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Central Administrative Tribunal

PRINCIPAL BENCH

Shri...Hon...Smt...Lakshmi Swaminathan Vice Chairman
Member (J)

Pre - delivery ORDER in

C.A.T.O. A. No. 222 of 1988.....

is sent herewith for Consideration, please

V. Majotra

25/10/2001

(V. K. Majotra)
Member (Admin)

As discussed

Lakshmi
25/10

(10)

Central Administrative Tribunal, Principal Bench

Original Application No. 2322 of 1998

New Delhi, this the 25th day of October, 2000

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

S.I. Sukhpal Singh, No.640/D, S/o
Sh.Inderaj Singh, R/o Village Billsuri, P.S.
Sikanderabad, Distt. Bulandshahr, U.P. - Applicant

(By Advocate Mrs.Sumedha Sharma)

Versus

1. Commissioner of Police, P.H.Q., I.T.O.,
M.S.O. Building, I.P.Estate, New Delhi.
2. Dy.Commissioner of Police, III Bn., DAP,
Kingsway Camp, New Police Lines, Delhi.
3. Sr.Additional Commissioner of Police,
(AP&T), Delhi, P.H.Q., I.T.O. M.S.O.
Building, I.P.Estate, New Delhi.
4. Dy.Commissioner of Police, H.Q. R.S.(I)
Delhi, PHQ, ITO, MSO Building,
I.P.Estate, New Delhi. - Respondents

(By Advocate Shri Ajesh Luthra)

O R D E R

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

The applicant has challenged punishment of
forfeiture of two years approved service for a period of
two years permanently entailing proportionate reduction
in his pay with immediate effect vide order dated
25.4.1997 and appellate order dated 16.10.1998 rejecting
his appeal there against.

2. Among others, joint departmental enquiry was
proceeded against the applicant vide order dated
5.2.1996 on the allegation that he had committed gross
misconduct in discharge of his official duties as 2nd
Incharge New Delhi Lock-Up on 8.1.1996 when he failed to
check the warrant and the 'Peshi' register in respect of
accused Stephen Paasch properly and handed over the
accused to Constable Sukhender to produce the said Under
Trial Prisoner (for short 'UTP') in the Court of

Additional Chief Metropolitan Magistrate, New Delhi though he was not required to be produced in the Court for the second time on the same day as he had already been produced in the said Court before the lunch hour and the Court had adjourned the case for 12.1.1996 after recording the evidence. It was further alleged against him that the second page of B-Class (Peshi Register) dated 8.1.1996 was torn off as the page bears the next date of hearing of UTP Stephen Paasch to destroy the evidence against him. He re-wrote the entries on the next page by fabricating the signatures of Constables with malafide intention and ulterior motive. The enquiry officer held the charges proved against the applicant and a copy of the findings of the enquiry officer was served upon the applicant and co-defaulters. The applicant and co-defaulters submitted their representations. The applicant pleaded that not even a single prosecution witness had deposed that the second page was torn by the applicant. He averred that all registers remains in custody of 'Moharar' - Head Constable after duty hours. The prosecution witnesses have not deposed that he managed to obtain signatures of Constable Birender. The applicant has also stated that whereas a joint enquiry was held against the applicant and co-defaulters the punishment imposed was not uniform. The applicant has sought quashing of the punishment and appellate orders and direction to the respondents to restore his original pay.

3. According to the respondents all the defaulters were found guilty of the charges levelled against them beyond any reasonable doubt in the

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departmental enquiry. The disciplinary authority agreed with the findings of the enquiry officer that the UTP Stephen Paasch was not required to be produced second time in the Court on that day as he had already been produced at 11.20 a.m. and after examining the prosecution witnesses the case was adjourned for recording statement of the accused. B- Class UTP (Peshi) Register was in the custody of the applicant and he was duty bound for its proper maintenance and safety. Thus, the contention of the applicant that he had not torn off the register is not correct. According to the respondents the enquiry officer has based his findings on the deposition made by the prosecution witnesses as well as defence put forth by the applicant.

4. We have heard the learned counsel of both sides and perused the record available in the file as well as those produced by the respondents.

5. The learned counsel of the applicant has contended that it is a case of no evidence. No prosecution witness has supported the allegations made against the applicant. He has also stated that the evidence of DW Constable Sukhender Pal also supports the contention of the applicant. The learned counsel further pointed out that it was not proved in the enquiry that the second page of the Peshi register was torn off. He has further taken exception to imposition of different punishments to different co-defaulters, although it was alleged that they were all instrumental in the escape of UTP from the custody.

6. The learned counsel of the respondents contended that there is sufficient evidence of the prosecution witnesses that the applicant was incharge of

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the lock-up and it was his duty to keep the register safe. The second page of the said register was torn off and re-written. The signatures of the prosecution witnesses on the page re-written are not there or are forged, although in the original page they had signed the entries about the production of UTP on 8.1.1996 before the Court. The UTP had been produced in the Court at about 11.20 a.m. and after examination of prosecution witnesses the case had been adjourned for the next date. Obviously, the applicant, who was incharge did not carefully check the warrant and the UTP Stephen Paasch was handed over for reproduction before the Court although he had already been produced in the Court. Even DW Sukhender Pal did not check ^{up} the warrant carefully and he did not know whether the UTP had already been produced before the Court and the applicant did not tell him about this fact. The inspection of B-Class (Peshi) register establishes that the relevant page had been torn off and entries regarding various UTPs including that of Stephen Paasch had been re-written and various witnesses have deposed that their signatures are not there on various entries on the re-written page.

7. It is true that 'Moharar'-Head Constable makes entries in the Peshi Register but the applicant's defence that he does not check the Peshi Register and has to check the warrant only cannot be countenanced. Not only that he was the Second In-charge of the Lock-Up, it was his duty to check the warrants as well as the Peshi Register. He did not check the warrant properly in which it had already been recorded that the UTP had to be produced on the next date of hearing i.e.

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12.1.1996. Obviously the UTP was not required to be produced the second time on the same day before the Court but as the applicant among other did not take sufficient care and precaution, he was instrumental in handing over the UTP for production in the Court second time and also tampering with the entries in the Peshi Register. We find that there is sufficient evidence against the applicant to bring home the charge against him. As a matter of fact there is material in his defence evidence also which does not uphold his contention. We further find that not only that proper procedure was followed in the enquiry, the principles of natural justice were also kept in view. The duties and responsibilities of different co-accused are different. Therefore, keeping in view their duties and responsibilities the respondents are within their rights to impose different punishment on them.

8. Having regard to the reasons and discussions made above, we do not find merit in the present OA and do not consider it proper to interfere with the impugned orders. The OA is dismissed accordingly, however, without any order as to costs.

V.K.Majotra
(V.K.Majotra)
Member (A)

Lakshmi Swaminathan
(Mrs.Lakshmi Swaminathan)
Member (J)

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