

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA.No.1691/89

4

New Delhi dated this the 18th April, 1994.

Shri C.J. Roy, Hon. Member(J)

Shri P.T. Thiruvengadam, Hon. Member(A)

Shri Vigender Singh,  
S/o Shri Tika Ram,  
R/o 1031/24, 'D' Block,  
Gali No.6, Khajoori Colony,  
Delhi.

... Applicant

By Advocate Shri A.S. Grewal

Versus

1. Lt. Governor of Delhi, through  
Chief Secretary, Delhi Administration, Delhi.
2. Commissioner of Delhi Police, Delhi Police,  
Headquarters, M.S.O. Building, I.P. Estate,  
New Delhi.
3. Additional Commissioner of Police,  
New Delhi Range, New Delhi.
4. Deputy Commissioner of Police,  
South District, P.S. Defence Colony,  
New Delhi.

... Respondents

By Advocate Shri D.N. Trishal

JUDGEMENT(Oral)

By Hon. Member(J) Shri C.J. ROY.

The applicant is a Delhi Police Head Constable and was posted at Police Station Vinay Nagar, New Delhi on patrolling duty on Government motor cycle from 5.00 pm. to 10.00 pm. on 18.1.85 in the area of P.S. Vinay Nagar along with a constable Shri Darbara Singh. The applicant states that while he was on duty, a magazine of S.A.F. containing 10 live cartridges of 9 MM got lost. Therefore a charge memo was issued to him by the departmental authorities. He also claims that a committee was constituted

5

to probe into this matter, as to whether there was negligence or not, on the part of the applicant. The applicant further submits that the committee found him not negligent and therefore, forfeiture of his one year service is discriminatory in nature. During the course of the arguments, some of the grounds raised by the applicant in the OA were not pressed except that the recommendation of the committee should have been accepted which is ground No.1. In the ground No.2, it is stated that the magazine got misplaced during the patrolling on speed breaker and rough roads etc. accidentally. As regards ground No.3, the applicant stated that under section 21 of the Delhi Police Act and Rule 5 of the Delhi Police (Punishment and Appeal Rules), 1980 only one punishment could be awarded. But here, more than one punishment has been awarded. Therefore, it is not legal. He further claims that the punishment was harsh as compared to the other punishments ordered in similar circumstances.

2. In the counter affidavit the respondents have stated that a preliminary committee was appointed as a fact finding authority and having been found <sup>by</sup> not satisfactorily arrived at <sup>The Commission</sup> a regular enquiry against the applicant was ordered. The applicant preferred an

(b)

appeal against the punishment awarded to him. The disciplinary authority in Annexure-F discussed the entire evidence and took a lenient view by ordering forfeiture of one year approved service of the applicant.

The summary of allegations and Charge are at Annexures B and C of the OA. To prove the negligence of the applicant, witnesses were also examined and the applicant was given an opportunity to represent himself.

3. The short point involved in this case for consideration is whether the punishment awarded to the applicant by the disciplinary authority is valid or discriminatory. The various grounds raised by the learned counsel for the applicant are that the applicant was appointed on the Punjab Police Act and therefore, the Punjab Police Act is applicable to him. After perusing the record, we fail to understand that when the incident took place after coming into force of the Delhi Police Act, how the applicant can claim the benefits under the Punjab Police Act. We are not satisfied with the arguments advanced by the learned counsel for the applicant that the Punjab Police rules are still applicable to him and that if the negligence is proved, the loss can be recovered from him and if there is no negligence

7

the loss should be borne by the Government. We have also examined the case in another facet of the matter as the applicant has accepted the entrustment of magazine to him and the subsequent loss of the magazine by him in the course of the duty. The explanation given by him is that due to the motor cycle being run on the speed breakers and / bad roads the said magazine is lost. Unfortunately, the argument of the learned counsel for the applicant is not satisfactory in view of the fact that the magazine would have remained intact, if it had been fixed properly. The relevant portion of the reply filed by the respondents is extracted below for convenience:-

"I have gone through the revision petition and other relevant documents on record. The pleas put forth by the petitioner have no force. It is admitted fact that the magazine of SAF entrusted to him was lost by him. the magazine remains intact, if it is fixed properly. A safety catch is provided to ensure that it remains in position and only when pressed, the magazine be removed. When the petitioner was patrolling, he was so negligent that he could not realise at what moment the magazine fell down. The committee was constituted to decide whether the cost of the lost arm/ammunition will be borne by the petitioner or otherwise....."

4. This kind of weapon which was entrusted to the applicant is used even at rugged circumstances. The police Head constable, who is in the disciplinary force who has to be alert in his duty was proved to be negligent by losing the the magazine of SAF entrusted to him. Therefore, we do not accept that there is no negligence on the part of the applicant in losing the magazine and accept that the

8

appellate authority has rightly considered the case of the applicant and the revision petition and rejected the same on merit.

5. We have seen the Section-21 of the Delhi Police Act, wherein, various kinds of punishments have been imposed. The punishment is imposed under Sub-Section-21(2)(d) for forfeiture of one year approved service. The applicant claims that the respondents should have invoked Section 2(e) instead of 2(d) and that the recovery of the loss should be made if the negligence on the part of the applicant is proved and if the negligence is not proved, the Government should bear the recovery of loss based on the committee report. This contention cannot be accepted because Section-21 provides major penalty as well as minor penalty and there is no provision for invoking of rule under Sub Section(2) for particular offence only. Sub Section-8 deals with the major punishment which we are not concerned in the case. In the minor penalties, any one of the same can be imposed. The punishment imposed under Section 2(d) for forfeiture of one year approved service, in our opinion is legal. The applicant cannot claim the benefit of invoking of rule 8(e). Therefore, we are not satisfied with the grounds raised by the applicant and the application fails. However, in view

9

of the ground No.4 at page 6 of the OA raised by the applicant with reference to the similar situation which is not specifically denied in the counter by the respondents, in the punishment awarded in the case of Narender Singh and also considering the fact that the punishment in our opinion is a bit severe, as this was the first act of negligence of the applicant in his service <sup>and</sup> therefore, we remit the case back to the revisionary authority to reconsider the extent of punishment awarded to the applicant.

With this observation, the case is disposed of.

No costs.

P. J. Thiruvengadam

(P.T. THIRUVENGADAM)  
MEMBER(A)

kam180494

C. J. Roy

(C.J. ROY)  
MEMBER(J)