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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA 796/1999

New Delhi this the 30th day of October, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri V.K. Majotra, Member (A)

Head Const. Nahar Singh
No. 10091/EX Battalion, DAP, Delhi
resident of C-12 Nanhe Park,
Uttam Nagar, New Delhi-59

.. Applicant

(None for the applicant)

Versus

1. Commissioner of Police
Delhi Police Headquarter
I.P. Estate, New Delhi.
2. Addl. Commissioner of Police,
Armed Police, Delhi Police HQ,
I.P. Estate, New Delhi.
3. Deputy Commissioner of Police (C&T),
Delhi Police HQ, I.P. Estate,
New Delhi.
4. Deputy Commissioner of Police
IXth Battalion, Delhi Armed Police,
Delhi.

.. Respondents

(By Advocate Shri George Paracken)

O R D E R (ORAL)

Hon'ble Shri V.K. Majotra, Member (A)

The applicant is a Head Constable in Delhi Police. It is alleged that while posted in Chankaya Puri Traffic Circle and Traffic points of round about Rammanohar Lohia Hospital during the period January, 1995 and at traffic point of Gole Market during the period February, 1995, ^{he} had extorted/ accepted money amounting to Rs. 100/- as 'entry' from Shri Gian Chand Driver of Bus No. DBP 2632, route No. 840 red line plying from Shivaji Stadium to Hari Nagar Depot on 14.1.95

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and 2.2.1995. On 12.10.1995 at about 5.30 PM a random check was made by Shri Ranjit Singh, ACP/Vigilance with his staff at Shivaji Stadium, DTC terminal near Madras Hotel. During the checking STA permit and entry book of Bus No.DBP 2632 were seized and the STA permit was found expired on 10.10.1995. From the entry book of the said bus it was found that the appellant was posted in Traffic Unit and performing duty at Chankaya Puri Traffic Circle had accepted a sum of Rs.100/-as entry from the driver of the said bus. Departmental enquiry was held against him and on the basis of the findings of the Inquiry Officer's report notice was issued to the applicant on 15.5.97. He submitted his representation on 2.6.1997. He was heard personally in orderly room on 13.6.1997 by the disciplinary authority. The disciplinary authority awarded punishment of withholding of his five years service increment with commulative effect by order dated 9.7.1997. The appellate authority in his order dated 11.12.1997 reduced the penalty to that of withholding of one increment permanently. The Revision Petition submitted by the applicant to the Commissioner of Police was rejected being time barred. The applicant has challenged the orders dated 27.1.1999 and 11.12.1997 (Annexures A and B) whereby he was punished by the disciplinary authority as well as by the appellate authority. The applicant has sought setting aside of both these penalty orders with consequential benefits. The applicant has contended that although the same allegations were made against S.I Harbans Lal Sharma and Constable Vinod Kumar

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who were also proceeded on the basis of same allegations the charges against them were dropped in the absence of any evidence against them. Five PWS were examined in the instant case. According to the applicant the present case is of no evidence as no prosecution witness deposed against the applicant in support of this charge. The applicant has further stated that the report of the Inquiry Officer is not reasoned one and the respondents have in violation of the principles of natural justice and without application of mind particularly when there is no evidence against him resorted to punish him while dropping the charges against the aforesaid two Charged Officers.

2. In their counter, the respondents have admitted that though PWS 1 and 2 have denied making any payment to the applicant on the basis of the statement of PWS and material/evidence adduced the charges against the applicant is established. Representation of the applicant in response to the findings of the Inquiry Officer and oral submissions in orderly room were considered before reaching the conclusion that the charges against the applicant were established.

3. Since the applicant has remained unrepresented, we have proceeded to dispose of the matter under Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987. We have also heard learned counsel of of the respondents and perused the material available on record.

4. Learned counsel of the respondents has stated that though the other two officials who had been charged for similar mis-conduct

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were let off but it was not a case where common enquiry has been held against the applicant and the other two charged officers. Separate departmental proceedings were held against these personnel. On the basis of the evidence adduced in the other two cases, the other two officers were exonerated. However, the present case has to be considered on the basis of evidence in the present case and is unrelated to the outcome in the other two cases.

5. In the appellate authority order dated 11.12.1997(Ann.B) the appellate authority has recorded as below:-

" I have gone through the relevant records and DE file and past record of the appellant. The Disciplinary authority has held the appellant guilty based on circumstantial evidence and awarded penalty of withholding of five increments permanently. In the absence of strong conclusive evidence indicating direct involvement in corruption imposing such a penalty is excessive. Further very clean past record of the appellant also needs consideration while deciding of the punishment. Considering the above factors, I reduce penalty of withholding of five increments permanently awarded to the appellant by the Disciplinary Authority to that of withholding of one increment permanently."

The appellate authority has stated that in the present case strong conclusive evidence indicating direct involvement in corruption of the applicant is absent. Therefore, he found the penalty imposed by the disciplinary authority as excessive.

According to the Appellate Authority the applicant had a very

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clean past record which had not taken into account by the Disciplinary Authority. However, it is also stated that four other persons who faced the same charges have been punished withholding one service increment. The Appellate Authority modified the penalty of withholding of 5 years service increment permanently to that of withholding of one increment permanently.

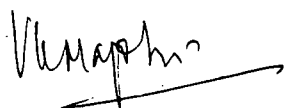
6. From the Annexures E & F dated 13.1.98 and 27.2.1998 which are final orders passed in the departmental enquiries held against Constable Vinod Kumar and SI Harbans Lal Sharma against whom the same charges as against the applicant were levelled it is seen that the charges against them were not substantiated during the departmental proceedings and therefore, the enquiries against both of them were ordered to be dropped.

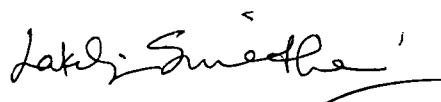
7. While serious allegation of corruption has been made against the applicant which must be dealt with a heavy hand, we find that according to the respondents themselves they were not able to lead conclusive evidence against the applicant and as a matter of fact, they were forced to let off two other personnel who were involved in the same incident. The appellate authority in his order dated 11.12.1997 has himself stated that strong conclusive evidence indicating direct involvement in corruption of the applicant is absent in the case. The applicant has also in the OA referred to the evidence of certain witnesses who have denied to have made any payment to the applicant. This has

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not been rebutted by the respondents. In the circumstances we agree with the applicant's contention that the present is a case of no evidence and does not warrant imposition of any penalty against the applicant.

8. Having regard to what has been stated above and particularly the fact that SI Harbans Lal Sharma and Constable Vinod Kumar who were proceeded against for same charges as the applicant but exonerated and the conclusions of the appellate authority, we have no other alternative except to allow the OA and set aside the orders dated 9.7.1997, 11.12.1997 and 27.1.1999 (Annexures A, B and C, respectively) with consequential benefits. No order as to costs.


(V.K. Majotra)
Member(A)


(Smt. Lakshmi Swaminathan)
Member (J)

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