

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 39/94

199

T.A.No.

DATE OF DECISION 21-7-99

Sh. Amar Pal Singh

....Petitioner

Mrs. Avnish Ahlawat

....Advocate for the
Petitioner(s)

VERSUS

Govt. of NCTD through
Commissioner of Police & Ors

....Respondent

Shri Amresh Mathur

....Advocate for the
Respondents.

CORAM

The Hon'ble Shri V. Ramakrishnan, Vice Chairman (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? YES

2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 39/94

14

New Delhi this the 21th day of July, 1999

Hon'ble Shri V. Ramakrishnan, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri Amar Pal Singh,
Ex-Constable (No. 825/P),
S/o Shri Shakti Singh,
R/o C-4/22, Dayalpur Extension,
Shahdra, Delhi.

...Applicant.

By Advocate Mrs. Avnish Ahlawat.

Versus

1. Government of National Capital Territory of Delhi, through Commissioner of Police, Delhi Police, MSO Building, I.P. Estate, New Delhi-110 002.
 2. Additional Commissioner of Police (Operations), Delhi Police, Police Headquarters, MSO Building, I.P. Estate, New Delhi-110 002.
 3. Deputy Commissioner of Police, Indira Gandhi International Airport, Delhi Police, Delhi.
 4. Inspector Ratan Singh, Enquiry Officer, DE Cell, Vigilance Branch, Delhi Police, Police Headquarters, MSO Building, I.P. Estate, New Delhi-110 002.
- ...Respondents.

By Advocate Shri Amresh Mathur.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant who was working as Constable in Delhi Police, is aggrieved by the orders passed by the respondents punishing him with dismissal from service by order dated 14.5.1992 and the

88

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order of the appellate authority dated 21.2.1992 by which although the punishment order was modified and the applicant was reinstated in service, it was ordered that his pay be reduced by five stages from Rs.1070/- to Rs.970/- in the time scale of pay for ^{the} ~~the~~ period of five years from the date of issue of the dismissal order. It was also ordered that he would not earn increments during this period of reduction of pay. The suspension period has also been ordered to be treated as not spent on duty for all intents and purposes. The intervening period, that is from the date of dismissal on 14.5.1992 till he rejoined duty was sanctioned as leave of the kind due.

2. The brief facts of the case are that a departmental enquiry under Section 21 of the Delhi Police Act, 1978 was ordered against the applicant by order dated 31.3.1991 on the allegation that on the night between 19/20.12.1990 while the applicant was on duty at the IGI Airport, he had committed a misconduct. One Shri R.K. Agarwal, Director, Naval Air Material, Naval Headquarters, New Delhi, who had come to the Airport along with his wife to receive his relatives, had stated that he had seen the applicant extorting money from passengers and caught him red handed while extorting Rs.20/- from a passenger. However, he stated that the passenger slipped away from the spot. An amount of Rs.3020/- was taken by Shri Agarwal from the applicant and handed over to Shri Jaipal Singh, ACP along with a written complaint. On searching the applicant a sum of Rs.115/- was also found in his possession. A fact finding enquiry had been conducted by Shri Jaipal Singh, ACP who had found Substance in the allegations levelled against the applicant. Thereafter, a regular departmental inquiry had been held in which the Inquiry Officer had submitted his findings that the charges levelled against the applicant stood proved. Copy of the findings

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16

of the Inquiry Officer had been handed over to the applicant to which he had submitted a representation. The disciplinary authority had dismissed him from service but the appellate authority on consideration of the facts and submissions made by the applicant in his appeal set aside the punishment of dismissal and modified it to one of reduction of pay for a period of five years, during which period he would not earn increments. The appellate authority has stated that only the charge of accepting Rs.20/- is proved against the applicant for which he felt that the punishment of dismissal from service for an act of misconduct of this nature would be far too excessive.

3. Mrs. Avnish Ahlawat, learned counsel for the applicant, has contended that the statement of Shri R.K. Aggarwal, the complainant dated 19.12.1990 cannot be believed totally because he has stated that he had caught the applicant red handed taking Rs.20/- from the passenger. Thereafter, he had asked the applicant to take out all the money from his pocket and collected it which was a total amount of Rs.3020/- which he had handed over to Shri Jaipal Singh, ACP. Learned counsel's contention is that these facts have not been made out in the statement of ACP, Traffic Shri Jaipal Singh, PW-8. Her submission is that in the statement of PW-8, he has stated that Shri Aggarwal gave him Rs.3020/- of which there were six notes in the denomination of Rs.500/- and one note of Rs.20/- which had been taken from the hand of the applicant. The ACP has stated that he took that money produced by Shri Aggarwal, into his possession through a memo and later on deposited in Malkhana of P.S. NITC. The complaint has also been signed by the wife of Shri Aggarwal. Mrs. Ahlawat, learned counsel, has very vehemently submitted that this is a case of no evidence as what PW-8 has stated is that Shri Aggarwal had given him Rs.3020/- which was alleged

18

17

to have been taken from the hand of the applicant whereas in the complaint made by Shri R.K. Aggarwal, he has stated that he had caught the applicant red handed taking Rs.20/- from a passenger and thereafter he had asked the applicant to take out all the money from his pocket and collected it, which was handed over to Shri Jaipal Singh, ACP. She has also further contended that it is nobody's case that Rs.500/- denomination notes which were found with the applicant had been given to him as a bribe, as even according to the complainant he had caught him red handed taking only Rs.20/- from the passenger. She has also submitted that Shri Aggarwal had added the Rs.20/- note to Rs.3000/- which was his own money.

