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Central Administrative Tribunal, Principal Bench

Original Application No. 1801 of 1995

New Delhi, this the 7th day of March, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman
Hon'ble Mr. V.K. Majotra, Member (Admnv)

Shri Arvind Kumar, S/o Shri Ram Niwas, R/o
A-16, PS Saraswati Vihar, Delhi - Applicant

Versus

1. Commissioner of Police, Delhi Police,
Police Headquarters, MSO Building, I.P.
Estate, New Delhi-2
2. The Addl. Commissioner of Police,
Northern Range, Police Hqrs, MSO
Building, I.P. Estate, New Delhi.
3. Union of India, Ministry of Home
Affairs, Government of India, New
Delhi, through its Secretary. - Respondents

(By departmental representative Shri Subhash Chand)

O R D E R (Oral)

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

The applicant has challenged the order dated 30.8.1994 passed by the Additional Commissioner of Police, Northern Range, New Delhi whereby punishment of forfeiture of five years approved service permanently for a period of five years entailing consequent reduction in the pay of the applicant has been imposed. The applicant has also impugned the action vide orders dated 30.8.1994 whereby the period of dismissal has been ordered to be treated as leave of the kind due and if the leave is not due in his credit the same period has to be treated as leave without pay and as communicated vide subsequent order dated 11.11.1994 as under -

- (i) 240 days EL w.e.f. 12.4.89 to 7.12.89.
- (ii) 274 days HPL from 9.12.89 to 7.9.90
- (iii) L.W.P from 8.9.90 to 19.9.94.

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2. The applicant has been working as Constable since 13.3.1977. He was confirmed in 1980. He was suspended along with HC Kedar Nath and Constable Puran Singh from 20.2.1988 vide order dated 24.2.1988 on the allegation of acceptance of illegal gratification from one truck driver while they were posted at Police Station Anand Parbat. Subsequently a departmental enquiry was held against them for receiving illegal gratification from decoy Virendra Kumar Sub Inspector, Police Station Anand Parbat, who was travelling in truck no. RGC-5595 loaded with cattle heads. Inspector Lal Singh, SHO Anand Parbat was also travelling in the same truck. The provision of Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964 was invoked. Shri Virendra Singh, Inspector Lal Singh, Swaran Singh S/o Shri Makhan Singh and the writer of daily diary of Anand Parbat were cited as witnesses. The applicant denied the charge. The order of dismissal was passed on 12.4.1989 by the disciplinary authority. The appeal against the order of dismissal was rejected vide order dated 22.11.1989. The aforesaid orders were challenged in OA No.22/90 before this Tribunal. Vide orders dated 1.6.1994 the Tribunal remanded the case to the appellate authority to consider the quantum of punishment on the applicant and pass a speaking order and also pass orders regarding the period of suspension. The appellate authority set aside the order of punishment and inflicted punishment of forfeiture of five years approved service permanently for a period of five years entailing consequent reduction in the pay of the applicant. It was also ordered that the period of

suspension of the applicant shall be treated in the same manner as the period of suspension decided in the case of HC Kedar Nath but the period of dismissal shall be treated as leave of the kind due and if the leave is not due in his credit the said period shall be treated as leave without pay. Thereafter another order was passed on 11.11.1994 stating how the period of dismissal from 12.4.1989 to 19.9.94 was to be dealt with. Thereafter the applicant submitted an appeal against the aforesaid order to the Commissioner of Police, respondent no.1 which was rejected. The applicant has pleaded that in OA 1430/90 made by HC Kedar Nath against order of punishment against him, on 23.8.1994 the Tribunal had remanded the case to the disciplinary authority for reconsideration with regard to quantum of punishment. On remand respondent no.2 reduced the punishment of HC Kedar Nath to that of forfeiture of three years approved service to be effective from 12.4.1989. The applicant has pleaded that his case should also be considered on the same basis as that of HC Kedar Nath and his punishment should also not be any different from that of HC Kedar Nath. The applicant has sought quashing of order of punishment dated 30.8.1994 communicated on 22.9.1994 being arbitrary and discriminatory. He has also sought that he cannot be given a punishment different than that imposed on HC Kedar Nath; and that he should be allowed full salary from January, 1988 to 12.4.1989 i.e. during the period of suspension.

