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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.654/2000

Hon'ble Shri V.K.Majotra, Member(A)
Hon'ble Shri Shaker Raju, Member(J)

New Delhi, this the 29th day of January, 2001

Sukh Ram
Ex. Head Constable(Driver)
c/o Shri Rai Singh Saini
r/o Village & P.O.Bijwasan
New Delhi. ... Applicant

(By Shri Arun Bhardwaj, Advocate)

Vs.

1. Union of India
through Commissioner of Police
Police Headauarter
I.P.Estate
New Delhi.
2. Addl. Commissioner of Police
P.C.R. & Communication
P.H.Q., I.P.Estate
New Delhi.
3. Addl. Dy. Commissioner of Police
Police Control Room
Delhi. ... Respondents

(By Shri Amit Singh, proxy of Shri Devash Singh,
Advocate)

O R D E R (Oral)

By Shri Shanker Raju, Member(J):

The applicant who is an Ex Head Constable in Delhi Police has challenged an order dated 3.8.1999 wherein a major penalty of dismissal inflicted upon him and period of suspension was also treated as not spent on duty. The applicant preferred an appeal and the appellate authority vide order dated 22.12.1999 rejected the same.

2. Brief facts leading to the present OA are that the applicant was posted in Police Control Room and attached to PCR van No.D11A-0338. It was alleged that the applicant and another were on duty on the

night of 24/25.4.1998 and he was found standing near Sanjay Chowk, Gurgaon Road at about 3.15, A.M., HC Ved Prakash stopped the truck bearing No.HR-29-B-6375 and demanded money in a hurry while Inspector Balwant Singh/Vigilance (PHQ) was sitting besides driver in the said truck. The truck was also followed by ACP Vigilance. It is further alleged that HC Ved Prakash was handed over a currency note of Rs.50/- and on noticing the same Inspector Balwant Singh came down from the truck and asked the HC to stop but the HC rushed towards the PCR Van where driver HC Sukh Ram was sitting. HC Ved Prakash dropped Rs.50/- note in a clandestine manner which was latter picked up by Inspector Balwant Singh while the said Inspector recording the statement of the witnesses and had put the currency note of Rs.50/- on the bonnet of PCR Van. It is further alleged that the HC Ved Prakash picked up that note and fled away. After asking him to come back and on the threat to inform the higher officials he came back and refused to handover the said currency note. The said currency note was traced in the vehicle in a partly torn and folded condition and which was latter siezed. The applicant was placed under suspension on 4.5.1998 and a departmental enquiry was ordered against him. Summary of allegation was served upon the applicant. Where it has been inter-alia alleged that when the alleged transaction of demanding of money had taken place the applicant remained sitting in the PCR Van. The applicant had been alleged to have committed a grave misconduct for his connivance in taking illegal gratification. Along with the summary of allegation five witnesses have been cited to prove the charges.

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The enquiry officer after completion of the enquiry recorded a finding of guilt against the applicant and proved the charge of not helping the vigilance staff to apprehend HC Ved Prakash and as the applicant was present at the spot during the inspection, his connivance had been established and proved.

3. The disciplinary authority vide order dated 3.8.1999 observed the applicant to be a silent spectator and mixed up with other defaulter and on that he has been dismissed from service along with the HC Ved Prakash in a common order. The applicant took the plea of 'no evidence' in his appeal but the same was rejected by the appellate authority by maintaining the punishment.

4. The applicant challenges the impugned order on the ground that first the charge on which he has been held guilty and later on punished was not even mentioned either in the summary of allegation or charge framed against in the department enquiry. Secondly the applicant contended that the present case is of no evidence. According to him the finding of guilt has been arrived by the enquiry officer on merely suspicion, surmises and conjectures. In this conspectus, the applicant urges that the Tribunal is competent to review the finding in the disciplinary proceedings as the present case is of no evidence. According to the learned counsel for the applicant keeping in view of the test of an ordinary prudentman, the finding of guilt could not have arrived at by the enquiry officer.

5. The respondents have refuted the contentions of the applicant by supporting their orders on the ground that the applicant was very much present at the spot and as he had neither helped the vigilance staff nor brought this matter into the notice of the higher officers, clearly shows his connivance in the alleged transaction of illegal gratification.

6. We have carefully gone through the rival contentions of the parties and perused the available records on the file.

7. After perusal of the findings of the enquiry officer, we find that the enquiry officer while proving the charge against the applicant has concluded as under:

"HC (Dvr.) Sukh Ram, No.3805/PCR was present on the spot through out the incident. Although he did not play any vital role but he neither ask HC Ved Prakash not to take money nor he helped the vigilance staff to apprehend the running HC alongwith Rs.50/- which clearly establish that his connivance in the whole episode can not be ruled out and he is equally responsible for this malafide act."

