

(B)

Central Administrative Tribunal
Principal Bench

O.A. No. 671 of 2000

New Delhi, dated this the 18th May, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALI, MEMBER (J)

Hd. Const. Shri Bhagwan No. 12/W,
C/o Shri Sachin Chouhan,
Advocate,
CAT Bar Association,
Faridkot House,
New Delhi. . . Applicant

(By Advocate: Shri Sachin Chouhan)

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
3. Jt. Commissioner of Police,
Southern Range,
Police Headquarters,
I.P. Estate,
M.S.O. Building,
New Delhi.
4. Addl. Dy. Commissioner of Police,
West,
P.S. Rajouri Garden,
New Delhi. . . Respondents

(By Advocate: Shri Ram Kawar proxy counsel
for Ms. Neelam Singh)

ORDER (Oral)

S.R. ADIGE, VC (A)

Applicant impugns Disciplinary Authority's
order dated 15.1.1999 (Annexure A-3) and the
Appellate Authority's order dated 21.9.99 (Annexure
A-5).

2. Applicant was proceeded against
departmentally vide summary of allegations dated
12.3.98 (Annexure A-6) that on the night of
5/6.12.1997 while Asst. Commissioner of Police
(Vigilance) Shri Pratap Singh along with Inspector

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Man Chand conducted surprise check at Punjab Bagh General Store Chowk, one Mohd. Juber driver of a truck reported that his truck was stopped by a policeman who asked him to show the documents of the vehicle. The truck driver showed all the documents to him but the policeman was not satisfied and demanded money. The truck driver requested that he had nothing more than Rs.90/100, upon which the policeman beat him and snatched Rs.90/- from his possession. Upon an enquiry conducted by ACP in this regard, the policeman was identified as applicant and the truck driver also identified him as the person who snatched Rs.90/- from him. The said amount was recovered from applicant in the form of Rs.5/- notes.

3. During enquiry applicant stated that he along with Constable Phire Ram was on patrol duty but he and the Constable returned to Police Station before duty.

4. The Enquiry Officer in his report held the charges against applicant to be proved, although the truck driver Mohd. Juber had himself recanted from his earlier stand. A copy of the enquiry report was furnished to applicant for representation, if any. Applicant submitted his representation, and he was given a personal hearing by Disciplinary Authority. Thereafter upon going through the materials on record and agreeing with the E.O's

report, the Disciplinary Authority by impugned order dated 15.1.99 ordered withholding of two increments for a period of two years without cumulative effect.

5. Applicant meanwhile had been suspended on 29.12.97 but was reinstated on 18.5.98 and the period of suspension was ordered to be treated as period not spent on duty.

6. Applicant's appeal was rejected by impugned order dated 21.9.99 against which the present O.A. has been filed.

7. Various grounds have been taken in the O.A. but the only ground pressed by applicant's counsel Shri Chouhan is that the allegation of demanding and accepting illegal gratification from the truck driver discloses a cognizable offence, and in accordance with Rule 15(2) Delhi Police (Punishment & Appeal) Rules

"In cases in which preliminary enquiry discloses the completion of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

8. Shri Chouhan has pointed out that in the present case, prior approval of Additional Commissioner of Police was not obtained as to whether a criminal case should be registered and

investigated, or departmental enquiry should be held, and hence the the Disciplinary Proceedings in question are vitiated.

9. Shri Ram Kawar was unable to furnish any material to establish that the provisions of Rule 15(2), Delhi Police (P & A) Rules had been complied with and indeed respondents in Para 5.2 of their reply to the O.A. have tacitly conceded this contention of applicant.

10. In this connection Shri Chouhan has invited our attention to the Tribunal's order dated 6.12.90 in O.A. No. 874/89 Bachi Singh Vs. Union of India & Others as well as the Tribunal's order dated 19.2.97 in O.A. No. 402/92 Prakash Chand Vs. Secretary, Ministry of Home Affairs & others. In both these cases it had been held that non-adherence to the provisions of Rule 15(2) Delhi Police (P&A) Rules is an infirmity grave enough ~~as~~ to warrant quashing of the impugned orders.

11. Shri Chouhan informs us that the Tribunal's order in Bachi Singh's case was also upheld by the Hon'ble Supreme Court in SLP No. 11162/91, dismissing the same by order dated 10.9.91.

(12)

12. Under the circumstances the O.A. succeeds and is allowed to the extent that the impugned respondents' orders are quashed and set aside. Applicant is ordered to be restored his increments and other consequential benefits flowing therefrom. These directions should be implemented within four months from the date of receipt of a copy of this order. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

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

karthik