

Central Administrative Tribunal, Principal Bench

Original Application No.1565 of 1998

New Delhi, this the 29<sup>th</sup> day of September, 2000

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

Head Constable Rajender Singh S/o Sh.Kartar Singh, Village Katlupur, Police Stn. Rai, P.O. Nahri, Distt. Sonapat, posted as Head Const. in II Bn. DAP, Delhi. - Applicant

(By Advocate Shri Arun Bhardwaj)

Versus

1. Union of India through Lt.Governor of Delhi through Comm. of Police, P.H.Q. I.P.Estate, New Delhi.
  2. Dy.Commissioner of Police, II Bn., DAP, Delhi.
  3. Add.Comm.of Police, Armed Police, Delhi - Respondents
- (By Advocate Ms.Neelam Singh)

O R D E R

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

In this OA the applicant has assailed order dated 4.2.1997 (Annexure-A-1) by which he has been awarded punishment of forfeiture of three years approved service permanently for a period of three years, entailing reduction in his pay from Rs.1360/- per month to Rs.1270/- per month and also that he will not earn increment of pay during the period of reduction and after the expiry of this period the reduction will have the effect of postponing his future increments of pay. He has also assailed order dated 14.5.1998 (Annexure-A-2) in appeal.

2. The charge against the applicant was that while posted in Traffic Unit Patel Nagar Circle and detailed for duty at traffic point Loha Mandi he extorted/ accepted Rs.100/- as entry fee from Sh.Gian Chand, driver of Bus No.DBP 2632 route No.840 Red Line Bus Service, plying from Shivaji Stadium to Hari Nagar depot Delhi. It was alleged that on 12.10.1995 around

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5.30 p.m. a random checking was made by Shri Ranjit Singh, ACP, Vigilance at Shivaji Stadium, D.T.C. Terminal near Madras Hotel. During the checking STA permit and entry book of Bus No.DBP 2632 route no.840 were seized. It was found that Traffic points, dates & names of same police traffic staff were written in the entry book of the driver/ conductor to whom they were making payment of Rs.100/- per red light/ round about as protection money for the year 1994-95. Shri Pradeep Kumar Gupta, owner of the said bus, Shri Gian Chand, its Driver and Shri Vinod Kumar, its helper were examined. They confirmed the payment of Rs.100/- to the applicant on 2.1.1995 and 6.3.1995 respectively at traffic point Loha Mandi Patel Nagar Circle. The name of the applicant, traffic point and date as indicated/ written in the entry book of the said bus, tallied with duty roaster and "his name was found similar".

3. A departmental enquiry was held against the applicant and a copy of the findings of the enquiry officer was issued to him on 19.12.1996. His representation dated 3.1.1997 was considered and he was also heard in orderly room on 17.1.1997.

4. The applicant has alleged that whereas Constables Satbir Singh and Bachhu Singh, who were similarly charged were let off and charges against them were dropped and Constable Nahar Singh and Head Constable Ram Kishore were awarded lesser punishment of withholding of one increment permanently for a period of one year, the applicant has been discriminated against and awarded a harsher punishment. The applicant has contended that statement of Vinod Kumar recorded by the ACP Vigilance has been brought on record although he was not examined in the departmental enquiry. According to

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the applicant no prosecution witness has stated that he had given any money to the applicant. The duty roster indicating that the applicant was posted at Loha Mandi has not been produced and Conductor Guddu has not been examined as a prosecution witness. The applicant has further averred that the enquiry officer has not applied his mind to the facts on record, statements of witnesses and documents.

5. In their counter the respondents have stated that whereas the enquiry proceedings against Constables Satbir Singh and Bachhu Singh were dropped as the charges levelled against them were not proved by the enquiry officer, in the case of the applicant charges were fully proved by the enquiry officer. Helper Vinod Kumar could not be examined as he was not traceable. Therefore, his statement earlier recorded was brought on record. According to the respondents documentary evidence on record proved that the applicant was detailed for duty at traffic point Loha Mandi on 2.1.1995 and 6.3.1995 and entry fee at the rate of Rs.100/- was paid to him on these dates by the staff of Bus No.DBP-2632 as per entry made by the staff of the bus in the entry note book. No preliminary enquiry had been held in the present case. Only a random check was made by the ACP Vigilance. The duty roster could not be produced by the prosecution witness as the same had already been seized by Shri Ranjit Singh, ACP Vigilance during the vigilance enquiry. Although the statement of Vinod Kumar does not contain the name of the applicant but he had stated that an entry fee at the rate of Rs.100/- per month was given to the traffic staff by the driver/ conductor of the said bus on the route of the bus i.e. Shivaji Stadium to Hari Nagar. The entry fee of Rs.100/- was paid to the applicant on 2.1.1995 and

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6.3.1995. The applicant has filed a rejoinder as well.

