

Central Administrative Tribunal, Principal Bench

Original Application Nos. 1279, 1333 & 1334 of 1998

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

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)
Hon'ble Mr. V.K. Majotra, Member (A)

(1) Original Application No. 1279 of 1998

Constable Om Kumar, S/o Shri Dalip Singh,
R/o A-56, Multan Nagar, New Delhi. - Applicant
(By Advocate Mrs. Meera Chhibber)

Versus

1. Union of India, through Commissioner of Police, PHQ, M.S.O. Building, I.P.Estate, New Delhi.
2. Additional Commissioner of Police (Ops), M.S.O. Building, I.P.Estate, New Delhi.
3. Dy. Commissioner of Police, Police Control Room, PHQ, M.S.O. Building, I.P.Estate, New Delhi. - Respondents
(By Advocate Shri Harbir Singh)

(2) Original Application No. 1333 of 1998

H.C. Ishwar Singh, S/o Shri Yad Ram Yadav,
R/o RZF 1/8, Mahavir Enclave, Palam, New Delhi-45 - Applicant
(By Advocate Mrs. Meera Chhibber)

Versus

1. Union of India, through Commissioner of Police, PHQ, M.S.O. Building, I.P.Estate, New Delhi.
2. Additional Commissioner of Police (Ops), M.S.O. Building, I.P.Estate, New Delhi.
3. Dy. Commissioner of Police, Police Control Room, PHQ, M.S.O. Building, I.P.Estate, New Delhi. - Respondents
(By Advocate Shri Harbir Singh)

(3) Original Application No. 1334 of 1998

ASI Ranvir Singh, S/o Shri Paltu Ram, R/o C-139, Amar Colony, East Gokalpur, Shahdara, Delhi-94 - Applicant
(By Advocate Mrs. Meera Chhibber)

Versus

1. Union of India, through Commissioner of Police, PHQ, M.S.O. Building, I.P.Estate, New Delhi.
2. Additional Commissioner of Police (Ops), M.S.O. Building, I.P.Estate, New Delhi.

:: 2 ::

3. Dy.Commissioner of Police, Police Control Room, PHQ, M.S.O. Building, I.P.Estate, New Delhi. - Respondents
(By Advocate Shri Harbir Singh)

Common Order

By V.K.Majotra, Member(A) -

As the facts are identical and the issues involved are common in the aforesaid O.As these are being disposed of by this common order.

2. A departmental enquiry was held against these applicants vide order dated 28.4.1995 on the allegation that on 11.7.1994 around 3 p.m. one Shri Mustaq Ali, driver of truck no.UP-14-9822 informed PCR on telephone that on that day while he was driving his truck in front of Batra Hospital and Vayusena Bad, traffic sergeant and his staff extorted a sum of Rs.700/- from him. This information was lodged vide DD No.23 at Flying Squad, Vigilance Branch. Inspector Ranjit Singh (now ACP) of Vigilance Branch was deputed to verify and enquire into the matter on the spot. He found ASI Ranbir Singh, Head Constable Ishwar Singh and Constable Om Kumar present there talking with the truck drivers including the complainant Shri Mustaq Ali. The trucks were found parked there. The complainant alleged that he had been beaten for not paying Rs.100/- as entry fee. The Vigilance Inspector checked the challan book of the ASI and found that the ASI had not challaned any one of those trucks. The Inspector asked the ASI to facilitate the tallying of his challan book with cash in his possession, but the ASI ran away from the spot. When Inspector Ranjit Singh returned from there, ASI Ranbir Singh challaned the trucks. The applicants were charged for indulgence in illegal extortion of money from truck drivers amounting to gross misconduct and dishonesty.

The disciplinary enquiry was initially held by Inspector Surender Kumar. It was later on transferred to Inspector Satyapal Singh. The enquiry officer submitted his finding on 12.9.1995 concluding that the charges against the applicants were not substantiated. The disciplinary authority disagreed with the findings of the enquiry officer stating that sufficient weightage/importance had not been given to contemporaneous records; information of PCR form conveyed to the Vigilance Branch was recorded vide DD No.24 dated 11.7.1994; PWs including the complainant Shri Mustaq Ali had not denied the fact of having made the complaint regarding extortion of money by the three applicants; the enquiry officer from Vigilance Branch Shri Ranjit Singh on reaching the spot an hour or so later found the complainant along with 7 trucks and the delinquent traffic staff on the spot which corroborates authenticity of the initial information received and recorded in the PCR; the Vigilance Enquiry Officer could not complete his work systematically partly due to the delinquents having run away from the spot which establishes the guilt of the delinquents; and more weightage has been attached to the daily diary made by SI Mukesh Tyagi as the same was made immediately subsequent to the incident than what he has stated in his statement during the disciplinary enquiry. He relied on the contemporaneous records and the following grounds:

1. The authenticity of PCR form which clearly mentions the nature of the allegations stands proved beyond doubt.
2. Presence of all the three delinquents at the spot when Shri Ranjit Singh, Insp. Vigilance (Now ACP) visited the spot to enquire into the complaint.
3. Fleeing the spot by delinquents to avoid

:: 4 ::

facilitating tallying of cash in hand with the challan book and also to avoid checking of dickey of the Motor Cycle of ASI Ranbir Singh, when asked to do so by Shri Ranjit Singh, Insp. / Vigilance.

