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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 233/98

New Delhi this the 20th Day of April, 1999.

Hon'ble Shri R.K. Ahooja, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Mohinder Singh,
S/o Shri Kashi Ram,
R/o of D-55, Pushpanjali,
Pritampura,
New Delhi.

Applicant

(By Advocate: Shri P.P. Khurana)

-Versus-

1. Lt. Governor of Delhi,
Govt. of NCT of Delhi,
Raj Niwas,
Delhi.
2. Chief Secretary,
Govt. of N.C.T. of Delhi,
Old Secretariat,
Delhi.

Respondents

(By Advocate: Shri Rajinder Pandita)

O R D E R

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant, a Motor Licensing Officer under the Delhi Government was chargesheeted vide Memorandum No. F.7/1/96/DOV/937 dated 4.3.96 under rule 14 of the CCS (CCA) Rules, 1965 on the allegation that while he was functioning as Assistant Secretary State Transport Authority prior to 1992, he committed gross misconduct in as much as he changed the route of Bus No. DL-1P-8001 from Bara Tuti - Shahdara to Shalimar Bagh - Regal without the approval of the competent authority with malafide intention. The applicant denied the charge. The enquiry was conducted by Shri Ajit Srivastava, Deputy Commissioner, Sales Tax. The Inquiry Officer in his report dated 19.12.1996 found the charge to be proved. After examining representation of the

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charged officer, the disciplinary authority Chief Secretary, Govt. of NCT, Delhi by his order dated 13.3.1997, Annexure 'A' imposed a penalty of reduction to a lower post of Motor Vehicle Inspector for a period of 8 years with a further direction that his pay as Motor Vehicle Inspector will be fixed at the minimum of the scale. The appeal filed by the applicant was also dismissed by the Lt. Governor of Delhi vide his order dated 28.8.1997. Aggrieved by the order of the disciplinary and appellate authority, the applicant has now approached the Tribunal.

2. The applicant has cited many grounds but the points which have been canvassed before us by his counsel, Shri P.P. Khurana, may be mentioned. It is first contended that the applicant was denied a fair hearing as certain documents asked for by him and even allowed by the Inquiry Officer were not supplied to him. Secondly, it is submitted that it is a case of no evidence and the conclusions of the Inquiry Officer are based merely on conjectures and surmises. Thirdly, it is alleged that the disciplinary authority has imposed three different penalties contrary to the provisions of CCS (CCA) Rules, 1965.

3. Before proceeding further, we may reproduce the statement of imputation at annexure-II to the charged memo:

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As a matter of policy, routes to the Bus owners are granted on the basis of draw of lots. Once a route is granted to the Bus owner, no change is permissible in the route unless it is approved by the Competent Authority.

Shri Mohinder Singh, MLO while functioning as Assistant Secretary (STA) changed the route of bus DL-1P-8001 (previously bus No. DBP-2465) by unauthorisedly issuing a new route permit No. 039832 on 24.12.92 valid from 24.12.92 to 23.02.93 with the route Shalimar Bagh to Regal although the permit holder was already holding permit No. 088821 dated 14.10.92 valid upto 23.02.93 with the route Bara Tuti to Shahadra, which was also signed by him. Owing to this unauthorised change of route clandestinely made by Shri Mohinder Singh, Assistant Secretary (STA) by using Shri Ravi Dutt Sharma, LDC in STA Branch, the new route Shalimar Bagh to Regal/Palika Kendra was renewed and continued till the Enforcement Staff intercepted the Bus No. DL-1P-8001 on a complaint.

The above act on the part of Shri Mohinder Singh, M.L.O. (under suspension) reflects lack of integrity and conduct unbecoming of a Govt. servant thereby violating the provisions of Rule 3 of the CCS (Conduct) Rules, 1964."

