

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2115/94

NEW DELHI THIS THE 14th DAY OF DECEMBER, 1994.

MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR.B.N.DHOUNDIYAL, MEMBER(A)

Constable Om Prakash
362 N/535 P
S/o Shri Chandan Singh
R/o Village & P.O.Girhanbar Kala,
Distt.Rohtak
(Haryana)
Presently posted at PAP Lines. ... APPLICANT

BY ADVOCATE MRS.MEERA CHHIBBER.

Vs.

1. Government of N.C.T.Delhi
Through Commissioner of Police
PHQ ,IP Estate
New Delhi.
 2. Addl.Commissioner of Police(OPS)
Through PHQ,IP Estate
New Delhi.
 3. Dy.Commissioner of Police
I.G.I.Airport,
New Delhi.
- ... RESPONDENTS

BY ADVOCATE SHRI O.N.TRISHAL.

ORDER

JUSTICE S.K.DHAON:

The applicant, a Constable in the Delhi Police, was subjected to disciplinary proceedings. On 27.4.1994, the disciplinary authority(Deputy Commissioner of Police) passed an order of punishment to the effect that 5 years' service rendered by the applicant should be forfeited permanently for a period of 5 years entailing reduction in his pay by five stages from Rs.1110/- to Rs.1010/- per month. Further, the applicant will not earn increment during the period of reduction and the reduction will have the effect of postponing his future increments. It directed the reinstatement of the applicant in service. He further directed that during the period of suspension, the applicant will be entitled to the payment of subsistence allowance. The suspension period from 24.8.1993 to the date of the passing

10

of the order shall be treated as not spent on duty for all intents and purposes. The absence period from 27.1.1993 to 23.8.1993 will be treated as leave without pay.

2. On 19.7.1994, the appellate authority (the Additional Commissioner of Police) dismissed the appeal preferred by the applicant. On 28.9.1994, the applicant was not permitted to undergo the training in the Lower School Course on administrative grounds. The three orders are being impugned in the present OA.

3. It is agreed that the administrative ground mentioned in the order dated 28.9.1994 is the punishment aforementioned awarded to the applicant. Therefore, the three impugned orders are inter-related. In fact, the order dated 28.9.1994 is dependent upon the order of punishment passed against the applicant.

4. The applicant strongly pressed for the grant of interim relief to the effect that he may be sent provisionally for training to the Lower School Course. After hearing the counsel for the parties on the question of grant of interim relief, we felt that it will be expedient and in the interest of justice to dispose of the OA itself. Affidavits have been exchanged between the parties. The OA is, therefore, ripe for hearing. With the consent of the counsel for the parties, we have heard it with a view to dispose it of finally and, therefore, we are doing so.

5. The applicant was posted at the Palam Airport, Police Lines(PAP). On 7.1.1993, an order was passed transferring him to the New International Terminal Complex(NITC). It is alleged that on 27.1.1993 he was relieved from the PAP to join the NITC. However,

it is alleged that he did not do so for a period of 7 months and admittedly, he drew salary during the said period of 7 months.

6. The gravamen of the charge against the applicant is that he failed to carry out the order of transfer and instead drew salary for a period of 7 months without doing any work.

7. It is not in dispute that the order of transfer was passed on 7.1.1993. However, the only question to be adjudicated ^{upon} /in the disciplinary proceedings was whether the applicant was served with the said order of transfer dated 7.1.1993 and whether he acquired knowledge of the said order. It now appears to be an admitted position that the order dated 7.1.1993 was not ^{formally} /served upon the applicant. The inquiry officer recorded a finding that the order had been served upon the applicant. The punishing authority, apart from agreeing with the inquiry officer, recorded a finding that the applicant had appeared before him in the OR and admitted the fact that he had really been absent for a period of 7 months in spite of the knowledge of the order of transfer. It is also recited in the order that the applicant pleaded for mercy. The appellate authority, as already stated, recorded a finding in agreement with the inquiry officer and the disciplinary authority that the charge had been brought home to the applicant.

