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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.819/94

New Delhi: this the 2nd day of December, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Constable Virender Singh No.1451/E,  
Delhi Police,  
District Lines,  
East District,

Delhi

..... Applicant.

(By Advocate: Shri Anil Singhal).

Versus

1. Govt. of NCT of Delhi

through  
Commissioner of Police,  
Delhi Police,  
Police Headquarters,  
MSO Building,  
I.P. Estate,  
New Delhi-0002.

2. Addl. Commissioner of Police,

(New Delhi Range),  
Delhi Police,  
Police Headquarters,  
MSO Building,  
I.P. Estate,  
New Delhi -0002

3. Shri M. A. Sayed,

Dy. Commissioner of Police (East Distt.),  
through Commissioner of Police,  
Police Headquarters,  
MSO Building, I.P. Estate,  
New Delhi-0002.

4. Shri R. K. Joshi,

Enquiry Officer,  
Asstt. Commissioner of Police (Hqrs),  
East District,  
Delhi Police,  
Delhi.  
through Commissioner of Police,  
Delhi

... Respondents.

(By Advocate: Shri Vijay Pandita)

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A),

Applicant impugns the Enquiry Report dated

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31.5.93(Annexure-A), the dismissal order dated 27.7.93 (Annexure-B), and the appellate order dated 27.9.93 (Annexure-C). He prays for treatment of the suspension period as period spent on duty and for arrears of pay allowances.

2. Applicant and Constable Kalu Ram were proceeded against departmentally on the allegation that while posted in District Line on 29.10.92 they unauthorisedly took away Jeep No. DID 4730 which was parked in the Lines area by HC (Driver) Davi Singh. On 30.10.92 at about 5 p.m. when Shri Davi Singh enquired from the Duty Officer Shri Dharam Singh about the whereabouts of the jeep, he searched for the same in the lines area but the same was not found parked there. After about 20 minutes applicant and Shri Kalu Ram came to the lines with the above jeep and fled away after parking the same in the District lines. When the jeep was checked, it was found that the meter reading showed an excess of 80 kms. The smell of liquor and vomit was oozing out of the vehicle. On enquiry it was revealed that both of them took the said vehicle at about 1 p.m. and returned at about 5.15 p.m. without making any departure in the daily diary. The presence of smell of liquor showed that they used a Govt. vehicle to bring the same and consumed it in the vehicle and drove it unauthorisedly for 80 kms.

2. Applicant and Shri Kalu Ram were suspended vide order dated 30.10.92 but were reinstated by order dated 6.4.93 without prejudice to the DE against them.

3. The Inquiry Officer in his impugned report

dated 31.5.93 held the charge against applicant and Shri Kalu Ram as proved.

4. Agreeing with the finding of the Inquiry Officer a show cause notice was issued to them on 11.6.93 proposing to dismiss applicant and Shri Kalu Ram from service. They received the notice on 21.6.93 and submitted similar replies on 5.7.93 and also prayed for a personal hearing.

5. The Disciplinary Authority's order dated 27.7.93 records that both constables were given a personal hearing on 16.7.93 during which they admitted that they had taken the Govt. vehicle from the lines area unauthorisedly, but contended that they had taken it to AGMS, which the disciplinary authority disbelieved as the vehicle was found to have performed journey of about 80/85 km.

6. Accordingly the disciplinary authority by his impugned order dated 31.5.93 dismissed Constable Kalu Ram from service, while in the case of the present applicant ordered reduction of his pay by 5 stages from Rs.1070/- p.m. to Rs.970/- p.m. for a period of 5 years with immediate effect, during which he would not earn increments, and on expiry of this period the reduction would have the effect of postponing future increments. The suspension period was ordered to be treated as not spent on duty.

7. Thereupon applicant as well as Constable Kalu Ram filed similar appeals which were rejected by impugned order dated 27.9.99 against which this OA has been filed.

8. We have heard applicant's counsel Shri Singhal and respondents' counsel Shri Vijay Pandita. Applicant's counsel Shri Anil Singhal has also filed written submissions which are taken on record.