4. There is no reason to disbelieve the testimony of Shri Ranjit Singh, ACP/Vig. (PW 14) which is convincing as well as irrefutable and proves the charge against all the three delinquents beyond all reasonable doubts".

The disciplinary authority vide his order dated 29.11.1995 has held the charge proved against the applicants beyond preponderance of probabilities and in view of the gravity of the charge, found their retention in the force as not desirable and imposed punishment of dismissal with immediate effect against them. The appellate authority vide his order dated 3.6.1996 rejected the appeals filed by the applicants against the order of dismissal. However, the revisional authority vide his order dated 26.6.1997 modified the punishment of dismissal from service to that of forfeiture of three years approved service entailing proportionate reduction in their pay for a period of three years with cumulative effect and the intervening period from the date of dismissal to the date of joining their duty was directed to be treated as not spent on duty. The applicants have challenged the aforesaid orders in these OAs.

3. According to the applicants the truck drivers who were examined had stated that there was no extortion at all and they had not been beaten by the applicants. The complaint of PCR was at 14.44 hours whereas the complainant had already been challaned at 13.55 hours and the next challan was also cut at 14.00 hours of a Scooterist. SI Mukesh Tyagi in his statement (Annexure-P-VIII) has stated that he did not find anyone present on the spot. Inspector Ranjit Singh made self contradictory statements and the enquiry officer did not

W

find the charge as substantiated. Applicants Constable Om Kumar, and Head Constable Ishwar Singh are even otherwise not authorised to cut challans, therefore, the question of their extortion of money from anyone should not arise. The applicants have also contended that the truck drivers failed to recognise the defaulters and they categorically stated that they had not been charged any entry fee. Whereas Mustaq Ali's challan was cut around 13.30 hours, Inspector Ranjit Singh had stated that no challan was cut. According to the applicants the drivers had given a general report and not against any particular police officer and complainant Mustaq Ali's challan was cut which had angered him. Thus, the enquiry officer had rightly concluded that the charge had not been proved. The applicants had given a joint representation in response to the show-cause notice issued by the disciplinary authority in which they had narrated the entire evidence but the disciplinary authority placed reliance on the earlier statements of witnesses rather than on the statements made by the witnesses in the departmental enquiry ^{and by} reached his conclusions totally at variance with the findings of the enquiry officer. According to the applicants these cases are those of no evidence. So far as applicant Om Kumar is concerned, his duty started from 2.00 p.m. whereas challan of Shri Mustaq Ali had been cut at 13.55 hours i.e. before commencement of applicant Om Kumar's duty. The applicants have also raised the point that the Vigilance Inspector had neither seized the challan book nor did he sign on it which proves that the challan had already been cut otherwise he should have put his signature to avoid any manipulation by the concerned staff. They have further stated that admittedly

Inspector Ranjit Singh reached the spot after one hour whereas in between the Inspecting Officer from the Police Station had visited the spot but found nothing of sort as alleged by Inspector Ranjit Singh. The applicants have been denied salary for 19 months by treating the period from 29.11.1995 to 26.6.1997 as period not spent on duty apart from forfeiture of three years' service. According to the applicants it amounts to double jeopardy.

4. In their counter the respondents have stated that the public witnesses became hostile during the disciplinary enquiry proceedings which is understandable "in view of the circumstances in which the DE against the police officer is conducted". Reiterating the grounds described by the disciplinary authority, the respondents have contended that the charges levelled against the delinquents are held proved beyond preponderance of probabilities. The applicants have filed a rejoinder as well.

5. We have heard the learned counsel of both sides and perused the material on record as well as disciplinary enquiry records produced by the respondents.

6. Appearing on behalf of the applicants Smt. Meera Chhibber, learned counsel contended that these are cases of no evidence. The prosecution witnesses did not identify the applicants and did not state that they had extorted any money from them. She further stated that even summary of allegations is totally vague and it does not clarify as to who had demanded money from the truck drivers and who had taken money from them. According to her the enquiry officer had rightly concluded that the charges against the applicants were

not substantiated.

