

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1475/2000

New Delhi this the 9th day of July, 2001

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

Surender Pandey (Head Constable),
No. 214/E (PIS No. 28720097)
R/O 8-G, Police Colony,
Model Town-II, Delhi-9

..Applicant
(By Advocate Shri Anil Singhal)

VERSUS

1. Govt. of NCT of Delhi,
through Commissioner of Police,
Police Head Quarter, IP Estate,
New Delhi.
2. Joint Commissioner of Police,
New Delhi Range, Delhi.
3. Addl. D.C.P. East Delhi,
Delhi.

.. Respondents
(By Advocate Ms. Neelam Singh)

ORDER (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J))

The applicant who is working as Head Constable with Delhi Police is aggrieved by the orders issued by the respondents, by which a departmental enquiry was initiated against him followed by the punishment orders, namely, disciplinary authority's order dated 23.6.1998, against which his appeal was also rejected by the appellate authority by his order dated 9.3.2000.

2. The aforesaid orders have been issued against the applicant by the respondents in respect of a charge read with summary of allegation, the relevant portion of which reads as follows:-

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"During the course of investigation HC Surinder Pandey, I.O. of the case seized both the vehicles involved in the accident. On perusal of case file the following discrepancies have been noticed :-

(1) Seizure memo. of scooter No.DL-95-4752 placed on case file was not signed by the I.O. while the copy of the same memo. which was deposited in the Malkhana is duly signed by the I.O.

(2) Accused Sumit Bhatnagar (Car Driver) was arrested by the I.O. on 13.4.97, but his personal search memo. was not signed by the witnesses and accused too.

On 17.4.97, Sh.Thomas T.N. came to Malkhana, PS Trilokpuri for getting his scooter released on superdari. But after physical inspection of the scooter he refused to accept the vehicle on the plea that the spare stepney of his scooter has been changed and requested that his original stepney should be given to him. He further alleged that his damaged stepney has been replaced by the I.O. which was the evidence of the accident. An enquiry was conducted into the matter by the SHO/Trilokpuri which revealed that on 14.4.1997 Constable Virender Chauhan, No.1480/E brought the said scooter from P.P. Mayur Vihar Phase-1 to deposit in the P.S. Malkhana. HC Ram Charan No.66/E MHC(M) inspected the vehicle and found that the stepney of the same has been changed. This fact was recorded by MHC (M) Vide DD No.24 B dated 14.4.1997. Further enquiry revealed that the original stepney was recovered from the possession of Constable Virender Chauhan, No.1480/E".

3. Learned counsel for the applicant has submitted that in the list of documents annexed to the summary of allegations, copy of the personal search memo. as well as the seizure memo. referred to above had been given to the applicant, namely, two documents listed at Serial Numbers 4 and 6. (copies placed at pages 21 and 23 (English translation at pages 22 and 24, respectively.). One of the main contentions of the learned counsel for the applicant is that from the copies of the relevant documents supplied to the applicant, the same have been shown as signed below the word "attested", which according to him bears the signature of the applicant. The Tribunal in its order

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dated 10.5.2001 have noted this submission of Shri Anil Singhal, learned counsel. Ms. Neelam Singh, learned counsel for the respondents has produced the departmental enquiry file. She has submitted that in the departmental file also the same copies of the documents as were supplied to the applicant and referred to above, are available and she has categorically submitted that there are no documents which have been referred to in the charge sheet without signature of the applicant at the relevant places. She has brought to our attention to the copies of the documents placed at pages 25-27, namely, the personal search memo of the accused and the seizure memo of the scooter which was involved in the accident which is apparently the same as of the copies supplied to the applicant and referred to in the list of documents annexed to the summary of allegation.

4. Learned counsel for the respondents has submitted that the seizure memo, as well as the personal search memo, copies of which have been referred to above, did not bear the signature of the applicant, on the basis of which the charges had been levelled against the applicant. If that is so, the reason why copies of such documents have not been given to the applicant is unexplained by the respondents. In the defence statement dated 26.1.1998 and in the representation dated 16.3.1998 made by the applicant to the concerned authority, he has pointed out that no other documents i.e. seizure memo, without signature of the I.O i.e. the applicant in the accident enquiry had been given to him. In this view of the matter, we see force in the submissions made by Shri Anil Singhal, learned counsel that the charge against the

applicant that the seizure memo of the concerned scooter DL 95 4572, placed on case file as well as the personal search memo. were not signed by the applicant i.e. the I.O. in that case, have not been supported by the relevant documents. On the other hand, the documents given to the applicant as annexures to the summary of allegation as well as the copy of the documents placed in the D.E. file itself show that these relevant documents bear some signatures, including that of applicant as well as complainant and witnesses. (12)

