

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.676/2000

New Delhi this the 22nd day of May, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Const. Dharam Pal,
No.949-I,
PIS No.28840653,
presently posted under
Dy. Commissioner of Police (Security),
Vinay Marg,
New Delhi. ...Applicant

(By Advocate Shri S.K. Gupta)

-Versus-

1. Govt. of NCT of Delhi through
its Chief Secretary,
5, Sham nath Marg,
New Delhi.
2. Addl. Commissioner of Police (Traffic),
Police Headquarters,
I.P. Estate, MSO Building,
New Delhi.
3. Addl. Deputy Commissioner of Police (Traffic),
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.
4. Atma Ram,
Asstt. Commissioner of Police (E.O.),
Traffic - East Distt.
Shalimar Park, Delhi. ...Respondents

(By Advocate Mrs. Meera Chhibber)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant a Constable in Delhi Police has assailed an order dated 11.11.94, whereby a major punishment of reduction of pay by five stages for a period of five years with cumulative effect has been inflicted upon him and was maintained in the appellate order dated 22.12.98.

2. The applicant on the basis of a preliminary

enquiry was placed under suspension w.e.f. 29.5.92 and was ordered to be dealt with departmentally along with another Constable Nawab Singh on the allegation that on 29.5.92 he along with one Constable Nawab Singh stopped a truck driver Harbhajan Singh and demanded money and later on beaten the driver and conductor inflicting several injuries on them. The applicant has been served with the summary of allegation in which, inter alia, included the statements recorded during the course of the preliminary enquiry and the report of the enquiry officer as well as MLC and medical report of Radiologist. During the course of enquiry the complainant was examined along with other witnesses and the charge against the applicant was proved to the extent that he was unauthorisedly checking the heavy transport vehicles (HTVs) along with Nawab Singh with ulterior motives to extract money and further while Harbhajan Singh was beaten he connived with Nawab Singh in the malpractices and had neither interfered nor tried to intervene. The disciplinary authority imposed a major punishment which was maintained by the appellate authority.

3. The first contention of the applicant is that during the course of the enquiry he has been denied a reasonable opportunity as the report of the Doctor, i.e., MLC and the Radiologist report has not been proved as the concerned Doctor being listed in the list of witnesses have not been examined in the enquiry with the result the applicant had been deprived of an opportunity to effectively cross examine them. It is contended that the MLC was subsequently used against the applicant to prove the charge of connivance and alleged beating. In this background, it is contended that this is violative of the

principles of natural justice denying fair hearing to the applicant and relying upon a document which has not been proved as per the provisions of law. On the other hand, the respondents by placing reliance on a judgement of the Tribunal in Satya Prakash v. Union of India, 1993 (23) ATC 260 contended that mere non-examination of Doctor would not vitiate the proceedings as the factum of beating has already been proved by another witness and MLC was only a supporting and corroborating piece of evidence. As no malafides have been alleged against the Doctor by the applicant he has not been prejudiced by non-examination of this witness. It is further contended that the Doctor has been summoned by the Department but he has left the hospital and was not available and as such as per the provisions of the Rule 16 (3) of Delhi Police (Punishment & Appeal) Rules, 1968 his statement has been taken on record.

4. We have carefully considered this contention of the applicant and are of the opinion that the charge which has been proved against the applicant is not of beating the complainant but of connivance with the fellow Constable who has beaten the complainant and his failure to intervene in the matter and stop Nawab Singh from beating the complainant. Non-supply of MLC has not caused any prejudice to the applicant. Furthermore, the fact of beating has been duly proved by the testimony of the complainant and as such non-examination of the Doctor had not affected the outcome of the enquiry. Apart from this, a departmental enquiry cannot be equated with a criminal trial where strict rules of evidence, i.e., Section 45 of the Indian Evidence Act would be applicable. What is required is compliance of natural justice and procedural

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rules. Rule 20 of the Delhi Police (Punishment and Appeal) Rules, 1980 also provides that the strict rules of evidence would not be applicable in the departmental enquiry. As there is additional evidence to prove the charge of beating, the non-examination of the witnesses has not vitiated the proceedings.

