.5.1998, imposed upon applicant the punishment of removal from service with immediate effect, while in respect of Constable Rajbir Singh the punishment imposed was forfeiture ^{of service} permanently for a period of two years with cumulative effect, thereby reducing his salary by two stages from Rs. 3500/- PM to 3350/- PM in the time scale of pay, for a period of two years, from the date of issue of the order, during which he would not earn increments of pay, and the reduction would have the effect of postponing his future increments of pay.

6. It needs to be mentioned that both applicant and Constable Rajbir Singh had been suspended with effect from 22.8.1997. In the case of Constable Rajbir Singh, he was reinstated with immediate effect.

7. Applicant's appeal was rejected by impugned order dated 29.7.1999 giving rise to the present OA.

8. We have heard Shri Sachin Chauhan, Applicant's counsel and Ms. Jasmine Ahmed, Respondent's counsel.

9. This is not a case of no evidence; the impugned orders have been passed by authorities competent to pass the same and no infirmity in the conduct of the proceedings which has materially prejudiced applicant in his defence has been brought to our notice.

10. We are then left with the punishment inflicted upon applicant which is that of removal from

service. We note that the Enquiry Officer had dropped the allegation of extortion of money by applicant and Constable Rajbir Singh, from Smt. Bindu and her son, in the charge framed against them, and in these particular facts and circumstances, we are of the considered view that the punishment of removal from service inflicted upon applicant is excessive, and wholly disproportionate to the charge in respect of which applicant was found guilty, so much so that it shocks our judicial ^{conscience} ~~conscience~~, particularly when we notice that the punishment inflicted upon constable Rajbir Singh is only of forfeiture of service permanently for 2 years with cumulative effect. No doubt, as applicant was Head Constable, while Rajbir Singh was only a Constable, ~~so~~ applicant's responsibility was therefore greater, but even so we hold that when the allegation of extortion was specifically dropped from the charge, and the charge ^{in which} ~~which~~ applicant was called upon to answer was consequently far less serious, respondents should have imposed a penalty upon applicant, less severe than that of removal from service, and yet which would have been in consonance with the gravity of the offence and in accordance with justice.

11. In this connection, the Hon'ble Supreme Court in **B.C. Chaturvedi Vs. Union of India & Ors.** 1995 (8) SC 65 has held that if the punishment imposed is so severe as to shock the judicial ^{conscience} ~~conscience~~ of the High Court/ Tribunal, it could appropriately mould the ~~sentencing~~ ^{relief} either directing the disciplinary/appropriately to reconsider the penalty imposed, or in some cases to impose appropriate punishment itself, with cogent reasons in support thereof.

(P)

12. As in our view the punishment of removal from service inflicted upon applicant is wholly disproportionate to the misconduct with which he was charged and found guilty, the impugned orders of the disciplinary authority and of the appellate authority to the extent of the punishment alone are quashed and set aside. The case is remanded to the disciplinary authority to impose any punishment on applicant, other than that of removal from service, which will be consonance with the gravity of the misconduct and in accordance with law. While doing so, the disciplinary authority will also determine in accordance with rules and instructions the manner in which the intervening period from the date of applicant's suspension till the date of the order is to be treated. These directions should be implemented within three months from the date of receipt of a copy of this order. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

S.R. Adige

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

Mittal