8. From the perusal of the summary of allegations, we find that the allegations regarding asking Ved Prakash not to take money or not helping the vigilance staff to apprehend the HC have not been alleged against the applicant. We have also perused the evidence in the departmental enquiry and find that no such evidence has been brought on the record by the respondents to substantiate the conclusion of the enquiry officer. Though the tribunal is precluded

from reappraising the evidence and we are conscious of this. But in order to ascertain whether there is some evidence to support the charge and findings of the Enquiry Officer, we have perused the evidence recorded in the Departmental Enquiry to support the charge.

9. The enquiry officer merely on the basis that the applicant was present on the spot and despite observing that the applicant had not played any vital role in the episode proved the charge on the basis of the material which has not been brought on record by the enquiry officer. Merely on surmises and conjectures he proved the connivance of the applicant in the whole episode by observing that the same cannot be ruled out. In our view a finding of guilt of the enquiry officer should be based on some evidence adduced during the enquiry pointing towards the guilt of the delinquent official.

10. Apart from it the aforesaid charge has not been alleged against the applicant either in the summary of allegations or in the charge framed against him. To our mind by not putting this material to the applicant and basing the findings on it would be a denial of reasonable opportunity to the applicant and would also be in violation of principles of natural justice. Rule 16(4) of the Delhi Police (Punishment and Appeal) Rules, hereinafter called 'Rule', stipulates that the charges are to be framed on the basis of evidence recorded in the support of summary of allegation. If the summary of allegation does not contain any imputation against the police officer, and in the absence of any evidence recorded in its support

a police officer cannot be held guilty of that charge. In our considered view this would amount to punishing a delinquent police officer on an extraneous matter beyond the record of the Departmental Enquiry. To our mind, such a procedure adopted in the Departmental Enquiry, would be an antithesis to Cardinal Principle of Audi Altrem Partem.

11. In view of the material before us, we have no hesitation to observe that the finding of the enquiry officer is perverse and is based on no evidence and is rested upon surmises and conjectures. Mere presence of the applicant in the PCR Van without any over act as alleged by the respondents, would not be sufficient to come to the conclusion of the guilt by the enquiry officer. In this view of ours, we are fortified by the ratio of the apex court in the case of Kuldeep Singh Vs. The Commissioner of Police and Others, JT 1998(8) SC 603. Secondly we are of the view that the finding is not having any legal justification. We have also seen the order of the disciplinary authority where the following observation has been made:

"The defaulters have further pleaded that as per D.E. file the note of Rs.50/- was thrown by HC Ved Prakash in a clandestine manner. Mr. Ashruddin who had seen the Head Const. throwing the note lifted the same and handed over to the Insp. Whereas Sh. Ashruddin has stated that no such transaction was taken place. Moreover, Shadruddin has also stated that somebody lifted the note. Therefore, it is clear that story of prosecution is concocted one. These plea of the defaulters are without substance. Ashruddin seems to have been won over. It is not material that who had lifted the Rs.50/- note. There is clear evidence that note of Rs.50/- was paid by Shadruddin in the presence of Insp.

Balwant Singh and accepted by HC Ved Prakash. HC (Dvr.) Sukh Ram the other defaulter did not take any active role in the extortion of bribery but he was a silent spectator and mixed up with the other defaulter as he might be sharing the bribery and therefore, he is equally guilty and cannot escape his responsibility."

12. Disciplinary authority has also agreed with the findings of the enquiry officer and despite observing that the applicant has not taken any active role in the alleged extortion of bribe has proceeded to record that the applicant was a silent spectator and mixed up with other defaulters. In our view this conclusion and observation of the disciplinary authority is based on extraneous matter and not on the evidence brought in the Departmental Enquiry. As such the order of the disciplinary authority is perverse based on no evidence.

13. In the result, we find that this is a case of no evidence and the applicant had been punished without any misconduct attributable to him. As a result, the OA is allowed. The impugned order of dismissal dated 3.8.1999 is quashed and set aside also the order of appellate authority dated 22.12.1999. The respondents are directed to reinstate the applicant in service with all consequential benefits ^{ie} to treat the intervening period w.e.f. 3.8.1999 to the date of reinstatement as on duty for all purposes. The aforementioned directions shall be complied with within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

V.K. Majotra
(V.K. MAJOTRA)
MEMBER(A)