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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1514/1998

New Delhi this the 14th day of November, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Constable Sri Niwas
S/o Shri Bishamber Sahai
R/o H-329, New Police Lines
Kingsway Camp, Delhi. Applicant

(By Advocate Shri Shanker Raju)

-versus-

1. Union of India
Through Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Addl. Commissioner of Police,
Southern Range Police Head Quarters
I.P. Estate, M.S.O. Building
New Delhi.
3. Dy. Commissioner of Police
South West District
Vasant Vihar
New Delhi. Respondents

(By Advocate Mrs. Neelam Singh)

O R D E R (ORAL)

Justice Ashok Agarwal:-

Applicant who is a Constable in Delhi Police was proceeded departmentally along with certain other Police officials under the following articles of charge:-

N.J.
"I Inspector Jagdish Kumar Malik,
S.H.O/Police Station, Inderpuri, charge
you H.C. Parkash Chamoli No. 92/SW,
Const. Babu Khan No. 857/SW and Const. Sri
Niwas No. 1705/SW that while you posted
to police station, Vasant Kunj, South West
Distt. and during the intervening night
of 28.2.93 and 1.3.93 were detailed for
picket duty at Rajokari Picket from 8 P.M.
to 8 A.M. You failed to maintain absolute

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integrity and devotion to duty is as much as:

"That during the night patrolling duty of Sh. Virender Singh, I.P.S., A.C.P/UT, South-West Distt. One car driver namely Kundan Singh S/o Sh. Sambhu Singh R/o H.P.M.C. Juice Shop, R.M.L. Hospital, New Delhi, at present Hamdard Dawa Khanna, Meerut Road, Ghaziabad (U.P.) driving Car No. DEA-8679 met him at Rajokari Border, who told the officer that the Police at Rajokari Picket has forced him to pay Rs. 100/-. On this the officer accompanied the car driver to the picket and enquired into the matter. Const. Babu Khan No. 857/SW admitted his fault and returned the money to the car driver.

"On the same time, the officer also caught Const. Sri Niwas No. 1705/SW red handed for accepting money from a truck. H.C. Parkash Chamoli No. 92/SW was the incharge of the picket and the indulgence of the picket constables in demanding and forcibly accepting the illegal gratification from the vehicle occupants was going on with his connivance."

2. As far as the applicant is concerned, it is clear ^{from the allegations} that he was caught red handed by A.C.P. Shri Virender Singh while accepting money from a truck driver. Shri Jagdish Kumar Malik, Inspector was appointed as an enquiry officer. He recorded statements of Prosecution Witnesses which include A.C.P. Shri Virender Singh as also Shri Kundan Singh from whom a sum of Rs. 100/- has been obtained. Enquiry officer examined one Shri Dilbag Singh, a defence witness on behalf of the delinquents. Based on the evidence both oral as also documentary on record, the enquiry officer by his report of 2.11.1993 has found all the delinquents including the applicant herein guilty of the charge framed against them. A copy of the aforesaid enquiry officer was duly furnished to the delinquents, who in turn submitted

[Signature]

their representations. Disciplinary authority by his order of 17.3.1994 has passed varying orders of penalty against the delinquents. As far as the applicant is concerned, he is awarded a punishment of withholding of an increment for a period of two years with a direction that the said withholding should have the effect of postponing his future increments.

3. Aforesaid order of penalty was impugned by the applicant by preferring an appeal. The appellate authority by an order passed on 5.6.1995 dismissed the appeal and maintained the order of penalty. Aforesaid order of the appellate authority was impugned by the applicant by filing an OA being OA No. 1484/1995 which was disposed of by an order passed on 18.12.1995 whereby the matter was remanded back to the appellate authority as the impugned order of 5.6.1995 was a non-speaking order. Appellate authority was accordingly directed to dispose of the appeal by passing a speaking order. By a speaking order later passed by the appellate authority on 25.7.1996, the order of penalty imposed by the disciplinary authority has been maintained and the appeal has been dismissed. The order of the disciplinary authority passed on 17.3.1994 and the one passed by the appellate authority on 25.7.1996 are impugned in the present OA.