4. The respondents in their reply have controverted the above contentions. They have submitted that Shri Aggarwal, the complainant had seized an amount of Rs.3020/- from applicant which was handed over to Shri Jaipal Singh, ACP along with a written complaint. On searching, a sum of Rs.115/- was also found from the possession of the applicant. The respondents have stated that the pleas of the applicant have been considered by the disciplinary authority but found untenable and hence he was dismissed from service. However, the appellate authority taking a lenient view modified the dismissal order to one ^{of 1/2} reduction in pay by five stages. They have submitted that since the inquiry has been held in accordance with law/Rules and there was evidence in this case that the applicant had taken bribe, the Tribunal should not interfere with the findings. They have stated that even if it is accepted that an amount of Rs.3000/- has been taken by the applicant from his cousin which were six notes of Rs.500/- denomination, there was also a note of Rs.20/- which he had taken from the passenger for which he was caught red handed. They have, therefore, contended that the punishment orders and the Inquiry Officer's report are legal and valid and the O.A. may be dismissed.

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19

5. In the rejoinder, the applicant has reiterated what he has stated in the O.A and has denied that he extorted Rs.20/- from a passenger. Mrs. Avnish Ahlawat, learned counsel, has also submitted that it is not alleged that the applicant had received a bribe of Rs.500/- each from the passengers and that six notes of Rs.500/- each i.e. Rs.3000/- were in fact applicant's own money. The amount of Rs.115/- recovered from him on search is not such a large amount as accepted by the appellate authority himself. She has, therefore, submitted that the whole case is a false case and the punishment order should, therefore, be quashed and set aside. She has also stated that the applicant never admitted the receipt of Rs.20/- and no such statement has been made to the ACP. Learned counsel has contended that the complainant Shri R.K. Aggarwal and his wife had wanted to go inside the Airport from the exit gate which was not allowed and when they were stopped by the applicant, he made the false complaint. Her contention is that the whole story of the complainant is concocted.

6. In the O.A. itself, the applicant has stated that the money amounting to Rs.3020/- was handed over to Shri Jaipal Singh, ACP. From the facts and documents on record, we are unable to agree with the contentions of the applicant that when he was trying to give his money to one Shri Virender Kumar Sharma, the complainant caught hold of Virender Kumar, took that money and added another Rs.20/- from his pocket and handed over the same to the ACP, alleging that he saw the applicant collecting money from the passengers. We are also not in a position to say that it is a case of no evidence or that the complainant had concocted the whole story as he was annoyed with the applicant as alleged. The appellate authority

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19

in his order has referred to the submissions made by the applicant that an amount of Rs.3000/-, including six notes of Rs.500/- were recovered from him. He has agreed with the contention of the applicant that it is difficult to accept that the defaulter sought and obtained tips only in multiples of Rs.500/-, but it would definitely have been another matter if Rs.3000/- had been found in the shape of notes of different denominations, including perhaps even an odd dollar or some other foreign currency. He had, therefore, correctly come to the conclusion that the recovery of Rs.3000/- cannot be linked with any illegal activity on the part of the applicant to satisfactorily meet this on "preponderance of possibility". Similarly, the recovery of Rs.115/- has also been disposed of as not being such an unreasonable amount of money for an individual to carry. The competent authority has referred to the defaulter's admission to PW-8 Shri Jaipal Singh, ACP, that he had received Rs.20/- as a tip from a passenger and he has discussed the evidence on this amount and held the charge of accepting a tip/bribe of Rs.20/- as proved against the applicant. This conclusion cannot be interfered with as it is based on some evidence and we reject the submission of the learned counsel for the applicant that this is a case of no evidence. The applicant has not been able to explain the presence of Rs.20/- note which is alleged to have been taken from him by the complainant and handed over to the ACP, Shri Jaipal Singh to ^{his} ~~his~~ satisfaction. The appellate authority has appreciated the evidence placed before him correctly and it is not open to the Tribunal to reappraise the facts in the circumstances of the case.

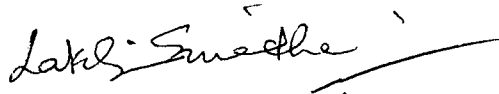
7. Taking into account the particular facts and circumstances of the case, the punishment as modified by the appellate authority in his order is neither unreasonable or disproportionate and in

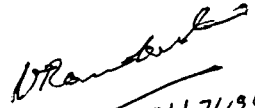
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no circumstances can it be stated that it is perverse or arbitrary to justify any interference in the matter. It is settled law in a catena of judgements of the Supreme Court (See **Union of India Vs. Upendra Singh** (JT 1994(1) SC 658), **Union of India Vs. Parma Nanda** (AIR 1989 SC 1185), **Government of Tamil Nadu Vs. A. Rajapandian** (AIR 1995 SC 561) and **Kuldeep Singh Vs. The Commissioner of Police** (1999(1) SC SLJ 201) that the Courts and the Tribunal should not interfere with the findings of fact recorded at the departmental enquiry unless it is based on no evidence and it is a perverse finding. None of these grounds are available to the applicant in the present case. Therefore, in exercise of the powers under judicial review, the Tribunal cannot set aside the punishment orders which are otherwise legal and valid.

8. In the result, for the reasons given above, the O.A. fails and is accordingly dismissed. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)


21/7/1998
(V. Ramakrishnan)
Vice Chairman(A)

'SRD'