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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 1684/98

New Delhi: this the 27<sup>th</sup> day of September, 2000.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Ex. ASI (Ovr.) Harbhajan Singh,

S/o Shri Joginder Singh,

Quarter No. 1, Type-I,

P.S. Sadar Bazar,

Delhi-

.....Applicant.

(By Advocate: Shri Sama Singh)

Versus

1. The Commissioner of Police,  
Delhi Police Headquarters,  
MSO Building, I.P. Estate,  
New Delhi-2

2. Sr. Addl. Commissioner of Police (Ops),  
Delhi Police Headquarters,  
M.S.O. Building, I.P. Estate,  
New Delhi-2

3. The Deputy Commissioner of Police,  
Police Control Room,  
Delhi Police Headquarters,  
MSO Building,  
I.P. Estate,  
New Delhi-2

4. The Dy. Commissioner of Police (Hq-III),  
Delhi Police Headquarters,  
MSO Building, I.P. Estate,  
New Delhi-2

.....Respondents.

(By Advocate: Shri George Paracken)

ORDER

Mr. S.R. Adige, VC (A).

Applicant impugns the Disciplinary Authority's dismissal order dated 20.3.97 (Annexure-A); the appellate order dated 22.8.97 (Annexure-B) and the revisional order dated 10.8.98 (Annexure-C). He prays for reinstatement with all consequential benefits including the treatment of suspension period as

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period spent on duty.

2. Applicant was proceeded against departmentally on the allegation that a complaint was received from one Jagir Singh alleging that applicant had taken Rs. 67000/- from him for providing employment Visa for his son Manjit Singh in Dubai as a Driver, but he provided only a Tourist Visa and that too for Brunei instead of Dubai and as such no employment for Manjit Singh was provided at Brunei. Applicant had given an assurance that the money would be returned, if Manjit Singh was not employed. Manjit Singh had returned from Brunei after 22 days upon which Jagir Singh asked applicant to return the money paid to him, but he did not do so. Applicant was also called by the Gram Panchayat when he gave an assurance that he would return the money within a week, but he did not do so. A fact finding enquiry was also conducted by Shri Shamsheer Singh ACP/PCR who submitted his findings that applicant had taken the money from the complainant at his Govt. Qr. at P.S. Sadar Bazar.

3. Applicant was placed under suspension vide order dated 8.3.96.

4. The Enquiry Officer in his report held that the charge against applicant had been proved beyond doubt.

5. A copy of the E.O's report was furnished to applicant for representation, if any vide Memo dated 25.7.96 (Annexure-J).

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6. Applicant submitted his representation, and after considering the same, as well as the materials on record, and giving applicant a personal hearing, the Disciplinary Authority, agreeing with the findings of the E.O. dismissed applicant from service vide impugned order dated 20.3.97. Applicant's appeal was rejected by impugned order dated 22.8.97 and his revision petition was likewise rejected by impugned order dated 10.8.98 giving rise to the present OA.

7. We have heard applicant's counsel Shri Sama Singh and respondents' counsel Shri Parackan.

8. The first ground taken by Shri Sama Singh is that applicant's act was not the gravest act of misconduct, so as to warrant dismissal from service. Reliance is sought to be placed on Rule 16.2 Punjab Police Rules and Rule 41 CCS (Pension) Rules. These proceedings have been conducted under the provisions of the Delhi Police (P&A) Rules, and it is those rules which are relevant here. It is now well settled in a recent Full Bench of the Tribunal, that the provisions of Rule 8(a) Delhi Police (P & A) Rules will be deemed to have been complied with if, upon a reading of the Disciplinary Authority's order it is revealed that the disciplinary authority, upon application of mind has concluded that the defaulter has been guilty of grave misconduct rendering him completely unfit to be retained in police service, even if those very words are not used in the penalty order. In the present case, the charge of cheating an innocent person by taking Rs. 67000/- from him after promising to get his son employed as a driver in Dubai, and failing to

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return the sum even after being caught, has been proved against applicant on the basis of the testimony of witnesses. It cannot be denied that cheating by any person is an act of grave misconduct and by a public official is even more so. The Disciplinary Authority after application of mind has concluded that there are no extenuating circumstance to take a lenient view and hence by impugned order dated 20.3.97 has dismissed applicant from service. This is a valid order, and hence the first ground fails.

9. The next ground taken by Shri Sama Singh is that the act of misconduct alleged against applicant disclosed a cognizable offence of cheating and if so a criminal case should have been instituted against him. He has urged that Rule 15(2) Delhi Police (P&A) Rules was not complied with, in as much as prior approval of Addl. Commissioner of Police was not obtained whether to institute a criminal case against applicant or proceed departmentally against him. Rule 15(1) comes into play in the case of the commission of a cognizable offence by a police officer in his official relations with the public. The charge of cheating a private individual by taking money on the promise of getting him an employment visa in a foreign country is not a part of applicant's official relations with the public. Hence this ground also fails as Rule 15(2) is not attracted.

10. It has next been urged that this is a case of no evidence. This assertion manifestly has no merit as the charge of misconduct has been amply proved on the basis of the testimony of witnesses. It must be remembered that unlike in a criminal case when the

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charge has to be proved beyond all reasonable doubt, in a domestic enquiry it is sufficient if the preponderance of probability points to the defaulter's guilt. Tested on this touchstone, there is no doubt that on the basis of the testimony of the witnesses applicant has been held guilty as charged.

11. It has next been argued that applicant was dismissed from service merely because the Disciplinary Authority got annoyed upon receiving applicant's reminder representation dated 14.3.97 (Annexure-K-1). There are no materials to substantiate this contention. It is clear that the Disciplinary Authority accepted the finding of the Enquiry Officer and came to the conclusion that the misconduct with which applicant was charged had been proved against him and this was not a case where a lenient view should be taken in view of the gravity of the misconduct. This conclusion was independent of applicant's reminder representation dated 14.3.97 and applicant has not succeeded in establishing that he was dismissed from service merely because he submitted this reminder representation. Hence this ground also fails.

12. It was next urged by Shri Sama Singh that in the appellate authority's order dated 22.8.97, a new allegation had been raised of applicant having violated Rule 15 CCS (Conduct) Rules by engaging himself in private trade/business of exporting persons to foreign country for employment purposes, while being in Govt. service without permission of the competent authority. It is contended that in the

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absence of making this a specific charge, and giving applicant an opportunity to defend himself against the same, the departmental proceedings are initiated. We are unable to agree with this contention. Regardless of whether applicant was engaging himself in trade/business of exporting labour, the charge against him of accepting money from Jagir Singh with the promise of securing an employment visa for his son Manjit Singh has been proved against applicant on the testimony of various witnesses on the basis of preponderance of probability. Hence this ground also fails.

13. Lastly, it was urged that the panchayat had resiled from its earlier stand; that Manjit Singh was never examined in the DE; and that applicant had not given any confession in regard to the misconduct. We have already noticed that on the basis of the statement of witnesses recorded in the DE, the charge has been brought home against applicant on the basis of the preponderance of probability. Hence these grounds taken individually or collectively are not sufficient to absolve applicant of the charge. *Manjit Singh was examined in the DE as PW 7.*

14. The DA therefore warrants no interference. It is dismissed. No costs.

*Kuldip Singh*  
( KULDIP SINGH )  
MEMBER (J)

*S.R. Adige*  
( S.R. ADIGE )  
VICE CHAIRMAN (A).

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