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Central Administrative Tribunal, Principal Bench

Original Application No.2501 of 1997

New Delhi, this the 29th day of May, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice Chairman
Hon'ble Mr. V.K. Majotra, Member (Admnv)

Vinod Kumar (923/C), s/o Sh. Kanti Prasad,
r/o Village Chaubli, P.O. Chaubli, Station
Chhaprasuli, Distt. Meerut, Uttar Pradesh. - Applicant

(By Advocate Shri Shyam Babu)

Versus

Addl. Commissioner of Police, Northern Range,
Police Headquarters, I.P. Estate, New Delhi - Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R (Oral)

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

The applicant has assailed order no.4338-4440/HAP/AC-II/C dated 30.4.1997 (Annexure-A) whereby the appeal of the applicant Ex. Constable Vinod Kumar and Constable Shiv Kumar against the punishment of dismissal was partially allowed considering that the punishment was too harsh. The punishment was modified from dismissal from service to that of forfeiture of five years approved service permanently entailing reduction in their pay by five stages for a period of five years from the date of dismissal order. It was also ordered that they would not earn increments of pay during the period of reduction of pay and that the reduction will have the effect of postponing their future increments of pay. The intervening period from the date of dismissal to the date of the impugned order was decided as dies non and the period from the date of issue of the impugned order to the date of joining their duties was treated as the leave of the kind due.

2. The applicant was placed under suspension vide order dated 6.2.1995. The Deputy Commissioner of

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Police, Central District, Delhi vide an order dated 10.2.1995 initiated the departmental enquiry appointing Inspector Sukhvinder Singh as the enquiry officer. It was alleged that the applicant along with one Shiv Kumar, Constable in Delhi Police had taken money from five persons. Inspector Ram Pal Singh had enquired into the matter and the money was returned to the complainant by the applicant and the other Constable. Seven prosecution witnesses were examined whereafter the charge was framed against the applicant on 22.12.1995. Two defence witnesses were examined. The applicant gave his defence statement (Annexure-F). The enquiry officer gave his enquiry report and findings on 10.2.1996. The applicant has challenged the same as arbitrary and perverse. By an order dated 16.7.1996 order of dismissal was passed by the Dy.Commissioner of Police, Central District, Delhi.

3. The applicant has stated that whereas he had never made any admission of the alleged misconduct, the disciplinary authority had wrongly mentioned in his order that the applicant had admitted the misconduct. In the appeal decided vide order dated 30.4.1997 the appellate authority found that the charge of taking money illegally from the complainants was not fully established but unnecessary harassment of the complainants for ulterior motive by the applicant cannot be ruled out. The appellate authority rejected the impugned order of dismissal dated 16.7.1996 and modified the punishment order.

4. According to the applicant there was no charge of harassment with ulterior motive against the

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applicant. The complainants had not identified the applicant. The appellate authority had given a contradictory finding stating that the applicant cannot be connected with the misconduct and the charge of taking money. Still he recorded a finding of harassment to the complainants by the applicant. It has also been alleged that the punishment awarded to the applicant is contrary to Rule 8(d) of Delhi Police (Punishment & Appeal) Rules. The direction of postponement of future increments of pay is contrary to the aforesaid rule. The applicant has sought quashing and setting aside of the impugned appellate order dated 30.4.1997 (Annexure-A) and grant of consequential reliefs/benefits.

5. According to the respondents the applicant along with co-defaulter Constable was heard in orderly room on 15.7.1996. He had admitted taking money from the complainants. In view of the fact that the complainants had been won over and had turned hostile, the statement of Shri Arun Kampani, the then ACP Daryaganj could not be disregarded and, therefore, the enquiry officer had found the charge partially proved. On consideration of the appeal, the punishment was reduced from dismissal to forfeiture of five years approved service.

6. We have heard the learned counsel and perused the record available in the file.

7. The learned counsel of the applicant pointed out that all the five complainants could not identify the applicant in the departmental enquiry. No seizure memo regarding taking money by the applicant had been made. Yet, the disciplinary authority had held that the

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charge was partially proved and dismissed the applicant from service. The appellate authority had held that the charge was not proved but he held a different charge proved, namely, charge of harassment of the complainants. According to the learned counsel of the applicant this was a perverse view taken by the appellate authority. He particularly drew our attention to the following points of mark detailed in the enquiry report :-

- i) that no P.W. identified the defaulters.
- ii) the demand of money was not noticed by anyone.
- iii) the transaction of money was not seen by anyone.
- iv) neither any complaint was got prepared from the victims nor any memo was prepared during the fact finding enquiry.
- v) All the 5 victims deposed that Inspr. Ram Pal Singh, Addl.SHO/ K.M. got returned their money but Sh. Arun Kampani ACP/D.Ganj has deposed that the money had already been returned to 5 victims by ACP/ Kampani Sahib.
- vi) The denomination of the money in question could not be mentioned by any P.W. anywhere.
- vii) No identification memo could be prepared at an initial stage to fulfil the requirement of Sub-Rule (1) of rule 15 of D.P. (P&A) Rules, 1980.
- viii) All the 5 public persons have deposed in D.E. that there (sic these) defaulters are not the same policemen who had taken money from them during the night of alleged incident of 4/5.2.95.

8. The learned counsel of the respondents drawing our attention to the decision of Hon'ble Supreme Court in the case of High Court of Judicature at Bombay Vs. Uday Singh and others (1997) 5 SC 129, stated that standard of proof in a disciplinary enquiry is different than that of a criminal trial. In a disciplinary enquiry only probabilities have to be considered by the authorities. The applicant had accepted the charge in the orderly room and through the evidence of ACP Shri

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Kampani the misconduct had been proved. From the records, we find that the complainants had not identified the applicant and no seizure memo had been prepared in the case. The evidence of the ACP, who had seen the occurrence had been relied upon by the enquiry officer and the appellate authority. The present case is nothing more than a case of no evidence. Whereas the disciplinary authority had imposed the harshest punishment of dismissal on the applicant, against whom the allegations could not be proved for want of any evidence, the appellate authority found entirely a different charge proved against the applicant that is that of harassment of the complainants and, therefore, he had modified and diluted the punishment in the appellate order. The appellate authority had himself pointed out several defects in the conduct of the enquiry such as that the complainants had not been examined by the enquiry officer, the roles and responsibilities of the public witnesses and the delinquents had not been attributed. Thus, the appellate authority had reached the conclusion that the appellants have not been fully connected with the misconduct and reached another conclusion without any basis that unnecessary harassment of the complainants with some ulterior motive cannot be ruled out against the applicant.

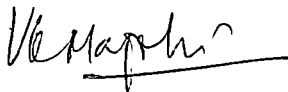
9. It is true that in a disciplinary enquiry propensity of probabilities have to be taken into consideration rather than stricter proof as in criminal trial, but here is a case which is absolutely a case of no evidence where the enquiry officer, the disciplinary authority and the appellate authority have reached the

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conclusion that the charge framed against the applicant has not been established.

10. In view of the above reasons and discussions, we find merit in the OA which succeeds accordingly. The impugned order dated 23.4.1997 (Annexure-A) is quashed and set aside. The applicant would be entitled to all consequential reliefs/benefits. No order as to costs.



(V.K. Majotra)
Member (Admnv)



(V. Rajagopala Reddy)
Vice Chairman

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