

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

D.A.No.1391/89.

New Delhi this the 10th day of May, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thirvengadam, Member (A).

Khazan Singh,
S/o Shri Budh Singh,
R/o 53, Pat Par Ganj,
Delhi.

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Petitioner.

By Advocate Shri Shyam Babu.

Versus.

1. Delhi Administration,
Delhi through its Chief
Secretary, 5 Shyam Nath
Mara, Delhi.

2. Add. Commissioner of
Police (Operations),
Delhi, Police Headquarter,
I.P. Estate,
New Delhi.

3. Dy. Commissioner of
Police, Police Control
Room, Delhi.

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Respondents.

By Advocate Smt. Avinash Ahlawat.

ORDER (ORAL)

Shri Justice V.S. Malimath.

The petitioner, Shri Khazan Singh, Head Constable, was subjected to a disciplinary inquiry along with the constable Attar Singh on the charge that both of them were found doing unauthorised checking of trucks and extorting money from truck drivers while on duty stationed at National Highway Road No.56 Ghazipur, check post, during their shift from 8 p.m. to 8 a.m. on the night between 12/13.2.1988.

As a consequence of the inquiry held, both the charges were held proved by the Inquiry Officer. The findings were accepted by the disciplinary authority which made an Order on 9.2.1989 as per Annexure 'K' imposing the punishment of forfeiture of two years approved service permanently entailing proportionate reduction in his pay. The suspension period of the petitioner was directed to be treated as not on duty for all purposes. Appeal against the said order was rejected by the ^{Addl.} Commissioner of Police by order, Annexure 'M' dt. 13.6.1989. It is the said order that is challenged in this case.

2. Shri Shyam Babu, learned counsel for the petitioner, contended that the petitioner has been held guilty of a misconduct in respect of which no charge was framed. It was further contended that in regard to the charge, as framed, there was no evidence to support the findings. The charge, as already stated, is that the petitioner along with Attar Singh did unauthorised checking of the vehicles and extorted money. The Inquiry Officer nowhere finds him guilty on both these grounds. There is nothing to indicate that the petitioner acted unauthorisedly on that date in resorting to the checking of the vehicles. So far as the question of extortion of money from the drivers of the vehicles is concerned, there is no finding that the petitioner did any such extortion along with Shri Attar Singh. On the contrary, the finding is to the effect that

the petitioner was standing nearly 40 Ft. away from Attar Singh and it is Attar Singh, who had stopped the vehicles and resorted to the checking of the same. Extortion, if any, is, therefore, attributable to Attar Singh. What can be gathered from the Inquiry Officer's report, the order of the disciplinary authority and the order of the appellate authority is that they have come to the conclusion that the petitioner was supervising the operations and that, therefore, he is guilty. There is no such charge framed against the petitioner. As already stated, the petitioner was as per the findings of the Inquiry Officer, 40 Ft. away. It is difficult to say, in such circumstances, that he was in immediate supervision of the work of Shri Attar Singh to cast a vicarious liability on the petitioner for the misconduct committed by Shri Attar Singh. As already stated, there is no charge framed against the petitioner that he was supervising and therefore, he is guilty of laxity in supervision or supervising in connivance with Attar Singh in resorting to unauthorisedly checking of the vehicles and extorting money from the drivers of the vehicles. It is not possible to sustain the findings recorded by the disciplinary authority and, therefore, the orders suffer from errors apparent on the face of the records justifying interference.

3. For the reasons stated above, the order of the disciplinary authority, Annexure 'K', dated 9.2.1989 the

order of the appellate authority, Annexure 'M', dated 13.6.1989. are hereby quashed. The respondents shall calculate and refund the amounts which were with-held from the petitioner on the strength of the impugned orders within a period of 4 months from the date of receipt of a copy of this order. No costs.

P.T. Thirvengadam

(P.T. THIRVENGADAM)
MEMBER (A)

V.S. Malimath

(V.S. MALIMATH)
CHAIRMAN.

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