

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. 1. OA-1668/89
2. OA-1772/89

Date of decision: 28.2.1992

1. Shri Ram Kishan)
2. Shri Suraj Bhan) Applicants

Versus

Lt. Governor of Delhi
and Another Respondents

For the applicants Shri R.N. Chawla, Advocate

For the respondents Shri O.N. Trishal, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. D.K.Chakravorty, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *yes*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant in OA-1668/89 has worked as Head Constable in the Delhi Police, while the applicant in OA-1772/89 has worked as a Constable Driver in the Delhi Police. Both of them were dismissed after holding an inquiry against them under Section 21 of the Delhi Police Act, 1978. They have challenged the impugned orders of dismissal dated 23.12.1986 and the impugned orders of rejection of their appeals dated 24.4.1989.

2. The facts of the case in brief are as follows. The applicants were deployed on duty on 19.2.1988 on P.C.R. Van No.V-9 in the area of Chanakyapuri from 8.00 p.m. to 8.00 a.m. On receipt of information of an accident in Satya Marg, opposite House No.D-1/175, Chanakyapuri, New Delhi, the Control Room directed the P.C.R. Van to proceed to the spot. It reached the spot and found a person lying in an injured condition and he was removed to the hospital. The name of that person was Kewal Swarup Kohli, resident of 25/64, West Patel Nagar, New Delhi. After four days, an officer of Gandhi Samriti and Darshan Samiti with whom Shri Kohli was attached as P.A., sent a complaint that somebody removed a sum of Rs.1400/- from the pocket of his P.A. On receipt of the said complaint, a departmental inquiry was ordered against both the applicants. Both of them were placed under suspension on 16.3.1988 and the following charge was framed against them:-

"It is alleged against HC Ram Kishan, No.2807/SD and Const. Suraj Bhan, No.10733/DAP that on 19.2.1988 while on duty on PCR Van V-9 in the night shift from 8 p.m. to 8.00 a.m. they were first to reach the place of accident opposite H.No.D-1/175, Satya Marg, Chanakya Puri at about 2233 hours on receiving a call of accident from PCR. They removed the injured Scooterist namely Kewal Sawroop Kohli s/o K.D. Kohli r/o 25/64 West Patel Nagar to Safdarjung Hospital in the Police Control Room van and in the way to Hospital, they allegedly removed Rs.1392/- from the person of the injured and did not deposit this amount of money either

to the Duty Constable at Safdarjung Hospital at the time of handing over the injured or to the I.O. of the case at P.S. Chankya Puri.

The above act of HC Ram Kishan No.2807/SD and Const. Suraj Bhan, No.10733/DAP amounts to a gross misconduct in the discharge of their official duties which renders them liable for departmental action U/S 21 of the Delhi Police Act, 1978."

3. After holding an enquiry, the disciplinary authority passed the impugned order of dismissal dated 23.12.1988 and the appeal preferred by them was rejected by the appellate authority on 24.4.1989.

4. The applicants have challenged the entire proceedings and the impugned orders on the ground that there was no direct evidence to implicate them in the alleged removal of Rs.1392/- from the person of the injured, that the penalty was imposed on them on the basis of conjectures and surmises, and that no witnesses had deposed against them. They have also contended that a theft case should have been registered under Section 375 I.P.C. instead of proceeding against them departmentally.

5. The respondents have contended in their counter-affidavit that the departmental inquiry was initiated against the applicants after obtaining the approval of the Additional Commissioner of Police under Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980. According to them, the Enquiry Officer had submitted his findings on the basis of sufficient evidence which are on record.

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6. We are conscious of the fact that the Tribunal cannot reappraise the evidence. If there is some evidence to sustain the charge, the Tribunal cannot interfere. In the instant case, however, there is no direct or circumstantial evidence to link the applicants with the charge. There is absolutely no evidence as to who removed the amount from the pocket of the complainant who was drunk and lying unconscious at the site of the accident, where at least two or three persons had been present before the applicants reached the scene with the Police van. In the absence of any direct evidence, the Enquiry Officer, the disciplinary authority and the appellate authority have based their conclusions on suspicion, conjectures and surmises.

7. The first two persons to arrive at the scene of accident were the residents of the locality, Shri Inderjit Khanna and Shri H.S. Sharma. Shri Khanna stated that during his presence on the scene, no search of the injured man was made by the Police officials or any other person present. Apart from the three policemen, there would have been 3 to 4 other people. Shri Khanna stated that two or three passersby also gathered at the spot and thereafter, the Police arrived. Shri Sharma stated that neither Shri Khanna nor anything against the applicants.

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8. The only other person out of the 11 prosecution witnesses who could speak about the accident is the complainant himself. He has shifted his stand from time to time. Even he has not stated that the applicants had removed the money from his pockets. At one stage, he stated that someone in uniform had removed money from his pocket.. Subsequently, he stated that the amount was removed while being taken to the hospital. His testimony is not worth reliance as he was heavily drunk at the time of the accident and he could not see a stone on the road against which he struck his scooter. Presence of two to four persons at the site of the accident before the arrival of the Police at the scene, has been proved. Someone present having removed the money before the arrival of the Police, cannot altogether be ruled out.

9. The finding of the Enquiry Officer with which the disciplinary authority and the appellate authority have agreed, is based on suspicion about the involvement of the applicants. It is well settled that mere suspicion cannot take the place of evidence. The learned counsel for the respondents argued that the standard of proof required in a case of this kind is preponderance of probability and the common course of human conduct should be taken into account. There is nothing to indicate that two to four passersby who were present at the spot before

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the applicants came to the scene, were above the temptation of money and that the applicants who had gone there in the performance of their duties, were more susceptible to such temptations. In our opinion, there cannot be any inference based on common course of human conduct implicating only the applicants in such a case.

10. In State of U.P. Vs. Babu Ram, AIR 1961 S.C. 751, ~~by majority~~ ^{by majority} the Constitution Bench of the Supreme Court/ has observed that when a rule says that departmental enquiry could be held only after Police investigation under the Criminal Procedure Code, it was not permissible to hold a departmental enquiry without such registration of case and its investigation. In the instant case also, no criminal case has been registered or investigated under the Criminal Procedure Code and only an enquiry was held. The Additional Commissioner of Police concerned is stated to have given his prior approval for holding departmental enquiry against the applicants under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980, but what reasons prompted him to come to such a decision and not to register a criminal case for the alleged offence, have not been disclosed by the respondents.

11. In the light of the foregoing discussion, we are of the opinion that the impugned orders of dismissal dated

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23.12.1988 and the impugned orders of rejection of appeal dated 24.4.1989, are not legally sustainable and the same are set aside and quashed. The respondents are directed to reinstate the applicants in service. They would be entitled to arrears of pay and allowances from the date of dismissal to the date of reinstatement. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order. There will be no order as to costs.

Let a copy of this order be placed in both the case files.

(D.K. Chakravorty)
Administrative Member

5/2/92

- 28/2/92
(P.K. Kartha)
Vice-Chairman(Judl.)