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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
DELHI.

O.A. No.1633/1989.

Date of decision 6.3.1991

Shri Azad Singh

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Applicant.

Vs.

Commissioner of Delhi Police  
and Ors.

... Respondents.

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HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

For the applicant

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Shri H.R.Bhutani, counsel.

For the respondents

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Mrs. Avnish Ahlawat, counsel.

(Judgment of the Bench delivered by Hon'ble  
Mr. Justice Amitav Banerji, Chairman)

The applicant, Shri Azad Singh, Ex-Constable in Delhi Police has filed the present Application under Section 19 of the Administrative Tribunals Act, 1985, challenging his dismissal from Police service. He had earlier filed O.A. No.1441/1987 which was decided on 28.3.1989 and the applicant was directed to file a Revision Petition before the Commissioner of Police-Respondent No.1 with further directions that the applicant may file fresh Application under Section 19 of the Act in case his Revision Petition is dismissed. The Revision Petition having been dismissed, the applicant has filed the present O.A.

The applicant states that the Commissioner of Police has not applied his mind to the facts and

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circumstances of the case nor has followed the observations made by the Tribunal in O.A. No.1441/1987. He has, therefore, prayed that the impugned orders issued by the disciplinary authority, appellate authority and revisional authority be set aside and quashed and the applicant be reinstated in Police service with all consequential benefits.

It will be necessary to state a few relevant facts so that it would be convenient to follow the basis of the penalty awarded to the applicant.

The applicant was posted as Constable in Foreigners Regional Registration Office (F.R.R.O) on general and Misc. duties in Shift-A, at Palam Airport from 7 PM to 8 AM on 19/20.6.1985. It is alleged that the applicant demanded/accepted Rs.400/- from four passengers, namely, S/Shri Sukhdev Singh, Surjit Singh, Sarbjit Multani and Lakhvinder Singh for early clearing them from the Immigration Check post. The matter was reported to S.I. Rajbir Singh of Shift-B during his duty hours, i.e., after 8 A.M. Shri Sukhdev Singh, one of the passengers told that the officer who had earlier demanded and subsequently accepted Rs.400/- was wearing the name plate "Azad Singh" who had then gone somewhere prior to their clearance. The passengers had reached the Immigration Checkpost,

Palam Airport, New Delhi on 20.6.1985 for boarding Kuwait Airways Flight No. KU-382 at about 6.30 AM.

Thereafter an inquiry proceeding started and Shri Trilok Singh Thapa, AFRRD Immigration (E.O) served summary of allegations on the applicant in which it was stated that four passengers appeared on a counter which was being manned by S.I. Rajbir Singh of Shift 'B'. One of them named Sukhdev Singh told S.I. Rajbir Singh that they had collectively paid Rs.400/- to an officer on his demand for their smooth clearance and also requested that early clearance be given to them. On enquiry by S.I. Rajbir Singh to the effect as to whom and why they had paid money while their travel documents were quite in order, Sukhdev Singh told that the officer who had earlier demanded and subsequently accepted Rs.400/- was wearing a name plate "Azad, Singh" a constable who had then gone somewhere prior to their clearance. It was stated that the above act on the part of the applicant amounted to an act of grave misconduct and remissness on his part which renders him liable for departmental action, under Section 21 of the Delhi Police Act, 1978. The evidence of six persons was recorded but they did not include any of the four passengers who were boarding the flight to Kuwait on that night. The statement made by the four passengers was recorded by Inspector K.N. Passi, Shift 'B' on 20.6.1985 on the Departure-side. Documentary evidence included the

statement of four passengers, copy of the report by S.I. Rajbir Singh and photostat copies of the original Embarkation cards in respect of the four passengers.