6. We have heard the learned counsel of both sides and considered the material available on record carefully.

7. Shri Arun Bhardwaj, learned counsel of the applicant, has pointed out that whereas certain other similarly situated police officials have either been exonerated in departmental enquiry or even let off with less severe penalty than the applicant, the applicant has been visited upon with a harsh penalty even though the respondents have totally failed to bring home the charges against the applicant. The DE against Constable Satbir Singh and Constable Bachhu Singh were dropped as charges could not be proved against them. Constable Nahar Singh and Head Constable Ram Kishore were dealt with leniently and less severe punishments were awarded against them. Shri Bhardwaj has further stated that during the vigilance enquiry the driver, conductor and the owner of the bus did not mention the name of the applicant and rather made a general type of statement that they had paid protection money to the traffic staff deployed at traffic point along the route of the bus. Six prosecution witnesses examined in the DE did not state that they had paid any money to the applicant or that the applicant had demanded any money from them. One of the important prosecution witness Vinod Kumar Helper was not examined in the enquiry. The respondents have brought on record the statement made by Vinod Kumar, Helper during the vigilance enquiry on the plea that it was not possible to trace out Vinod Kumar as he had gone away to Bihar. According to the learned counsel of the applicant PW Pradeep Kumar Gupta, owner of the bus could not recognise the applicant. He stated that Vinod Kumar Helper was illiterate and could not

state who had written the entries in the entry book. Shri Gian Chand, driver of the bus also denied to have made any entries in the entry book. Shri Bhardwaj, learned counsel has also contended that the enquiry officer has not drawn any firm conclusion of guilt against the applicant. The duty roster and the original entry book of the bus were not produced in the enquiry on the ground that they were with the vigilance. Shri Bhardwaj has pointed out that DD entries did not mention the place of posting of the applicant as Loha Mandi. In view of the anomalies stated above, the learned counsel of the applicant stated that the respondents have failed to establish charges against the applicant and accordingly the penalty against the applicant should be set aside.

8. Ms. Neelam Singh, learned counsel of the respondents stated that different personnel have been given different treatments in departmental enquiries because the facts in their cases were not similar. In some cases they were not posted enroute the Bus No. DBP 2632 and in another it was held that the delinquents could not be exclusively blamed. She explained that the Helper Vinod Kumar could not be examined as his whereabouts were not known. She further stated that the name of the applicant, traffic point and the date as indicated/ written in the entry book of Bus No. DBP 2632 were tallied with the duty roster and the applicant's name was found to be similar.

9. From the facts of the case, we find that the original entry book of Bus No. DBP 2632 and the duty roster were not produced in the departmental enquiry. The respondents' contention that these records were with the vigilance department is not acceptable as a convincing ground. Without these original records it

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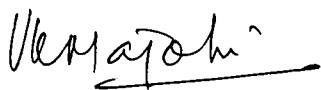
could not have been held that the applicant was detailed for duty at Loha Mandi on specific dates and time. Further, the entries stated to have been made in the entry book can also not be deemed to have been established without the original entry book having been proved and exhibited by the concerned witnesses. The prosecution witnesses have not stated to have paid money to the applicant nor has it been established that any money was paid as entry fees to the applicant. Normally, the statement made in a preliminary enquiry can be taken on record and considered if all efforts to produce a particular witness have failed. In the instant case whereas no preliminary enquiry was held, efforts were also not made to find out the whereabouts of the crucial prosecution witness Vinod Kumar. We are also agreeable to the contention of the learned counsel of the applicant that the enquiry officer has not drawn any conclusion in his enquiry report and in a superficial manner has held that the charge against the applicant stands proved.


10. As stated above, there are large number of anomalies in the present enquiry. Duty roster and the entry book were not produced in original in the enquiry, efforts were not made to produce the crucial prosecution witness Shri Vinod Kumar. The prosecution witnesses did not say that they had paid money to the applicant or he had demanded money from them. In the enquiry the enquiry officer has held the charge as proved against the applicant without drawing any specific conclusion in the enquiry. Last but not least, various other delinquents similarly situated were either exonerated or were given less severe punishment.

11. Having regard to what is stated above, we go along with the applicant and hold that the respondents

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have not been able to establish charges against the applicant. In this view of the matter, impugned order dated 4.2.1997 (Annexure-A-1) awarding the applicant punishment of forfeiture of three years approved service permanently for a period of three years, entailing reduction in his pay from Rs.1360/- per month to Rs.1270/- per month and also that he will not earn increment of pay during the period of reduction and after the expiry of this period the reduction will have the effect of postponing his future increments of pay, and the impugned order dated 14.5.1998 (Annexure-A-2) in appeal, are set aside with consequential benefits. No order as to costs.

  
(V.K. Majotra)  
Member (A)

  
(Mrs. Laksmi Swaminathan)  
Member (J)

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