

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 108/2000

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New Delhi, this the 16th day of January, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampli, Member (A)

Shri Dinesh Chander
S/o Shri Daya Nand Sharma
R/o Village & P.O. Garhi,
Delhi.

...Applicant

(By Advocate Shri Arun Bhardwaj
through Shri Pradeep Dahiya)

V E R S U S

1. Commissioner of Police & Ors.
Police Headquarter,
I.P.Estate, M.S.O. Building,
New Delhi.
2. Dy. Commissioner of Police,
III Bn. D.A.P.
Kingsway Camp
New Delhi.
3. Addl. Commissioner of Police,
Armed Police, Delhi
III Bn., D.A.P. Kingsway Camp,
New Delhi.

...Respondents.

(By Advocate Shri Ajesh Luthra)

O R D E R (ORAL)

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (ADMNV)

This OA is filed against the penalty imposed
on the applicant on 14-1-99 and confirmed on 31-8-99.

2. To state the facts in brief, the
applicant, a Head Constable, with the Delhi Police was
chargesheeted on 26-6-1998, alleging that he had
received a hundred rupee note from the relative of an
undertrial prisoner, (UTP) Sufian Khan, when the said
accused was making an I.S.D. Telephone call at Raghav
Telephone Booth, near Tis Hazari, which was recovered
from his shoe. The applicant's having denied the
charge proceedings were initiated against him, when

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the list of documents relied upon and that of witnesses were supplied to him along with the statements by the PWs. However, neither the relative, who is alleged to have given the 100 rupee note to the applicant, nor UTP Sufian Khan was made witness at the end of the Departmental Enquiry proceedings. The E.O. held that the charges stood proved. Though the applicant filed his representation pointing out a number of loopholes in the enquiry, which initiated the proceedings, and the findings therein, the disciplinary authority passed the order on 14-1-1999 directing the forfeiture of two years' approved service of the applicant permanently for a period of two years also entailing proportionate reduction in the pay from Rs.4135/- per month to Rs. 3965/- per month in the pay scale of Rs.3200-4900/-. The appeal filed by the applicant was rejected on 31-8-1999 by the Additional Comm. of Police. Hence this application.

3. Heard both the counsel for the applicant and the respondents. Shri Pradeep Dahiya, learned proxy counsel for the applicant submits that the proceedings have been initiated against the applicant incorrectly and have been gone through without fulfilling the requirements under law. According to *him*, on 23-8-97 when the UTP Sufian Khan was brought to Tis Hazari, permission was granted by the Hon'ble Court of A.S.J., Tis Hazari to the UTP Sufian Khan to make I.S.D. call and to keep Rs. 100/- (Rupees One hundred) with him. Advocate of the UTP Shri Khan who was present in the telephone booth paid the charge of telephone call and handed over to the applicant Rs. 100/- to be given to the UTP as per Court's

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permission. And on the way back when the UTP was brought at the lock up, the note slipped from his pocket and, therefore, the applicant kept it in his shoes. As soon as they reached the lock-up, he ^{Constable} vigilance, made baseless allegations against the applicant with a view to implicate him wrongly and get for himself out of turn promotion. On 27.08.1997 UTP Sufian Khan, applied to the court that ^{after he} as soon as he took Rs.100/- from his relative while going out of the Court the vigilance staff of III Bn. snatched Rs.100/- from his possession which amounted to contempt of court. He also prayed that he be given back the Rs.100/- from the Vigilance and suitable action against them for contempt. According to a subsequent affidavit filed by Shri A.J. Khan Advocate, UTP Sufian Khan obtained permission from the court on 23.08.1997 to have Rs.100/- and to make ISD calls. After paying ISD charges, he gave Rs.100/- to HC Dinesh Chand (applicant) to give it to the accused but knew the next day that the amount given to the HC has been taken by Vigilance staff. On the basis of all this, the counsel for the applicant pleads that the money which was taken from his possession was the money given to him in the J.C. for Sufian Khan as permitted by the Court and, therefore, view taken by the Enquiry Officer was not correct and should not have been entertained. The applicant's counsel also assails the E.O.'s report where is it has been mentioned that PW 4 Sunil Kumar would have been bought over. E.O. has concluded his enquiry and given his report in a casual manner, which has been accepted by the disciplinary and appellate authorities to the detriment of the applicant, argues Sh. Dahiya. The

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learned counsel also relies upon the decisions of the Hon'ble apex Court in the case of Surajmal Vs. State (Delhi Administration) (1979 (4) SCC 725) wherein it is indicated that the mere recovery from an individual of money was not sufficient to bring home to him the charge of accepting bribe. In addition reference was also invited ^{by him} to Tribunal's decision in Sarla Devi Vs. Commissioner of police (1992 (21) ATC 326) which according to him, supported his case.