5. The disciplinary authority in his order dated 23.6.1998 has stated "that basically there were two charges, one that of discrepancies in the investigation of the case FIR No.284/1997 and second changing of stepney of the scooter which was involved in the accident case." On perusal of the charge memo, issued to the applicant as well as the summary of allegations, with regard to the recovery of original stepney, it is stated that the same was recovered from the possession of Constable Virender Chauhan. It is relevant to note that nothing has been mentioned with regard to the recovery of the original stepney after the complainant Shri Thomas T.N. had alleged that the stepney had been changed, against the applicant. Ms. Neelam Singh, learned counsel for the respondents has submitted that from the evidence on record which have been brought in the D.E file, the stepney was recovered from the possession of Contable Shri Virender Chauhan who had been instructed to take the scooter by the applicant. However, we find that no such allegation against the applicant that he had connived with Shri Virender Chauhan had taken a decision on the concerned scooter stepney or it was done under his instructions.

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when the same was recovered from the possession of Shri Virender Chauhan. Learned counsel for the respondents has submitted that the Inquiry Officer had come to the conclusion that Constable Virender Chauhan brought the original stepney of the scooter and told him that it was sent by the applicant. However, we do not find any reference to these facts as part of the charge which has been issued against the applicant but the same has been reflected in the disciplinary authority's order wherein he has said "that I have my doubt in his version as why I.O of a case will tamper with such evidence. But at the same time it is quite surprising that the H.C. who actually was responsible for safety of the case property took it very lightly". In the result, agreeing with the findings of the E.O. in respect of the charges, the disciplinary authority has ordered to award the applicant the punishment of stoppage of one annual (next) increment for a period of 3 years with cumulative effect for his lackadaisical and casual approach in handling the investigation of the case. We have read the charges initiated against the applicant carefully and find that it did not include the second charge as mentioned by the disciplinary authority i.e. that the change of the stepney and the same has been referred to the other person constable Virender Chauhan. The punishment order issued to the applicant is on a combination of these charges as mentioned in the disciplinary authority's order. Therefore, it cannot be stated that in this case he has come to the conclusion to award the punishment only on the aspect of the charge pertaining to the applicant. If the respondents had wanted to issue a charge against the applicant with regard to the change of stepney as well as the discrepancies in the

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investigation of the case they could have done so which is, however, not the case in the present situation.

Therefore, on this ground, the disciplinary authority's order is liable to be set aside along with the order passed by the appellate authority who has merely rejected the appeal by agreeing with the conclusions of the disciplinary authority.

(A)

6. Another ground taken by Shri Anil Singhal, learned counsel is that while in the list of witnesses only five names have been mentioned, PW 6 i.e. Constable Atam Dev, has also been examined by the Enquiry Officer. He has, therefore, submitted that the the applicant was not in a position to cross-examine PW 6, ^{who} ~~also~~ was called all of a sudden without prior intimation to the applicant, as required under the relevant rules i.e the Delhi Police (Punishment and Appeal) Rules, 1980. He has relied on the judgement of the Delhi High Court in Rajeshwar Singh Vs. Union of India and Others (1990)(1) SLR para 6 page 24) and the judgement of the Punjab and Haryana High Court in Hans Raj Gupta Vs. State of Punjab (1992)1 SLR para 6 page 146) Both these judgements support the contention of the learned counsel for the applicant and the submissions made by the learned counsel for the respondents to the contrary are accordingly rejected.

7. Therefore, in the facts and circumstances of the case the punishment awarded to the applicant in respect of a charge which does not form part of the charges or the summary of allegations levelled against the applicant and the procedure followed in the enquiry proceedings are, therefore, contrary to the Rules and the principles of natural justice.

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8. In the result for the reasons given above, the OA succeeds and is allowed. Accordingly the disciplinary authority's order dated 23.6.1998 and the appellate authority's order dated 9.3.2000 are quashed and set aside. The applicant, therefore, be entitled to consequential benefits in accordance with the relevant rules and instructions within a period of two months from the date of receipt of a copy of this order. No order as to costs.

(Govindan S.Tampi)
Member(A)
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Lakshmi Swaminathan
(Smt.Lakhmi Swaminathan)
Vice Chairman(J)