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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.2278/1989

Date of decision:04.09.1992

Shri Fateh Mohmad

...Applicant

Vs.

Delhi Administration & Another

...Respondents

For the Applicant

...Shri J.P. Verghese,
Counsel

For the Respondents

...Shri S.C. Puri,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUNDIYAL, 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

(delivered by Hon'ble Shri P.K.Kartha, VC(J)
The applicant who has worked as Constable in the

Delhi Police is aggrieved by the impugned order dated 22.09.1988 whereby he was dismissed from service and the impugned appellate order dated 25.09.1989 whereby his appeal was rejected.

2. We have gone through the records of the case and have heard the learned counsel for both parties. The alleged misconduct of the applicant is that he accepted a sum of Rs.5/-(five) from a tempo driver for letting him off without challan-ing him which was, however, returned to the driver on the intervention of a Sub Inspector who reached the spot at about the time of the incident.

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The applicant has raised several contentions such as that this is a case of no evidence, that the material witness was not examined, that the copies of the statements of witnesses recorded during the preliminary enquiry were not supplied to him in order to effectively cross-examine them, that the punishment imposed was grossly disproportionate and contrary to the rules and that the appellate order is a non-speaking and bald order. The respondents have contended that the guilt of the applicant has been established in the enquiry and that there are no procedural or other irregularities in the enquiry.

3. The charge framed against the applicant is as follows:-

"I, Inspector Tek Chand D.E. Cell, Vigilance, PHQ Delhi, charge you constable Fateh Mohmad No. 936/T while on duty at Prithvi Raj Road on 8.11.1987 had stopped Tempo No. DHG 6787 being driven by Shri Rattan Singh Sharma s/o Shri Rameshwar Dutt r/o G I/81 Uttam Nagar, New Delhi. It is further alleged that you accepted a sum of Rs. 5/- from the tempo driver for letting him off without challaning him. You Const. however returned the amount of Rs. 5/- to the tempo driver on the intervention of SI Arun Kumar but the act of you Const. Fateh Mohmad No. 936/T amounts to the commission of a criminal offence in connection with your official relation with the public.

The aforementioned action on the part of you Const. Fateh Mohmad No. 936/T constitutes gross-misconduct, unbecoming of a Government servant rendering you liable for punishment under Section 21 of the Delhi Police Act, 1978."

4. A perusal of the Enquiry Report indicates that the prosecution story is not supported by the evidence of any eyewitness. Out of the seven witnesses examined for the prosecution, the evidence

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of PWs 1 to 4 have no bearing or relevance to the alleged incident as they have no first hand knowledge of what had transpired. The Enquiry Officer has relied upon the statements of PW Nos. 5 and 7 during the preliminary enquiry and the testimony of PW6 to reach the conclusion that the charge against the applicant was proved beyond doubt.

5. PW5 (Shri Rattan Singh) has stated during his examination that about 5/6 months back his driver Ram Mehar told him that the documents of his vehicle were checked by a Constable on Prithvi Raj Road. There was Rs.5/-(five) note in the documents returned by the Constable. At the same time, a traffic sergeant came on his motorcycle and stopped him. He asked him about his challan. He told him that the documents were checked which were found correct. On cross-examination, PW5 stated that he is a Manager of Standard Transport Company, Kamla Market. He did not go on his tempo on that day and he does not drive tempo.

6. PW5 was cross-examined by the Enquiry Officer ^{he} when he stated that "the previous statement was given on the information given by the driver." The Enquiry Officer has observed that PW5 had turned hostile " as he is not supporting his previous statement dated 7.12.1987". In other words, the Enquiry Officer has proceeded on the basis that the previous statement of PW5 recorded during the preliminary enquiry is entitled to credence. A copy of the same was not given to the

applicant.

7. PW7 (Shri Dhan Singh, Inspector) had conducted the preliminary enquiry against the applicant. He stated that he conducted the preliminary enquiry and examined S/Shri Arun Kumar, SI(PW6), ASI Jai Pal (PW2), Constable Ravinder Singh(PW1) and Rattan Singh (PW5). After recording their statements, he had submitted his report to conduct the enquiry against the applicant "because there was evidence as per the statements to conduct formal DE".

8. It is not understandable why PW7 who conducted the preliminary enquiry was cited as a witness except, perhaps, for the purpose of taking into account the statements during such enquiry into account. Copies of the statements recorded during the preliminary enquiry were not supplied to the applicant.

9. PW6 (Arun Kumar SI) is not an eyewitness of the incident. On reaching the scene, he is stated to have noticed "Constable whose name was later known to him as Fateh Mohmad accepting illegal gratification from a distance from a scooter driver. He stopped the tempo scooter and asked the driver who told him that the constable had demanded and accepted an illegal gratification of Rs.5/- for letting him off without challan". During the cross-examination, he stated that

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the driver told him that he gave Rs.5/- to the constable for letting him off without challan.

10. On a perusal of the records, we are convinced that there is not an iota of evidence to sustain the charge and that the finding of the Enquiry Officer is perverse.

11. The punishment of dismissal is provided by Rules 8(a) and 10 of the Delhi Police (Punishment and Appeal) Rules, 1980 read with Rule 16(2)(b) of the Punjab Police Rule, 1934. It shall be awarded for the acts of gravest nature or as a cumulative effect of continued misconduct. In our opinion, the punishment of dismissal from service is grossly disproportionate to the gravity of the alleged misconduct and has been imposed in disregard of the aforesaid Rules.

12. The material portion of the appellate order is as under:-

" I have perused the DE file, the papers connected with the appeal and parawise comments submitted by DCP/Traffic. I have also heard the defaulter in O.Room for any additional defence which he might like to put forward.

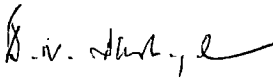
The enquiry officer has fully established the charge of accepting Rs.5/- as illegal gratification and later return to the driver by the defaulter on sighting other officers. The points raised in the appeal mentioned orally by him do not in any manner change the situation materially for me to intervene and change the existing punishment order. Accordingly the appeal is hereby rejected."


13. The aforesaid order is a non-speaking order and does not examine the various points raised by the applicant in his application.

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14. In the light of the above, we hold that the impugned orders are not legally sustainable. We, therefore, do not consider it necessary to examine the other contentions raised by the applicant. In the conspectus of the facts and circumstances of the case, the application is allowed. We set aside the impugned order dated 22.9.1988 and the appellate order dated 25.9.1989. The respondents shall reinstate the applicant as Constable. He 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 expeditiously and preferably within a period of three months from the date of receipt of this order.

There will be no order as to costs.


(B.N. DHOUNDIYAL)
MEMBER (A)
04.09.1992


(P.K. KARTHA)
VICE CHAIRMAN(J)
04.09.1992

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