9. The grounds taken by applicant to challenge the impugned orders are

- (1) There has been a violation of the principles of natural justice in as much as the list of witnesses furnished to applicant mentioned only four witnesses, but in fact five witnesses were examined. Reliance is placed on 1992 (1) SLR 146 Hans Raj Gupta Vs. State of Punjab.
- (2) Rule 16(1) Delhi Police (P&A) Rules has not been followed in as much as brief details of evidence to be led by PWs was not supplied to applicant. Reliance is placed on AIR 1963 SC 1719 Meenglas Tea Estate Vs. Workmen as well as CAT, P.B. order in O.A. No. 2596/97 Ashok Kumar Vs. U.O.I.
- (3) No discussion of evidence which amounts to violation of the principles of natural justice. Reliance is placed on AIR 1985 SC 1121 Anil Kumar Vs. Presiding Officer as well as order dated 21.7.99 of CAT in Jasmer Singh Vs. Delhi Administration.
- (4) It is a case of no evidence and hence the findings are perverse.
- (5) Violation of Rule 16(ix) Delhi Police (P&A) Rules in as much as the E.O. proved the charge of absence although the same was not specifically mentioned in the charge.
- (6) The E.O. took extraneous matter into consideration.

10. While normally these grounds would have been sufficient to warrant our judicial interference in this O.A., we find from a perusal of the Disciplinary Authority's impugned order dated 27.7.93 that he has

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observed thus

"They were also heard in person on 16.7.93. During personal hearing they have admitted to have taken the Govt. vehicle from the lines unauthorisedly. On my persuasion they have told that they had taken the vehicle to AIIMS, New Delhi. Their version is not found correct as the vehicle had performed journey about 80/85 K.M."

11. Thus the Disciplinary Authority has recorded that applicant as well as Const. Kalu Ram admitted before him that they had taken the Govt. vehicle from the lines unauthorisedly although they claimed to have taken the vehicle only to AIIMS, New Delhi, which claim the Disciplinary Authority disbelieved because the vehicle was found to have run 80/85 K.M.

12. No good reasons have been advanced by applicant as to why we should disbelieve this statement of the Disciplinary Authority contained in his impugned order dated 27.7.93. It is not the case of the applicant that the Disciplinary Authority was inimical towards him, for <sup>if</sup> that <sup>was</sup> so, applicant would have brought it to the notice of higher authorities well in time. The Disciplinary Authority was a senior police officer of the rank of Deputy Commissioner of Police and we have no reason to believe that he would have inserted the aforesaid statement in the bottom of his order dated 27.7.93 if it was contrary to the facts. No doubt applicant in his appeal has denied having made the aforesaid admission before the Disciplinary Authority and alleged that the Disciplinary Authority threatened him with dire consequences, but the appellate authority

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in his order dated 27.9.93 has stated that there was no reason why the Disciplinary Authority would have mentioned about the applicant's saying that the Govt. vehicle had been taken away from the lines to the AIIMS if the applicant had <sup>not</sup> mentioned the same to the Disciplinary Authority in the course of personal hearing. Indeed the appellate authority in his order has stated that applicant as well as Const. Kalu Ram appeared before him on 20.9.93 and were asked repeatedly to say anything they wanted to say and they were told that they could mention any point which they had not mentioned in their appeal, but both of them kept mum in spite of being repeatedly asked if they had anything more to say. Surely, if their admission before the Disciplinary Authority during the course of personal hearing that they had taken way the Govt. Vehicle unauthorisedly from the lines, was contrary to facts, they would have brought this to the notice of the appellate authority on 20.9.93, when they appeared before him for personal hearing.

13. In Paragraph 4:17 as well as Ground (P) of the O.A. applicant has denied having made the admission before the Disciplinary Authority during the personal hearing given to him, that he had taken away the vehicle unauthorisedly from the Police lines, but Respondents in the corresponding paragraphs of their reply have challenged these assertions and have reiterated that

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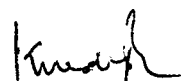
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applicant had himself admitted before the Disciplinary Authority having taken away the vehicle unauthorisedly, and there was no reason why the Disciplinary Authority would mention about applicant's having taken away the vehicle if the applicant had himself not mentioned the same.

14. Applicant in his rejoinder has reiterated his contention that he never made the aforesaid admission, but as pointed above we see no reason to disbelieve the Disciplinary Authority's version on this particular point.

15. Under the circumstances, in the light of applicant's own admission before the Disciplinary Authority during the course of personal hearing that he and Constable Kalu Ram have taken away the Govt. vehicle from the Police Lines unauthorisedly on the night in question, we do not find sufficient reason to interfere with the impugned orders of the Respondents.

16. The O.A. is dismissed. No costs.

  
(Kuldip Singh)  
Member (J)

  
(S.R. Adige)  
Vice Chairman (A)