3. The respondents have stated in their written statement that the applicant along with HC Kedar Nath and Constable Puran Singh were detailed for picket duty

near Kamal Hotel at New Rohtak Road, Delhi on 20.2.1988. The applicant accepted illegal gratification of Rs.10/- from SI Virender Kumar of Police Station Anand Parbat who acted as a decoy and was travelling in truck No.RSC-5595 along with Inspector Lal Singh. A joint DE was ordered against the delinquent officials including the applicant. Tentatively agreeing with the findings of the enquiry officer a show cause notice for dismissal was issued to all the three defaulters on 30.1.1989. The applicant had swallowed the currency note. The fact that he had accepted a currency note was corroborated by two PWs, namely Inspector Lal Singh and SI Virendra Kumar. On the basis of orders in OA 1430/90 the case of HC Kedar Nath was reconsidered and his punishment was reduced to forfeiture of three years approved service permanently. The punishment of dismissal in the case of the applicant was reduced to punishment of forfeiture of five years approved service for a period of five years on reconsideration of his case on the orders of this Tribunal. The applicant had accepted the money and is liable for a more severe punishment than that of HC Kedar Nath who had simply suggested the applicant to swallow the money. According to the respondents the punishment as well as the treatment of the intervening period from the date of dismissal to the date of joining the service has rightly been decided by the authorities. The plea of the applicant that the witnesses had led a false trap on the picket staff, or the SHO was vindictive has not been accepted by the authorities. The applicant has filed a rejoinder as well.

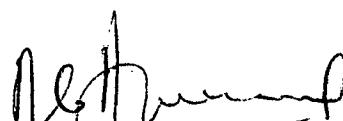
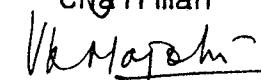
4. We find that senior officials had caught the applicant red handed accepting the money from truck driver in which the witnesses who were senior police officials were travelling as decoy. The authorities have considered the evidence of the prosecution witnesses in the true perspective and reached at the conclusive findings. The applicant has not been able to contradict the prosecution evidence convincingly.

5. Even otherwise in a departmental enquiry it is an established law that standard of proof is only preponderance of probabilities and the doctrine of proof beyond doubt as in a criminal court of law has no application in disciplinary proceedings. In the present case the norms of evidence as required in a disciplinary proceeding have been fully met. As a matter of fact the appellate authority has reconsidered the quantum of punishment on orders of the Tribunal and diluted the same. We are in full agreement with the respondents that the seriousness of guilt of the applicant is greater than that of HC Kedar Nath because the applicant and not the HC Kedar Nath had accepted the money from the truck driver. In this view of the matter if a severer punishment has been inflicted upon the applicant than what has been accorded to HC Kedar Nath, it cannot be faulted with.

6. Another question which can arise in this case is whether the penalty of forfeiture of 'X' years approved service permanently entailing reduction in pay by 'X' stages for a period of 'X' years with the condition that the delinquent police official would not

earn increment/ increments during the period of reduction and on the expiry of that period the reduction would have the effect of postponing the future ^{is in accordance with law.} increments. This issue has been adjudicated in an order dated 18.5.1999 in OA 2225/93, ASI Chander Pal Vs. Delhi Administration and another, passed by a Full Bench of this Tribunal. After considering all the pros and cons it has been held by the Full Bench that such a penalty as stated above is in accordance with law.

7. We have considered the material on record and considered the matter from all aspects. We are satisfied as to the correctness of the finding of guilt of the applicant and also as to the quantum of punishment and treatment of period of dismissal of the applicant by the respondents. Since the applicant has failed to prove the merits in his case, the OA is dismissed without costs.


(Ashok Agarwal)
Chairman

(V.K. Majotra) 7.3.2000
Member (Admnv)

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