

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.2020/96

New Delhi, this the 09th day of March, 2000.

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, V.C. (J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Ex.Head Constable (Driver) Rajender Kumar
(No.3928/PCR, Delhi Police), S/O Sh.
Sheo Raj Singh, R/O Village Paprsa, Post
Office Jakhauli, Police Station Rai,
District Sonapat, Haryana.

.....Applicant.

(By Advocate: Mr. R.R.Rai, proxy counsel
for Mrs. Avnish Ahlawat)

VERSUS

1. Union of India through Lt. Governor
of Delhi through Commissioner of
Police, Delhi, Police Headquarters,
M.S.O. Building, I.P.Estate, New
Delhi - 110 002.
2. Dr. Chandra Prakash, Additional
Commissioner of Police (Operations),
Delhi Police, Police Headquarters,
M.S.O. Building, I.P.Estate, New
Delhi - 110 002.
3. Sh. Ajay Kashyap, Deputy
Commissioner of Police (Police
Control Room), Delhi Police, Police
Headquarters, M.S.O. Building,
I.P.Estate, New Delhi - 110 002.
4. Inspector Surendra Kumar, Enquiry
Officer, D.E.Cell, Vigilance, Delhi
Police, Police Station Defence
Colony, New Delhi.

...Respondents.

(By Advocate: Mr. Anil Singal, proxy counsel
for Sh. B.S.Gupta alongwith ASI,
Asha Ram, Deptt. Representative.

O R D E R (ORAL)

Delivered by Hon'ble Mrs. Shanta Shastri:-

The applicant was posted as a Head Constable
(Driver) in Delhi Police on 15.11.85. A departmental
enquiry was initiated against the applicant for grave
misconduct, negligence and remissness in the discharge
of his official duties. The allegation against the
applicant was that he was detailed for duty at PC Van

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R-60 from 8.00 PM to 8.00 AM on 8/9.10.94 alongwith ASI Ram Nath I/C of the Van and Constable Ashok Kumar. The RAP of the said van was at Nanaksar Gurudwara just next to Wazirabad Bridge. The applicant alongwith two others i.e. ASI Ram Nath and Const. Ashok Kumar chased truck No.DL-IGA-0393 and intercepted it near Bhajan Pura. ASI Ram Nath, I/C of the van, asked the driver of the said truck that he had intentionally installed two number plates having different numbers on his truck. The I/C of the van further asked the truck driver to part with money otherwise he would be taken to police station for further legal action. Meanwhile, the DCP/North-East District reached the spot and questioned the staff as to what was going on. The DCP/North-East Distt. also informed the night G.O. to reach the spot immediately. The night G.O. followed by Inspector Puran Singh, night checking officer reached the spot and the truck driver gave in writing against all the three i.e. the applicant and ASI Ram Nath and Const. Ashok Kumar. This amounted to malafide intention which is against the character of the police duties. The applicant alongwith two others, were placed under suspension vide DD No.20, dated 8/9.10.94 and later on they were reinstated w.e.f. 2.11.94 without prejudice to the departmental action against them.

2) The D.E. was entrusted to Inspector Surinder Kumar for conducting the proceedings on day-to-day basis. The Enquiry Officer prepared the summary of allegations, list of witnesses and list of documents on 16.11.94 and served all the documents upon all the three

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defaulters by 30.11.94. The Enquiry Officer examined four prosecution witnesses in the presence of the defaulters, who were given full opportunity to cross-examine them. The Defence Assistant cross-examined the PW-2 and PW-3 on behalf of the charged officers. The Enquiry Officer after recording the evidence, came to the conclusion that charge framed and served upon the defaulters was substantiated. He submitted his findings on 15.6.95. Thereafter, the Disciplinary Authority after considering the evidence on the DE file and the representation of the delinquents and after giving them a hearing in O.R. on 7.8.95, dismissed them from service for the charge proved against them. Applicant's appeal was also rejected on 8.5.96. Their suspension period from 8.10.94 to 1.11.94 was treated as period 'not spent on duty'. The applicant who was one of the charged officers, has approached this Tribunal with the prayer to quash the summary of allegations, findings of the enquiry report dated 15.6.94, order of the Disciplinary Authority dated 14.8.95, order of the Appellate Authority dated 8.5.96 and to re-instate him in service with all consequential benefits.

3) The proxy counsel for both the parties are present and one Sh. Asha Ram, ASI, Deptt. Representative is also present on behalf of the official respondents. The proxy counsel have requested to adjourn the matter as they are not ready to argue today because of the strike of the Advocates. Since the

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matter is of 1996, we are proceeding to dispose of the same on merits.