8. We have heard the counsel for the parties at length. For reasons stated hereafter, we are of the opinion that it cannot be said that the findings arrived ^{at} /by the two authorities below are perverse in the sense that the same are not based on any evidence. This is a typical case where the rule - witnesses may lie but circumstances do not - will be applicable. The first circumstance is that

there is a clear recital in the order of the disciplinary authority of the aforementioned admission of the applicant. We have gone through the contents of the memorandum of appeal which are somewhat lengthy and we had asked the learned counsel for the applicant to point out even a whisper therein to the effect that the said recital in the order of the disciplinary authority is factually incorrect. The learned counsel has not been able to point out any averment nor do we find any averment in the memorandum of appeal. Even in the OA no such averment has been made. We may immediately note that the appellate authority had taken this admission into account while dismissing the appeal. This, in our opinion, should be sufficient to dispose of this matter.

9. The second circumstance is that we have before us the roll call. In this roll call, it is to be found that on 27.1.1993, the names of a number of constables, including the applicant, are mentioned. Against the name of the applicant, we find the abbreviation "TR". There can be no difficulty in deciphering the said abbreviation to mean transferred. In the roll calls of the subsequent dates, namely 28.1.1993 onwards, the name of the applicant is missing. We asked the learned counsel for the applicant to look into the roll calls and point out to us if the name of the applicant found a place in the roll calls of 28.1.1993 onwards. The learned counsel has not been able to do so. This is an important piece of evidence which goes to show that the fact that the applicant's name was not mentioned in the roll calls of 28.1.1993 onwards should have put him on guard as to why his name had not been mentioned therein. The inference, therefore, is irresistible that the name of the applicant was struck off from

roll calls of 28.1.1993 onwards on account of the fact that on 27.1.1993 he had been relieved. The further inference which may be drawn is on account of the fact that the applicant's name was not mentioned in the roll calls of 28.1.993 onwards is that he had acquired the knowledge of the fact that he had been transferred. We have seen the roll calls and we are satisfied ~~that the same~~ bears the initials of the inquiry officer. In fact, there is a reference of the roll calls in the inquiry officer's report. Therefore, it cannot be said that the roll calls did not form part of the record before the inquiry officer. The learned counsel has tried to wriggle out of the roll calls by showing to us that these roll calls are not mentioned in the list of documents which were supplied to the applicant along with the summary of charge. Assuming that be so, there is no rule which says that if a document is not mentioned in the list of documents supplied to the delinquent along with the summary of charges, the same cannot be put in evidence. The only requirement is that the delinquent should have sufficient notice of the documents so that the principles of natural justice are not violated. The further requirement is that the delinquent should be given sufficient opportunity to rebut the contents of the new documents. We may note that it is not the case of the applicant that he did not have knowledge of the roll calls. We may also note that at no stage he asked for giving him a copy of the roll calls. Furthermore, there is nothing on record to indicate that the applicant was not ^{given} an opportunity to rebut the contents of the roll calls.

10. The third circumstance is the daily diary which was prepared by Constable Ramesh Chand. In this diary the fact that the applicant along with another constable had been transferred is recited. It is further recited therein that the transferees had been informed of the order of transfer. Ramesh Chand entered the witness box. In the examination in-chief, he stated that the diary contained the signatures of the applicant. He also stated that the transferees, including the applicant, had been informed of the fact that the order of transfer should be carried out. In cross examination, the applicant confined his query to the factum as to whether the diary contained his signatures or not. The witness stated that, in fact, the applicant's signatures were not there. The applicant, however, stopped short there. He did not put the further question that, in fact, Ramesh Chand had not informed him of the order of transfer and had not asked him to carry out the same.

11. The learned counsel for the applicant has relied upon an authority of the Supreme Court reported in 1990 SCC(L&S) 672 in support of the proposition that ^{the} testimony of a witness cannot be accepted in part. That is not the position in the present case. It may be that the admission of Ramesh Chand in the cross examination that, in fact, the diary did not contain the signature of the applicant may shake his credibility. However, an adverse inference can certainly be drawn from the fact that the applicant did not cross examine the witness Ramesh Chand on the fact that he (Ramesh Chand) had informed the applicant of the order of transfer and had not asked him to carry out the same. The authority cited does not

lay down that if a particular witness has not been cross examined on a particular point and his statement goes unchallenged on that point, an inference adverse to the delinquent cannot be drawn on that score.

12. We have already stated that the fate of the order dated 28.9.1994 is dependent upon the fate of the order of punishment passed against the applicant. Having come to the conclusion that no ground exists for interference in the order of punishment, the challenge to the legality of the order dated 28.9.1994 fails.

13. This application fails and is dismissed. There should be no order as to costs.

B.N. Dhoundiyal
(B.N.DHOUNDIYAL)
MEMBER(A)

SNS

S.K. Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)