

(2)
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.833/1994

Friday this the 16th day of July, 1999

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

Yesh Pal Singh (No.1329/NE) now
10226/DAP) son of Shri Kadam Singh,
Village & Post Office Shamli, P.S.Shamli,
Distt. Muzafarnagar (U.P.) ...Applicant

(By Advocate Mr. Sham Babu)

Vs.

1. Addl.Deputy Commissioner of Police,
North East District,
P.S.Sealampur, Delhi.
2. Addl.Commissioner of Police,
(New Delhi Range) Police Head
quarters, IP Estate, New Delhi.Respondents

(By Advocate Mr. S.K.Gupta proxy for Mr.Jog Singh)

The application having been heard on 16.7.1999, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant Shri Yashpal Singh while working as a Constable in the Delhi Police was served with a summary of allegations after being placed under suspension and an enquiry was held. The allegation forming the basis of the enquiry was that the applicant let away suspect Sunil Kumar and a Motor Cycle which were placed in his charge by the Sub Inspector Radhey Lal of Delhi Police on the night of 22.11.92 at Gurshai Ganj Police Station. After examination of the three prosecution witnesses and considering the evidence the enquiry officer framed a charge. Thereafter the enquiry officer on completion of the enquiry found the applicant guilty of the charge. His report and the finding were accepted by the disciplinary authority the second respondent who after giving the applicant an opportunity to be heard on the report imposed on the applicant the penalty of

...2

12

dismissal from service by the impugned order dated 14.2.94. The appeal submitted to the second respondent was rejected by the impugned order dated 18.3.94 (Annexure.B). Aggrieved by these two orders the applicant has filed this application seeking to have the impugned orders set aside declaring that the suspension of the applicant was unjustified and arbitrary and for a direction to the respondents to reinstate the applicant in service with consequential benefits including seniority, monitory benefits etc. The applicant has raised various grounds assailing the impugned orders. It has been contended that as the disciplinary powers have been exercised simultaneously by the respondents 1&2, the order is unsustainable and that as the finding that the applicant is guilty is based on no evidence at all, the finding is per vrse.

2. When the application came up for hearing Shri Shyam Babu, learned counsel pressed only one point namely the paucity of evidence. We have heard Shri Shyam Babu, learned counsel of the applicant and Shri S.K. Gupta on behalf of Shri Jog Singh counsel for the respondents. Inviting our attention to the summary of allegations and the charge, the counsel for the applicant argued that as the sole basis of the proceedings against the applicant was the alleged statement of P.W. S.I. C.S. Sisodia to S.I. Radhey Lal that they saw the applicant releasing the Motor Cycle and the suspect Sunil Kumar which has not been established by evidence in the enquiry, the finding that the applicant is guilty is absolutely per verse. We have gone through the enquiry report as also the testimonies given by the three prosecution witnesses. PWs 2 and 3 the S.I. of Gurshai Ganj Police Station and the Police Constable of that Station have not

implicated the applicant with the allegation raised against him in the summary of allegations and in the charge. Both of them have said that a Sub Inspector and Police Constable came to the Police Station Gurshai Ganj along with another person in a Motor Cycle but have not stated anything further. Therefore, there is only the testimony of P.W.1 S.I. Radhey Lal who deposed that he had entrusted the Motor Cycle with the applicant and that by the time he came back the Motor Cycle and the suspect Sunil Kumar were missing and the applicant has not given any explanation to that. He has also stated as alleged in the summary of allegations and the charge that S.I. Sisodia (PW2) and constable Rajendra Prasad told him that the applicant had gone with Sunil Kumar on the recovered Motor Cycle. There is nothing on record to show that Sub Inspector Radhey Lal had entrusted either the Motor Cycle or the suspect Sunil Kumar with the applicant. If as a matter of fact the S.I. Radhey Lal had apprehended the suspect and taken into custody properly and having to keep them overnight in the Police Station, in the normal course he would have requested the S.I. of Gurshai Ganj Police Station to arrange for keeping the suspect and the stolen property there. It is an admitted case that no such arrangement was made by the S.I. Radhey Lal. There is no record at all to show that there has been a suspect who was kept in the custody of the accused. If a police officer had apprehended an accused and recovered stolen or suspected property and had entrusted them with a constable there normally would have been some record to show that. Nothing has been placed on record. What is alleged in the charge^{is} that it was from PW2 and PW3 that PW1 came to know that the applicant

had gone with Sunil Kumar the suspect on the Motor Cycle. PW2 and PW3 who are police officers have denied to have said so. The testimony of PW1 that the applicant allowed the suspect to go is based on hearsay which is belied by the PW2 and PW3. The story of the PW1 keeping the suspect Sunil Kuamr and Motor Cycle in Gurshai Ganj Police station without the involvement of PW2 and PW3 which has been denied by PWs 2 and 3 is also unbelievable. Therefore, we find that the argument of the learned counsel of the applicant that the finding that the applicant is guilty is per verse has considerable force and has to be accepted. We are conscious of the fact that by exercising judicial review the Tribunal is not justified in reappreciating the evidence. For finding out whether the finding is based on any evidence at all it is necessary to go through the evidence. If there is some evidence to support the finding the Tribunal would not interfere with the finding. However, if it is found that the evidence is such that on the basis of it it is not possible for a reasonable person to come to the conclusion which the enquiry authority has come to, judicial interference is perfectly justified. If it is not done, judicial review would be an empty formality. We therefore, found that the impugned orders in this case which are based on no evidence are liable to ^{be} set aside.


3. In the result, in view of what is stated above, the application is allowed. The impugned


.5.

15

orders are set aside and the respondents are directed to reinstate the applicant in service forthwith with all consequential benefits including backwages. There is no order as to costs.

Dated this the 16th day of July, 1999


S.P. BISWAS
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

|ks|