4) The applicant has submitted that no misconduct has been committed by the applicant. The truck driver's allegation that the applicant alongwith other two delinquents demanded money coupled with no other fact i.e. acceptance of money or harassment to the truck driver in any form, by no stretch of imagination can be construed as a misconduct grave enough to call for dismissal of the applicant. The applicant has also challenged that the DCP (Vigilance) had no authority to appoint officer on behalf of the DCP (PCR). The applicant has stated that the truck was having two different number plates because of which the applicant alongwith two others intercepted the truck. According to the applicant, PW-4 i.e. Sh. J.K.Sharma, DCP on whose complaint the enquiry was initiated against the applicant even had not bothered to make any enquiry from the truck driver. The whole matter had been proceeded only on suspicion and it cannot take place of proof. Moreover, it is further stated by the applicant that in the statement of the truck driver there were no allegations specifically against him that he had demanded any money from the truck driver. What transpired between the I/C of the PCR Van and the truck driver, was known to them only. On the whole, it is the case of the applicant that there is no evidence of the applicant having demanded any money from the truck driver and, therefore, the entire enquiry is vitiated. Also the punishment awarded is not commensurate under

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the provisions of Rules 8 & 10 of the Delhi Police (Punishment & Appeal) Rules, 1980 such punishment is to be awarded only on grave misconduct. In the instant case, according to the applicant, there was no misconduct.

5) We have gone through the pleadings and the relevant material available and it is a fact that the applicant alongwith two other defaulters, was detailed for duty at PCT Van R-60 from 8.00 PM to 8.00 AM on the night between 8/9.10.94. It has also been admitted that the truck bearing No. DL-IGA-0393 was intercepted near Bhajan Pura by ASI Ram Nath who was I/C of the Van. It has also been brought out in the enquiry that the truck did have two different number plates. There is only a statement signed by the truck driver wherein it has been mentioned that the PCR Van people asked for money. The truck driver has not mentioned the applicant by name as demanding money from him or even as the driver of the PCR Van. Even in the DCP's statement as PW-4, it is not stated that the applicant or the other two persons, had asked for money. He found the whole thing as quite fishy and, therefore, he gave message to DCP (PCR) to send someone for enquiry. In the statement of PW-2, i.e. Puran Singh, Inspector PCR, it has been brought out that on the instructions of Sh. Paldan ACP/PCR he recorded the statement of truck driver Sh. Muttaliff who has stated in his statement that he was stopped by PCR Van staff by overtaking and was asked to show the papers as his truck was having two different number plates and told either to pay money or to accompany them

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to police station. He handed over the statement to Sh. Paldan, ACP and checked the truck which confirmed that there were two number plates on the body of truck. PW-3 has also deposed that on enquiry ASI Ram Nath apprised that he stopped the truck as it was having two different numbers on its body, but the truck driver showed his ignorance about these two numbers. However, he alleged that ASI Ram Nath I/C Van had asked him to part with some money if he wanted to be released. A written statement of truck driver was recorded in his, i.e. PW-3's presence.

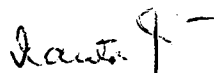
6) It is seen from the deposition of PW-3 that the allegation of demand for money from the truck driver has been made only against ASI Ram Nath I/C of the Van and not against the applicant. Beside this, there does not appear to be any other evidence to show that the applicant had demanded the money from the truck driver. Also the applicant had stopped the truck only at the instance of the ASI Ram Nath I/C of the Van. It is seen from the enquiry report that Sh. Muttaliff the truck driver was summoned through Regd. AD to join the D.E. proceedings on 8.12.94, 18.12.94, 26.12.94 and 3.1.95 but all the Regd. A.D. were received back unserved as he was residing at an unknown address, therefore, this PW, i.e. truck driver who was the material evidence was dropped. In our view if the Enquiry Officer was really serious, he could have issued summons to the truck driver and procured his presence as he happens to be the material witness in this case. However, that was not done. He was the material witness and only his

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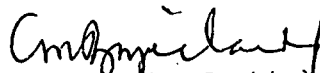
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examination could have substantiated the charge against the applicant. The evidence of the other PWs was based on the statement of this material witness. In our view, therefore, the enquiry is vitiated on this ground itself. We are supported in this view by the judgement in the case of Dr. D.P.S.Luthra Vs. Union of India & Others 1998 (8) ATC 815 wherein it was held that mere fact regarding recovery of bribe money from applicant's person without examination of such crucial witness was not sufficient to prove the guilt. It was further held that earlier statement of the witness could not be relied on without examining him during regular enquiry. The proceedings were, therefore, held as vitiated. According to us, the present case is covered by the ratio of this judgement. We, therefore, hold that this is a case of no evidence. Hence, we quash the enquiry and the order of dismissal of the applicant dated 14.8.95 by the Disciplinary Authority and the Appellate Authority's order dated 8.5.96. The OA is allowed. The respondents are directed to reinstate the applicant in service with consequential including monetary benefits.

7) In the facts and circumstances of the case, we do not order any costs.


(Shanta Shastri)
Member (A)

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(V. Rajagopala Reddy)
Vice Chairman (J)