

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA NO. 464/1999

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New Delhi, this the 2nd day of November, 2000

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)  
Hon'ble Sh. Govindan S. Tampi, Member (Admn)

Rakesh Tyagi  
(2406/DAP) Ex. Constable  
S/O Sh. Vishambar Singh  
r/o Vill: Lahorgarh,  
PO: Rassana (Meerut)  
PS: Sarurpur, Distt Meerut (UP):

...Applicant.

(by Advocate : Sh.Shyam Babu)

Vs.

1. Government of NCT Delhi  
through its  
Chief Secretary,  
5, Sham Nath Marg,  
Delhi.
2. Addl. Commissioner of Police  
(now Joint Commissioner of Police)  
Armed Police,  
Police Headquarter,  
I.P. Estate, New Delhi.
3. Dy. Commissioner of Police,  
3rd Battalion,  
D.A.P.,  
Kingsway Camp,  
Delhi.

.....Respondents

(by Advocate: Mrs. Meera Chhibber)

O R D E R (ORAL)

Justice V.Rajagopala Reddy, VC (J)

The applicant Constable Rakesh Tyagi in Delhi Police was detailed on searching duty at Deodhi of Central Jail No. 1. He was alleged to have left his duty point and went near Mulakat Room (meeting room of under trial prisoners with their relatives). It is alleged that there he obtained the telephone number of lady UTP Lizvamma and that he caught hold the hand of that lady: although lady UTPs are only permitted to be handled through woman constables. He was therefore alleged <sup>to have</sup> violated all norms and rules framed and

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committed gross misconduct and dereliction in discharge of his official duty. The applicant has however, not pleaded guilty. The enquiry had been ordered and during the enquiry the charge was found to be proved. The disciplinary authority agreeing with the findings of the Enquiry Officer imposed the punishment of Dismissal from service by impugned order dated 23.1.98 which was confirmed in appellate order dated 23.7.1998. These orders are impugned in this case.

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2. Learned Counsel of the applicant Shri Shyam Babu vehemently argued that this is not a case of misconduct/dereliction of duty as no wilful misconduct was imputed. Mere touching the hand with sympathetic consideration would not constitute misconduct in the eye of Law. Even if the findings are sustained the punishment was too harsh and highly disproportionate to the gravity of the misconduct, he averred.

3. Learned Counsel of Respondent Smt. Meera Chhibbar, however submits that the charge of holding the hand of a woman by a member of a disciplined force should not be viewed lightly, it is a serious and gross misconduct and the authorities were right in imposing the punishment of dismissal. It is also stated that there is sufficient evidence on record to sustain the orders.

4. We have given careful consideration to the points raised. The main allegation in this case is that the applicant while he was detailed for search/frisk duties on the undertrial prisoners coming from

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outside in to the prison. he left his duty point. went to another spot and caught hold the hand of a lady UTP. However in the circumstances of the case we have observed there was no bad intention on the part of the applicant in touching the hand of the lady. The enquiry proceedings reveal that out of 5 witnesses in this case. 3 witnesses are found to be formal witnesses, the 4th witness was allegedly won over and the 5th witness is the woman UTP whose hand the applicant was alleged to have caught hold of. The relevant portion in the report relating to the findings on the deposition of PW-5 is reproduced hereunder:

"The constable told her to give him the phone number and the lady Under Trial Prisoner gave telephone number to the Constable and she started weeping near a table kept at gate and on this Constable Rakesh Kumar caught the hand of Under Trial Prisoner Lizzamma and asked not to weep and thereafter she was called by Superintendent Jail No.-01 and inquired whether Constable Rakesh Kumar has committed some mischievous act and she replied that Constable talked to her while catching her hand and thereafter she went inside."

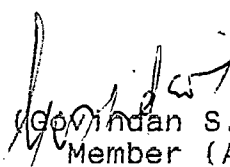
From the above evidence what emerges is that while the lady UTP was weeping the applicant touched her hand and asked her not to weep. When she was asked whether he had committed any mischievous act she replied in the negative. In the cross examination also she stated as under:


"Thereafter the Constable asked whether the female Under Trial Prisoner was caught of her hand by the Constable with some bad intention or in a sympathetic way. This Prosecution

Witness replied that her hand was caught by the Constable sympathetically." 9

The evidence of PW-5 was completely ignored by the enquiry officer. It is clear from the above that the applicant had touched her hand only to ask her not to weep. Apart from PW-5 there is no evidence. The evidence does not disclose that applicant had any mischievous intention in touching her hand. He had touched her hand only in sympathy. If the evidence of PW 5 is ignored, there is no other evidence on record to prove the charge. We are of the firm view that mere touching the hand of a lady only to express sympathy without any illwill or motive, is not a misconduct. Even for the uniformed officer it would not be derogatory of his discipline to express sympathy with another human being. The impugned orders therefore are perverse and are liable to be quashed.

The O.A. succeeds. The impugned orders are quashed. The Respondents are directed to re-instate the applicant in service within 3 months from the date of receipt of this order with all consequential benefits. However, he would be entitled for back wages only to 50%. The O.A. is accordingly allowed.

  
(Govindan S. Tamp)  
Member (Admn)

  
(V. Rajagopala Reddy)  
Vice-Chairman (J)

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