

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.NO.1748/98

New Delhi, this the 13th day of November, 2000

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Ex.Constable (Dvr.) Kulwant Singh,
No.272/DAP, S/O Late Sh. Raja Singh,
aged about 38 years, R/O H.No.9/37,
Mohalla Gudri Narnaul, Distt. Mohender
Garh, Haryana.

...Applicant.

(By Advocate: Sh. Shankar Raju)

VERSUS

Union of India, through its Secretary,
Ministry of Home Affairs, North Block,
New Delhi.

2. Commissioner of Police, Police Head
Quarters, I.P.Estate, New Delhi.

3. Sr.Addl.Commissioner of Police,
A.P.&T, Police Head Quarters,
I.P.Estate, New Delhi.

4. Dy.Commissioner of Police, Ist
Bn.D.A.P., Kingsway Camp, Delhi.

...Respondents.

(By Advocate: Sh. Ram Kunwar)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, M (A):-

In the disciplinary proceedings impunged in this
OA, Constable Sh. Kulwant Singh has been dismissed from
service on the charge of abandoning of truck in his
charge and misappropriation of diesel.

2. The learned counsel for the applicant has raised
two issues in the main relating to non-supply of certain
documents which formed part of the preliminary enquiry
and the proportionality of punishment. With his help, we
have gone through portions of the report of the enquiry
officer, the order passed by the disciplinary authority
and the other relevant documents placed on record. From
the report of the enquiry officer, it seems that the
delinquent official lost all opportunities to defend.

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himself as a deliberate move on his part and not because of any failure on the part of the respondents. It is clear from the report of the enquiry officer that he was given opportunity to produce defence witnesses and to submit his defence statement. The delinquent official neither produced his defence statement nor was found willing to produce any witnesses in his defence. He also did not avail of the opportunity to cross-examine the crucial witness in these proceedings who conducted the preliminary enquiry. The said Inspector who conducted the preliminary enquiry has clearly mentioned that after recording the statement of witnesses and perusing the documents, he found the delinquent official guilty of misappropriation of 40 litres of diesel and also of abandoning the truck (DEL 619) and of remaining absent thereafter. The delinquent official, if he so wanted, could pin down this crucial witness so as to be able to make out a case, if at all, in his defence.

3. As regards the issue of supply of documents forming part of the preliminary enquiry, we find it necessary to point out that the purpose of preliminary enquiry is to establish a prima facie case by collecting readily available evidence and it is not necessary at all for the respondents to make the preliminary enquiry report a part of the formal departmental proceedings. However, statements therefrom can be brought on record of the departmental proceedings when witnesses are no longer available. In this case, we find all the relevant witnesses were indeed available at the time of the departmental proceedings and, therefore, there was no question of relying on the preliminary enquiry report for the purpose of conducting a fair trial in this case.

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This argument, therefore, cannot take us any further in support of the applicant. On the other hand, we find that the departmental proceedings have been gone through precisely in the way they should have been gone through at all stages and every possible opportunity was given to the applicant to establish his innocence. It is the applicant who has, we are constrained to conclude, failed to avail of the various opportunities that were available to him during the course of the proceedings. It is not our task to re-appraise the evidence. Yet with the help of the learned counsel, we have gone through the statement of the individual witnesses produced by the respondents and have seen that there is an overwhelming evidence to conclude the guilt of the applicant in the manner charged by the respondents.

4. The learned counsel for the applicant has also raised the contention of proportionality of punishment. We are not convinced about this contention inasmuch as the charge proved against the applicant is of a serious nature and constitute serious misconduct. In our view, the respondents have correctly adjudged the scale of punishment and there is no need to interfere with the quantum of punishment in these proceedings.

5. In the result, the OA fails and is dismissed without any order as to costs.


(Ashok Agarwal)
Chairman


(S.A.T. Rizvi)
Member (A)

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