5. It is next contended that the disciplinary authority has indicated in its order that the applicant has confessed before it and begged pardon and given assurance that he will not give any chance in future for such type of mistake which has heavily weighed in the mind of the disciplinary authority to award the penalty. It is contended that there was no confession or admission on the part of the applicant and the disciplinary authority with biased mind recorded the same. On the other hand, the respondents' counsel contended that the applicant in his appellate memorandum has not whispered about the legality of the confession and has not raised any grievance regarding the fact that the confession was not made by the applicant in the earliest possible opportunity provided to him by way of an appeal. We also go along with the respondents counsel that had the contention of the applicant been justified and right he would have certainly questioned this confession by making a grievance to the appellate authority. From the perusal of the appellate memorandum we find that no such grievance has been raised by the applicant, as such his contention taken now in this OA is nothing but an after thought, which is not sufficient to take a contrary view or to hold that he had not admitted before the disciplinary authority.

6. It is next contended that the enquiry officer has held the applicant guilty of a charge which has not been framed against him in the enquiry. By referring to the charge of connivance with the fellow Constable in beating the complainant and also unauthorisedly checking the HTVs, it is contended that the same had not figured in the charge framed against him and also the case is of 'no evidence' as no incriminating evidence has come on record to substantiate these charges and as such the findings of the enquiry officer is perverse and can be interfered by the Tribunal in a judicial review. On the other hand, the respondents stated that there is ample evidence against the applicant to hold him guilty of the charge apart from substantial evidence which indicates that the applicant had been identified by the complainant and the applicant had tried to return the amount and also apologised before the complainant and his brother which on all four corners indicates towards the culpability of the applicant. Referring to B.C. Chaturvedi v. Union of India, JT 1995 (8) SC 65 it is contended that the role of the Tribunal in judicial review is not to re-appraise the evidence by assuming the role of the appellate authority and to take a different view from what has been taken by the departmental authorities. As the case is of some evidence, the Tribunal cannot interfere with the punishment. To resolve this controversy, we have perused the record of the departmental enquiry and also the rival contentions. From the perusal of the evidence recorded we find that the complainant in his statement had alleged stopping of truck, demand of money and beating against Constable Nawab Singh but in his statement it has come that the applicant was also present in uniform and thereafter the applicant had touched his

feet and requested for pardon. It is also come on evidence that the applicant has tried to return him some money. It has also come on record that when the amount was snatched by Nawab Singh the applicant was present. It has also come in the evidence of ASI Bhupinder Singh that the applicant had sought for pardon from the complainant. The allegation that the charge proved against the applicant that he was unauthorizedly checking the HTVs and had not interfered while the complaining was being beaten is in fact borne out from the circumstances and some evidence exists on the record. Had the applicant been innocent he would not have been identified by the complainant and there was no occasion for him to either return the money or to seek pardon. This clearly indicates towards the guilt of the applicant. The applicant has also returned the amount which adds to his culpability. Whatsoever may be, we find that this is not a case of 'no evidence' and the findings of the enquiry officer has been based on some evidence and in that even the Tribunal has no jurisdiction to interfere. The applicant has not made out a case of perverse finding based on 'no evidence'. As such the interference of the Tribunal with the findings of the enquiry officer is not warranted.

7. Lastly, it is contended that the punishment is in violation of Rule 8 of the Police Rules *ibid*. We have perused the relevant rules and find that the aforesaid punishment is within the purview of the rules as upheld by the Full Bench in the case of Vijay Singh v. Commissioner of Police.

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8. No other valid legal grounds have been raised by the applicant.

9. Having regard to the reasons recorded above, we find no legal infirmity in the orders passed by the respondents and the applicant has been rightly awarded the punishment which was also rightly confirmed by the appellate authority. The O.A. is bereft of merit and is dismissed but without any order as to costs.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member(A)

'San.'