7. Smt. Chhibber pointed out the dichotomy between the timings recorded in the police record in various documents. Whereas the complaint to the PCR was recorded at 14.44 hours, complainant Mustaq Ali had already been challaned at 13.55 hours and another challan of a scooterist had been cut at 14.00 hours. The truck drivers have stated in the disciplinary enquiry that they had made the complaint in anger as although they had been paying the entry fee on various police check points, Mustaq Ali had been challaned. While stating that they do not identify the delinquents they had made their statements without any pressure or allurement. She faulted the reliance of the disciplinary authority on the PCR report rather than evidence in the DE. As regards the applicants who are Head Constable and Constable, the learned counsel maintained that these persons are not even authorised to cut challan, therefore, the question of their demanding any money does not arise at all. As regards the revisional order Smt. Chhibber stated that without giving any sound basis, the revisional authority referring to the "totality of the circumstances of the case" awarded punishment of forfeiture of approved service of the applicants. According to her when the revisional authority did not have any sound basis for establishing the charges against the applicants they should have been totally exonerated. Smt. Chhibber relied on the following cases:- (i) Shri Azad Singh Vs. Commissioner of Police & others, 1998 (3) SLJ 386; (ii) Kuldeep Singh Vs. Commissioner of Police and others, (1999) 2 SCC 10; Sanatan Swain Vs. Union of India, (1987) 5 ATC 437.

8. The learned counsel of the respondents stated that the dichotomy in the matter of police records is because the ASI and other delinquents had run away from the spot when the Vigilance Inspector reached there. Later on, the ASI returned and prepared the ante-timed challans. He further stated that the prosecution witnesses had turned hostile as normally the public men do not come forward to make statements against the Policemen. The learned counsel of the respondents Shri Ram Kanwar contended that these are not cases of no evidence. As a matter of fact sufficient evidence is available to establish the charges against the applicants. He further stated that the disciplinary authority and the revisional authorities had relied on contemporaneous record and totality of the circumstances of the case.

9. Whereas the disciplinary authority has preferred to rely on the statements made by the witnesses such as SI Mukesh Tyagi prior to those made in the departmental enquiry, the learned counsel of the applicants relying on the case of Azad Singh (supra) stated that the earlier statements cannot be relied upon in preference to those recorded during the departmental enquiry. Such an approach is violative of the provisions of Rule 15(3) of Delhi Police (Punishment & Appeal) Rules. Agreeing with the learned counsel of the applicants, we hold that the respondents cannot be allowed to rely on the statements recorded prior to those recorded in the departmental enquiry in preference to the statements made during the course of the departmental enquiry in view of the decision in the case of Sanatan Swain (supra). The prosecution witnesses did not identify the applicants and did not state that the

money had been extorted from them. The statements of the prosecution witnesses in support of the cases of the applicants make the present cases as those of no evidence. Rightly, the enquiry officer has held on the basis of the evidence before him that the charges against the applicants were not substantiated. The finding of guilt in the absence of evidence in the case tantamounts to perverse conclusions. This view finds support from the ratio in the matter of Kuldeep Singh (supra).

10. The respondents have stated that the ASI and his team had run away when the Vigilance Inspector visited the spot. Inspector Ranjit Singh is stated to have seen the challan book and found that no challan/receipt was given by the police officer. It is also contended by the respondents that it implies that the ASI had run away along with the challan book, receipt book etc. and when he returned after the departure of the Inspector Ranjit Singh, he prepared ante-timed challans. When Shri Ranjit Singh on reaching the spot saw the challan book and found that no challan had been cut, it is unbelievable that he returned the challan book and other documents without signing them. As a matter of fact, he ought to have seized them, so that there was no opportunity at all for interpolation. The respondents have used the expression "contemporaneous record" but we find from the records produced by them that on return from the spot Inspector Ranjit Singh had not made any entry in proof of the fact that the ASI and his team had snatched the challan book and other documents from his possession and run away. In this background when Inspector Ranjit Singh did not

sign the documents nor seized them, the story of the prosecution cannot be accepted.

11. The learned counsel of the respondents has relied on the case of High Court of Judicature at Bombay Vs. Uday Singh and others, (1997) 5 SCC 129 stating that in the present cases there is preponderance of probabilities and conclusions drawn ^{base of the} as a reasonable man from evidence on record sufficient for the purpose of departmental enquiry. We cannot agree with the contention of the respondents as there is hardly any preponderance of probabilities thrown up in the present case. As a matter of fact whereas Vigilance Inspector has committed blunder in neither signing the documents nor seizing them, the other witnesses have totally rebutted the prosecution contentions.

12. Having regard to the discussion made above, we cannot uphold the impugned orders against the applicants and accordingly the OA succeeds. The impugned orders dated 29.11.1995, 30.6.1996 and 26.6.1997 are quashed. The respondents are directed to accord consequential benefits to the applicants within a period of two months from the date of receipt of a copy of this order. In the facts and circumstances of the case the parties shall bear their own costs.

V.K.Majotra
(V.K.Majotra)
Member (A)

Lakshmi
(Mrs.Lakshmi Swaminathan)
Member (J)