The applicant was charged for demanding/accepting Rs.400/- collectively from four passengers. Defence examined four witnesses and also submitted a written statement. The Enquiry Officer submitted his finding holding that after thorough examination of the evidence brought on file and point to point discussion, I am of the opinion that charge does not stand proved beyond doubt. Thereupon the F.R.R.O./DCP, New Delhi, Shri R.Tewari who was the Disciplinary Authority recorded that he had gone through the findings of the Enquiry Officer, statements of PWs/DWs and other record of the enquiry and he did not agree with the same. He held that the material on the record in the departmental enquiry proved that the applicant had demanded and accepted Rs.400/- from the passengers. He proposed a penalty of dismissal and issued a show cause notice vide his order dated 11.8.1986 (Annexure C). After a reply to the show cause notice has been made, the order of dismissal against the applicant had been passed. The applicant filed an appeal against the order of dismissal dated 15.12.1986. The appeal was dismissed by the Addl. Commissioner of Police (Operations).

Thereafter the applicant approached the Tribunal in O.A. 1441/1987 and after hearing learned

counsel for the parties, the Division Bench pronounced its decision on 28.3.1989. The Division Bench observed:

"11. We have carefully gone through the records of the case and have heard the learned counsel of both parties. In this case, the Enquiry Officer has pointed out in his report that "the P.Ws as well as the D.Ws have said in their statements that they did not see the applicant talking to any other passenger, checking any passport, demanding and accepting any money from any person. The Inspector of his shift admitted of having received no complaint against him. It is a fact that the complaint was recorded by Inspector, Shri K.N.Passi, who got the same signed from the 4 passengers."

According to Rule 16.23. of the Punjab Police Rules, 1934, "such complaint could be made a record of the departmental proceeding for the purpose of corroboration and contradiction but cannot be admitted as a substantive piece of evidence in the absence of cross-examination of the complaints whose evidence could not be procured being at a far distance from the place of enquiry. The complainants had left India on the day of complaint. There are instructions that such complaints which make the record of the Departmental Enquiry should be recorded by a Gazetted Officer and attested thereafter but in the instant case, the complaint has been recorded by Inspector, Shri K.N.Passi leaving a little weight to believe the same of all the probabilities. The mere fact mentioned that the officer who demanded and accepted Rs.400/- was wearing name plate in the name of 'Azad Singh', cannot be believed in the absence of specific identity because such name plates were being displayed by the members of the other staff like custom, Palam Air-port Police and Air Line staff. The better course was to get the culprits identified there and then, which was not done. Thus in the absence of

cross-examination of the complainants, who were generally decoy witnesses and identification of the defaulter, it creates a reasonable doubt of demanding and accepting of Rs.400/- from the complainants and the benefit of which goes to the defaulter." (vide pages 25-26 of the Paper Book).

12. The complaint of the 4 passengers which is the basis of the Departmental Enquiry against the applicant is at Annexure A-7B at page 76 of the Paper Book. It is a statement of Shri Sukhdev Singh, one of the 4 passengers, who concludes with the following words, "I have read and understood the above statement and signed it." However, in the left hand margin not only Sukhdev Singh, but his three other colleagues have also signed. The handwriting of the statement clearly indicates that it is not that of Sukhdev Singh. The statement has been attested by Shri Passi, Inspector Immigration.

13. The Enquiry Report has stated that "since the statement of the complainants written by Inspector Shri K.N.Passi indicates as to be a statement in respect of one complaint but after the same had been counter signed by others, it lost its value as a statement in an enquiry, where it should have been recorded individually and independently and not jointly as per laid down procedure." (vide page 26 of the Paper Book).

Thereafter the Division Bench observed that:

"The Disciplinary Authority did not apply his mind to the aforesaid findings of the Enquiry Officer before disagreeing with the same. The Appellate Authority also did not apply his mind to the aforesaid findings of the Enquiry Officer."

As regards the punishment, reference was made to provisions of <sup>Rule</sup> 16(2)(1) of the Punjab Police Rules, 1938 which reads as follows:

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"Dismissal shall be awarded only for gravest act of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award, regard shall be had to the length of service of the offender and his claim to pension."

The Division Bench then held:

"In the facts and circumstances of the case, we are of the opinion that the applicant should be given an opportunity to apply to the Commissioner of Police with a revision petition bringing out all the points in his defence and praying for appropriate reliefs. We, therefore, order and direct as follows:-

(i) The applicant shall prefer a revision petition to the respondents (Commissioner of Police) within one month of the communication of the copy of this judgment.

(ii) The respondents shall consider the revision petition on the merits and without taking the plea that it was not preferred within the period stipulated in the rules. While doing so, the respondents shall also duly consider the observations made hereinabove.

