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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.873/2000

New Delhi this the 20th day of February, 2001

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

Constable Parmod Kumar
No. 1394/E
R/o Vill. & P.O. Assora,
Distt. Gaziabad, U.P.

-Applicant

(By Advocate: Shri Anil Singhal)

Versus

1. Union of India,
through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
3. Addl. Commissioner of Police,
New Delhi Range,
Police Headquarters,
I.P. Estate,
New Delhi.

-Respondents

(By Advocate: Mrs. Neelam Singh)

ORDER (Oral)

Mr. Shanker Raju, Member (J)

Applicant, a Constable in Delhi Police, has been proceeded against in a departmental enquiry on the allegations that he alongwith the other staff of police station Anand Vihar demanded an illegal gratification from one Shri V.K. Diwan and in that process Shri Diwan was also brought to the police station along with SI Tigga. The applicant has been charged for a gross misconduct and for dereliction in discharging of their official duty. The Enquiry Officer after examining the prosecution witness as well as considering the defence of the applicant exonerated the applicant & Head Constable Jag Pravesh from the charge in his finding dated 15.6.97. The Disciplinary Authority

disagreeing with the findings of the Enquiry Officer imposed a major punishment of permanent forfeiture of five years approved service on the applicant with cumulative effect and left the period of suspension to be decided later on by an order dated 6.10.97. The suspension period was later on decided as not spent on duty vide an order dated 1.12.97. The applicant challenged his punishment before the Appellate Authority. By an order dated 1.7.99, the appeal was rejected and the major punishment was maintained. The applicant challenged the impugned orders on various legal grounds impugning that he admittedly proceeded on Casual Leave duly granted by the respondents from 25.12.95 to 29.12.95 and there is no question of his harrassing the complainant or demanding an illegal gratification during this period. It is further contended that the disagreement arrived at by the Disciplinary Authority is not a tentative one but rather a final conclusion by the Disciplinary Authority and as a formality the applicant has been afforded an opportunity of his defence by way of filing reply to the show cause notice. While dealing with the case of Constable Jag Pravesh Vs. Union of India in OA-2760/99 decided on 16.1.2001 the Tribunal set aside the order of punishment by observing as under:-

"In our view, the disagreement arrived at by the disciplinary authority does not confirm with the observation made by the Apex Court in Yogenath's case (Supra). The conclusion arrived at is rather final and is not a tentative one. The disciplinary authority by recording its own reasoning firstly has proved the charge against the applicant and only then given an opportunity to the applicant to answer the same as a post-decisional hearing, which is meaningless. It clearly smacks of bias of the disciplinary authority and shows his pre-determined mind to punish the applicant. The aforesaid conclusion which does not

indicate any tentative conclusion of the disciplinary authority would not sustain in law. We also find from the findings of the enquiry officer that the applicant has been exonerated from the charge of detaining the complainant at the police station. The aforesaid charge has been proved against SI Tigga who had brought the complainant to the police station and detained him for three hours. The charge of alleged demand and acceptance of money to the tune of Rs. 2000 has also been proved against SI Tigga. Regarding the applicant, it has been recorded by the enquiry officer that he had brought the complainant on the directions of his superior SI Tigga and thereafter they returned back to their duty and were not a party to the alleged demand and the detention. The aforesaid findings has been given by the enquiry officer after meticulously going into the evidence on record and the defence produced by the applicant. In the disagreement note, it has been proved that the applicant had brought the complainant on the direction of SI Tigga. In fact it is on the alleged information which was later on found to be false. The SI had gone to the place of duty of the applicant and on whose direction the complainant was brought to the police station. The applicant was merely accompanying him and had no role to play being a Constable. No evidence had come on record showing that the applicant had demanded or exonerated money from the complainant. The disciplinary authority on mere suspicion presumed the illegal detention vis-a-vis the applicant as he was present at the police station for a while. In our view, while issuing the show cause notice for disagreement the evidence of the enquiry officer has been completely ignored and with a bias and malafides the notice had been issued after proving the charge and without awaiting the reply of the applicant to the show cause notice. Apart from this, we find that in para 5.10 of the OA the applicant has shown certain instances showing vindictiveness of the disciplinary authority and his pre-determination to punish the applicant by contending that out of eight policemen only four had been picked up who were examined in the vigilance enquiry and were later on placed under suspension and also their names were brought in the secret list of doubtful integrity. The applicant was amongst them. This allegation of the applicant has not been controverted by the respondents in their reply admitting it as

a matter of record. This confirms the pre-determined mind of the disciplinary authority".

2. The separate orders were passed on the basis of the common disagreement note of the Disciplinary Authority and separate appellate order was passed. The respondents took exception to the contention of the applicant and contended that the applicant though granted leave upto 29.12.95 but was very much present on 30.12.95. The misconduct of the applicant had been proved from the testimony of Shri V.K. Diwan as such the disagreement recorded by the disciplinary authority is very much justified.

3. In view of the ratio laid down in the case of Jag Pravesh (Supra) we also hold in this case that the disagreement arrived at by the Disciplinary Authority is not a tentative one and no legal reasoning had not been arrived at by the Disciplinary Authority to conclude the findings of guilt against the applicant.

4. In the result, we allow the OA relying upon the ratio of Jag Pravesh (Supra) and set aside the impugned order of punishment as well as the appellate order and direct the respondents to restore to the applicant his reduced pay and withheld increments and also to treat the period of suspension as spent on duty, with consequential benefits. Respondents are directed to comply with these directions within a period of three 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) 20.2.2001
Member (A)

cc.