4. Shri Rajeev Kumar, the learned proxy counsel appearing for Shri Shanker Raju, the learned counsel for the applicant has drawn our attention to the following observations contained in the order of the disciplinary authority and has contended that the

order holding the applicant guilty of the charge and the consequent order of penalty cannot be sustained:-

"The charges against Const. Siri Niwas No. 1705/SW could not be proved for want of adequate evidence. The acts that were brought out on the file, 'the driver holding the money while the constable did not take it and that the truck driver sped away on seeing the checking team', could be viewed either way. Const. Siri Niwas No. 1705/SW is hereby awarded the punishment of with-holding of an increment for a period of two years and the with-holding shall have the effect of postponing future increments. However, his suspension period w.e.f. 12.3.93 to the previous date of issue of this order will be treated as Leave of kind due.

HC. Parkash Chamoli No. 92/S.W., Const. Babu Khan, 857/SW, and Const. Siri Niwas No. 1705/SW are hereby reinstated in service with immediate effect."

The learned counsel has emphasised the finding of the disciplinary authority, namely "the charges against Const. Siri Niwas No. 1705/SW could not be proved for want of adequate evidence". Based on the aforesaid observation, he has contended that the disciplinary authority was not justified in passing a conflicting order of imposition of aforesaid impugned order of penalty.

5. We have examined the aforesaid contention at some length and we find that if one has regard to the sequence of events as also the facts found, there is no contradiction in the order of the disciplinary authority as contended. As far as the applicant is concerned, it would be necessary to refer to the evidence of Shri Virender Singh, I.P.S. A.C.P. As far as the role of the applicant is concerned, this is what has been stated in his examination in chief:-

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"In the meantime he saw Const. Siri Niwas No.1705/SW taking the money from one truck driver...."

"On the Cross examination by defaulter Const. Siri Niwas No.1705/SW, the ACP confirmed that he reached at the picket at 1.05 A.M. and saw that the Const. Ram Niwas had already stopped the truck and was taking money from that truck driver and he could not note the truck number and taking advantage of the crowd of the people the truck driver escaped from the spot alongwith the money. Only due to this reason he could not take into possession that currency note and statement of the truck driver."

6. Aforesaid order of the disciplinary authority has to be viewed in the light of the aforesaid facts deposed by Shri Virender Singh, I.P.S. A.C.P. The A.C.P. is specific in deposing that he had seen the applicant accepting money from the truck driver. However, before he could apprehend the applicant after he had received the amount, the truck driver taking advantage of the crowd made good his escape. This he did along with the money. He, therefore, managed to escape from the spot before he had actually delivered the amount to the applicant. In view of this, applicant could not be apprehended along with the money on his person. Similarly, the statement of the ^{truck driver} applicant also could not be recorded. It is on the basis of this evidence that the disciplinary authority has held that the charges against the applicant could not be proved for want of adequate evidence. In other words, what he meant was that he could not be apprehended with the amount on his person. He has further gone on to hold that the driver of the truck was seen holding the money. Before the applicant could take the same, the truck driver sped away. Having regard to the aforesaid

facts, we do not find any contradiction in the order of the disciplinary authority. The same holds the applicant guilty of taking bribe from the truck driver or in any event for having attempted to take money from him. The order of the disciplinary authority, in the circumstances, cannot be successfully assailed.

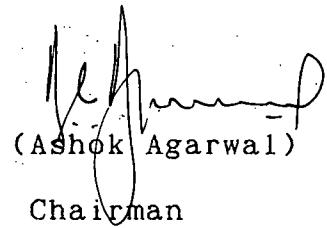
7. Similarly, the order now passed by the appellate authority is a reasoned order. The same takes into account all the contentions advanced on behalf of the applicant. The same also cannot, therefore, be successfully assailed. As far as the quantum of penalty is concerned, the same if at all ~~ever~~ urged on the side of leniency, ^{the same} also cannot, therefore, be successfully assailed.

8. Present OA in the circumstances, we find is devoid of merit. The same is accordingly dismissed. No costs.



(S.A.T. Rizvi)

Member (A)



(Ashok Agarwal)

Chairman

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