(iii) The respondents shall pass a speaking order on the revision petition as early as possible, but not later than 2 months from the date of receipt of the revision petition by them.

(iv) In case the applicant is aggrieved by the order passed on the revision petition, he will be at liberty to file a fresh application, in accordance with law, if so advised.

(v) ....

(vi) .... "

We have underlined the second sentence of direction No. (ii) above as we considered this to be one of the directions which had to be followed by the revisional authority.

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The revisional authority thereafter passed the impugned order rejecting the revision vide order dated 11.7.1989. It will be relevant to quote one paragraph from that order (Annexure 'M').

"I have gone through the revision petition and other documents available on record. The pleas put forth by the petitioner have no force. The pleas that the alleged complaint against him was neither made by any genuine complainant nor the same has been proved during the D.E. proceeding, his plea that the passengers have not been examined in the D.E. proceedings, have already been discussed by the appellate authority, on appeal. The complainants came to the counter of S.I. Rajbir Singh for Immigration clearance, they narrated the facts of acceptance of Rs.400/- by the petitioner. Accordingly, S.I. Rajbir Singh brought the facts to the notice of his seniors and combined statements of complainants were recorded due to paucity of time, as the flight was being delayed. According to rule 16 (xii)(a), the disciplinary authority can disagree with the findings of the E.O. after recording brief reasons of disagreement. The disciplinary authority confirmed the punishment keeping in view the statements of PWs 2,4,5 and 6 and after hearing him in D.R. There is no merit in his revision petition. I, therefore, reject the same."

It is against the above order that he has come up before this Tribunal.

We have heard Shri H.R. Bhutani, learned counsel for the applicant and Mrs. Avnish Ahlawat, learned counsel for the respondents.

Shri H.R. Bhutani, learned counsel for the applicant argued that the impugned order of the Commissioner



of Police, Delhi has been issued without application of mind and in a mechanical way and there is no compliance with the directions given by the Division Bench in earlier O.A. No. 1441/1987 .

Mrs. Avnish Ahlawat, learned counsel for the respondents contended that the applicant had appeared before the Disciplinary Authority, contested the matter, filed an appeal and revision, both of which were dismissed and he has no case now to reagitate the matter before the Tribunal.

We have heard learned counsel for the parties and perused the material on the record and we are satisfied that the Commissioner of Police, the revisional authority paid no heed to the directions given by the Division Bench in OA 1441/1987, inasmuch as the underlined portion of direction No. (ii) had not been observed at all. We are satisfied that if the matter had gone before the Criminal Court, the applicant would have been acquitted in no time. There is no direct evidence that the money was demanded and accepted by the applicant. There is no evidence by any of the persons who had given the money. The statement made by the passengers at the time of taking their flight were neither produced nor made any statement before the Enquiry Officer so as to give an opportunity to the applicant to cross-examine him or them. The entire case proceeded as if the statement of one of the passengers

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that the Police officer had the name plate of "Azad Singh" was enough not only to identify but also to convict him for he accepted Rs.400 from the passengers.

We are of the view that the Enquiry Officer proceeded in accordance with law and came to proper conclusion and there was no justification for holding that the charge was proved or passing an order dismissing him from service. The reason given by the Division Bench in the earlier OA is to be supplemented by the fact that the Commissioner of police did not advert to any of the matters referred by the Division Bench nor had cared to look into those matters and as such, the order of Commissioner of Police was bad in law and liable to be set aside. We are satisfied that this Application has to be allowed as the respondents have not been able to make out any case whatsoever against the applicant. A man cannot be dismissed from service on the basis of surmises or conjectures. We, therefore, direct setting aside the orders of the disciplinary authority, appellate authority and the revisional authority and direct that the applicant be reinstated in service and be given all consequential monetary benefits. He will also be entitled to his pay etc. for the period he was under suspension less what he had been paid as subsistence allowance. He

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will also be considered for promotion etc., if due.

This O.A. is accordingly allowed. There will be no order as to costs.

*I.K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER (A) 6/3/91

*Am*  
..6.3.91  
(AMITAV BANERJI)  
CHAIRMAN

SKS