4. As a matter of policy routes to the bus owners are granted on the basis of draw of lots. Once a route is granted, no change is permissible unless it is approved by the Competent Authority. The applicant alleges that the original cash receipt for Rs. 200/- said to have been filed as renewal/issue of duplicate permit and the original permit No. 039832 issued on 24.12.92 of the changed route from Shalimar Bagh to Regal was never produced despite his repeated requests. Shri P.P. Khurana argued that the prosecution had to establish two things - 1) that the route of the bus was changed and 2) that it was the applicant who changed the route. He further argued that in the absence of the original permit seized by the Enforcement Branch and the

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non-production of the original receipt for depositing the fee for a change, it could not be said that the bus route had been changed or that it had been changed by the charged officer. Citing the observations of the Hon'ble Supreme Court in Central Bank of India Vs. Prakash AIR 1969 SC 983, he submitted that even in domestic inquiries the findings recorded by an Inquiry Officer must be supported by legal evidence. He pointed out that PW 3 Shri Ramesh Kumar, Sub-Inspector, Enforcement did not come forward to depose before the Inquiry Officer. The original certificate was not produced nor the application for change of route was established nor these two documents were allowed to be inspected by the applicant and thus there was no legal evidence before the Inquiry Officer to establish that the bus route had been changed or that it had been done by the applicant. Further the applicant was also denied the opportunity of defending himself as the necessary documents were not given to him. Shri Khurana also sought support from Supreme Court judgement in Kashi Nath Dixit Vs. Union of India and Ors. 1986 (3) SCC 229 in which it was held that refusal to supply copy of statement of witnesses recorded ex-parte at inquiry stage and documents relied on by department to establish charges before the commencement of inquiry constitute denial of reasonable opportunities and hence is a violation of principle of natural justice.

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5. We are not persuaded by the above arguments. The applicant was allowed to examine Exh. P-3 which was the extract of report of Enforcement Staff dated 24.1.1995 and Exh. P-5 that is noting of the file No. DL-1P-8001 page 29. These were relied upon documents. After examining P-3 and P-5, the applicant asked for the additional documents Viz., the original permit seized by the Enforcement Branch and the original receipt for depositing the fee. It appears from the ordersheet copy annexed to the O.A. itself at Annexure A-2 that on 2.12.1996 inspection of documents was completed and the only items which was not available was the original copy of notes at page 29/N of the file of Exh. P-5. In view of the fact that the documents relied upon by the Prosecution were made available to the applicant for inspection, even if, the original permit was not available, the interest of the applicant was not jeopardized as the office copies of those permit were duly exhibited as P-2 and made available to the applicant. As regards the receipt for depositing the fee, we find no indication as to how its absence jeopardizes the defence of the applicant. The question was not whether the bus owner had made the application along with the fee but whether the applicant had ordered the change beyond his competency. We therefore find no merit as regards non supply of documents.

6. We next come to the argument that the disciplinary authority has come to its conclusions based on surmises and conjectures when no legal

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evidence against the applicant was available. This argument has no legs to stand on. The evidence of PW-1 who was a Clerk dealing with the file and who stated that he issued the permit at the behest of the applicant was before the Inquiry Officer. There was also the report of the Enforcement Staff Exh. P-3 and the noting of the file Exh. P-5. We are not called upon in a judicial review to decide whether the weight given by Inquiry Officer to a one piece of evidence was justified or was proper or that the ultimate conclusion drawn by him was right. Suffice it to say that this was certainly ^{not or} a case of 'no evidence'.

7. Finally, we come to the question of penalty imposed by the disciplinary authority of reduction to the lower rank of Motor Vehicle Inspector, and also reduction to the lowest stage in the lower grade and a direction that the applicant will not be considered for promotion as Motor Licensing Officer for 8 years. While reduction to a lower time scale of pay or a post with or without further direction regarding conditions of restoration to higher grade, constitutes one penalty, reduction to a lower stage in a time scale is a separate penalty under Rule 11 (v) and (vi) of CCA (CCS) Rules, 1965. It was open to the disciplinary authority to impose only one of these penalties. To that extent the order of penalty imposed requires to be modified.

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8. In the result while rejecting the other contentions of the applicant, we partly allow the O.A. by directing that the order of the penalty will be modified to the extent of ~~reducing the applicant~~^{OR} ~~to~~ reduction in a lower grade only; in other words his pay in the lower grade will be fixed on the assumption as if he had not been promoted as M.L.O. at all.

O.A. is disposed of accordingly.

S.L. Jain
(S.L. Jain)
Member(J)

R.K. Arora
(R.K. Arora)
Member (A)

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