4. Contesting the pleas made on behalf of the applicant, Shri Ajesh Luthra, learned counsel appearing for the respondents, states that all the procedures have been gone through correctly and the Enquiry Officer had recorded his findings only after examining all the evidence brought on the record. Without contesting the fact that permission was given by the court to the UTP to keep Rs.100/- the learned counsel points out that such permission was not produced at the time of recovery of the currency note from the shoe of the applicant. In fact, if the permission was available, the amount should have been with the UTP and not in the shoe of the applicant wherefrom it was recovered. This is borne out by the deposition of all but P.W. Sunil Kumar and there was no reason for the E.O. to disbelieve them. He further avers that if the applicant had so desired, he could have brought in the UTP or his relative as DW; during the proceedings, which he had not chosen to do. The E.O. has, therefore, come to the correct conclusion that the 100 rupee note recovered from the possession of the applicant - from his shoe - was voluntarily accepted by him as bribe and thus held the charge as

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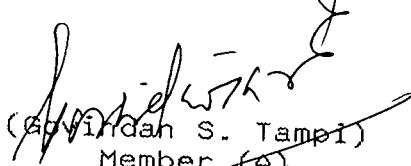
proved. According to the learned counsel, the decision cited on behalf of the applicant are not germane in this case, as they related to criminal proceedings where degree of evidence called for was of much higher order than in departmental proceedings.

5. We have carefully deliberated on the rival contentions and perused the records. It is brought on record that the recovery of the hundred rupee note is from the shoe of the applicant. The version being given out that the same was given by the UTP's lawyer to the applicant or that the same was with the UTP and snatched from the UTP by the Vigilance staff is a bit too thin to believe. When it has been admitted by the applicant himself that the amount was in his shoe, there is no basis for the claim that it was snatched by the vigilance staff from the UTP & on the other hand, if the money was handed over ^{to} _{by} the UTP's lawyer to the applicant, for being used by the UTP, there was no basis for its being kept in the applicant's shoe or its not being shown in the Cash Permission register. Obviously, therefore, this was an amount taken voluntarily by the applicant from the relative of the UTP as an illegal consideration and kept in his shoes, till its recovery by the Vigilance Staff. In the above circumstances and keeping in mind the fact that all the witnesses but one deposed that no record of permission from the court to keep Rs.100/- was produced at the time of recovery of the amount by the Vigilance Staff from the possession of the applicant, The E.O's findings cannot in fairness be challenged, in the circumstances. The various decisions cited by the learned counsel for the applicant would not help

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him, as they deal with criminal cases where rules of evidence have a pride of place unlike in departmental enquiries where preponderance of probabilities has a determining role. Still it is worth mentioning that in the instant case what has ~~occurred~~ is not mere recovery of the note from the applicant's possession. In fact a number of other facts have been brought on record by the deposition of all but one ~~which~~ ^{witnesses} would point to the applicant's taking the amount voluntarily as illegal gratification. Therefore, the deposition of one witness alone would not serve his cause. Evidently, therefore, we cannot observe that the E.O. had come to wrong conclusions or that his report was vitiated in any manner. Nothing also has been brought on record to show that the proceedings have suffered on account of any lapse in requirements. The report of the E.O., properly made, has been accepted by the disciplinary authority who has imposed a punishment of reasonable proportions. The appellate authority has duly endorsed it. We cannot, in fairness assail any of them, ~~on~~ facts or in law. Applicant has not made out any case for our interference in the matter.

6. The application thus being totally devoid of any merit, is dismissed. However, in the circumstances of the case, we do not order any costs.


(Govindan S. Tamai)
Member (A)

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(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)