

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.210/1989

NEW DELHI, this 21st day of February, 1994

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

Shri P.T. Thiruvenkadam, Hon'ble Member(A)

Shri Ishwar Singh
s/o Shri Chandgi Ram
House No.382, Vill. & P.O. Bawana
Delhi
By Shri A.S.Grewal, Advocate
Versus

.. Applicant

Union of India, through

1. Chief Secretary,
Delhi Admin., Delhi

2. Commissioner of Police
Delhi Police Hqrs.
MSO Building, IP Estate
New Delhi

3. Addl. C.P. (S&T)
Delhi Police Hqrs.
MSO Building, IP Estate
New Delhi

.. Respondents

By Ms. Ashoka Jain, Advocate

ORDER

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

This application is filed by the applicant, Constable in Delhi Police, claiming the following reliefs:

- i) To quash the order No.9628-36/Vig. AC-II dated 19.3.87 imposing punishment of forfeiture of two years approved service permanently;
- ii) To quash the order No.1592-93/CR-I dated 29.1.88 rejecting the appeal of the applicant; and
- iii) To order the respondents to reinstate the applicant from the date of suspension and pay all consequential benefits.

2. Brief facts of the case are that the applicant was on duty in Traffic Unit at Raj Ghat on 14.5.1986 upto 2 PM and after that he went to take rest as his duty was to start again at 5 PM. He took over duty at 5 PM. But, meanwhile at Raj Ghat crossing at 3.45 PM, while he was taking a bus for ITO to take tea, the DCP-Traffic came in a car driven by his driver and stated that the applicant was seen stopping a Matador with ulterior motive.

On enquiry by the DCP-Traffic, the applicant seems to have disclosed his name and number after much hesitation. Then a charge-sheet was served upon him, which is at Annexure A. That reads as follows:

"It is alleged that you constable Ishwar Singh No.553/T were noticed stopping a matador at Rajghat crossing at 3.45 PM on 14.5.86. On seeing the car of DCP/T, you hurriedly allowed the matador to go away, which you had stopped on the other carriage way. You were not on duty at the crossing. Your duty was from 11 AM to 2 PM and from 5 PM to 8 PM. You are liable for action u/s 21 of Delhi Police Act".

The enquiry was started and the applicant denied the allegation during the course of the enquiry, when PWs were examined, and the charge at Annexure B was served on the applicant. That reads as under:

"I, Inspector Jodh Singh No.D-I/317, hereby charge you constable Ishwar Singh No.553/T that while posted in Darya Ganj Circle, you were detailed for duty at Raj Ghat crossing from 11 AM to 2 PM and were to perform duty there again from 5PM to 9 PM. You were off duty between 2 PM and 5 PM. Instead of leaving the point, you remained present at the crossing and were seen stopping a matador with ulterior motive. On being asked you did not disclose your number and name at the very outset. You had to be asked a number of times before you disclosed your number and name. It shows that you were indulging in unauthorised checking and also disobeyed the departmental instructions regarding non-stopping of commercial vehicles by Traffic Staff when off duty.

This act of yours amounts to grave misconduct and remissness on your part which is unbecoming of Government servant under Rules (i)(ii) of CCS Conduct Rules and thereby rendering you liable for punishment u/s 21 of Delhi Police Act, 1978"

3. The applicant alleges that the Enquiry Officer did not consider the statements of PWs and DWS properly and returned a verdict of guilty in his findings, although there was no evidence against him. He also alleges that the Additional Commissioner of Police did not appreciate the evidence on record and issued a show cause notice

proposing the punishment of forfeiture of two years approved service permanently entailing reduction in pay. This is at Annexure C.

4. The applicant also submitted his reply to the show cause notice. But he claims it was not properly considered and the punishment was made absolute by the Additional Commissioner of Police, which is at Annexure D. The applicant also preferred an appeal to the Commissioner of Police, Delhi, which is also dismissed by order dated 29.1.88. This is at Annexure E. Aggrieved by this, he has filed this OA.

5. The respondents have filed their counter stating that the applicant was dealt with departmentally on the allegation that on 14.5.86 at about 3.45 PM while the Deputy Commissioner of Police-Traffic was going to the Chief Secretary's Office, Delhi Administration, Delhi for a meeting, the applicant was noticed stopping a matador at Rajghat crossing. On seeing the car of Deputy Commissioner of Police-Traffic, the applicant hurriedly allowed the matador to go away which he had stopped on the other carriage way. On enquiry, it was revealed that the applicant was actually not on duty there, his duty hours being 11AM to 2 PM and 5PM to 8PM. The finding of the Inquiry Officer was that the applicant was present at the relevant time, he had stopped a matador and let it go hurriedly on seeing the car of the then Deputy Commissioner of Police-Traffic. The applicant had failed to disclose his name on being asked repeatedly by the officer and thus exhibited his guilt conscience and he was issued with a show cause notice dated 12.1.87 proposing therein the punishment of forfeiture of two years approved service permanently entailing reduction in his pay. After considering his explanation, the punishment was confirmed by the disciplinary authority vide his order No. 9628-36/Vig. AC-II dated 19.3.87. The applicant had filed an appeal

which was also rejected. The rest of the allegations made by the applicant are denied by the respondents in their reply.

6. We have heard the learned counsel for the parties and perused the departmental file.

8. In the departmental file, we notice that the applicant did not request for any assistance in conducting the proceedings but he himself took part nor asked for change of either Enquiry Officer. There were six witnesses examined for prosecution and the DCP-Traffic himself was also one of the witnesses. Even in the cross-examination of the DCP-Traffic, he has simply put one question and did not effectively cross-examine him. This is a matter where we are not supposed to reapprise the evidence as a court of appeal exercising jurisdiction under Article 226 of the Constitution. The applicant's presence at 3.45PM at the same spot when he was not on duty itself establishes that he was there for some purpose other than official. His explanation that he was there to continue his duty at 5 PM at the same place can not cut much ice compared to his conduct. It is much more so when the applicant did not disclose his name and number when the DCP-Traffic asked for the same. It is stated that the applicant stopped the matador but on seeing the DCP-Traffic he allowed the matador to pass away. Therefore, we do not see any infirmity in the evidence recorded nor any prejudice shown to have been caused to the applicant.

9. During the course of the arguments, the only ground that is urged before us was that the matador driver is not examined. When the applicant himself was hesitant to give his name and number to the DCP-Traffic on being questioned, and the charge being that the matador driver has been allowed to pass away after it was being stopped, it is not

in the mouth of the applicant to claim that the enquiry is vitiated because the matador driver is not examined.

10. We have also seen the findings of the enquiry, show-cause notice, reply to the show-cause notice, dismissal of the appeal, order of punishment and the rejection order and we find that all are speaking orders.

11. When six witnesses including the DCP-Traffic have confirmed the incident and the applicant himself has admitted his presence there, and that he did not attribute any motive to the witnesses including the DCP-Traffic to falsely implicate him in the charge and the name of the matador driver or its number is not given by him, which has been allowed to go away, the applicant can not claim that the enquiry is vitiated on that ground alone. The matador driver could be summoned when the registration number and the name of the driver are placed before the Inquiry Officer. When the applicant himself has allowed the matador driver to pass away, it is not possible to call that witness to examine, which is not at all an infirmity. The quality of the evidence is important rather the number of witnesses. There is corroboration of the evidence.

12. In view of the above, we are not persuaded to interfere in the case. The application is devoid of merits. In the circumstances, the application is dismissed. No costs.

P. J. *3*
24/2/94
(P.T. Thiruvengadam)
Member (A)

urging
24/2/94
(C.J. Roy)
Member (J)

/tvg/