

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 2286/89

Date of decision:15.05.1992

Shri Bishambar Singh

...Applicant

Vs.

The Commissioner of Police, Delhi & Others

...Respondents

For the Applicant

...Shri J.P.S. Sirohi, Counsel

For the Respondents

...Shri O.N. Trishal, Counsel

CORAM:

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

The Hon'ble Mr.I.K. Rasgotra, 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 Shri P.K. Kartha,  
Vice-Chairman(J))

The applicant who has worked as an Assistant Sub Inspector in the Delhi Police filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside and quashing the impugned order of dismissal from service dated 4.7.1989 imposed on him and the rejection of his appeal by the appellate authority by order dated 12.10.1989. He has also sought for a direction to the respondents for reinstating him in service with all consequential benefits.

2. The applicant has worked in the Delhi Police from 1953 onwards for about 39 years. He was on duty at Police Control Room Van V-33 on 31.12.1987 in the first shift along with Constable Joginder Singh and Constable-Driver Dharam Pal. A Departmental Enquiry was held against them in respect of the following

*Q*

allegations:-

" ASI Bishamber Singh No.153/DAP, Ct. Joginder Singh No.3039/SD and Ct. Dvr. Dharam Pal No.1881/W were on duty at PCR Van V-33 on 31.12.1987 in Ist Shift. An information was received at tele. No.100 at 0911 hrs. from some unknown person that some vehicle had hit a padestrian over the Nangal Rai Bridge and he is lying there. At 0912 hrs. PCR Van V-33 was directed to reach the spot. The van reached at the spot and transmitted at 0920 hrs. that some military truck had hit a Const. of Delhi Police and he was being removed to Safdarjung Hospital. Later on, the name of the Constable was revealed to be one Raj Singh No.191/L who was a Hd. Const. and posted in Old Police Lines. He was declared brought dead by the Dr. in the hospital.

Smt. Ajay Kumari w/o late HC Raj Singh No.191/L r/O Village & P.O. Sulakha Teh. Bawal, Distt. Mohinder Garh (Hry.) made a complaint that her late husband had carrying with him the pay for the month of December, 1987, which he had drawn from O.P.L. The accident was witnessed by one Siri Kishan s/o Mohar Singh, an MCD employee and he also saw that the money and some other papers were removed by ASI Bishamer Singh from the personal search of her late husband. The ASI kept the amount and the papers in his pocket. She further alleged that the money had been misappropriated by ASI Bishamer Singh No.513/DAP, Ct. Joginder Singh No.3039/SD and Ct. Dvr. Dharam Pal No.1881/W.

ASI Bishamber Singh No.153/DAP, incharge guard of PCR Van V-33 only deposited one wrist watch one Identity card and a pair of keys belonging to the deceased, in the hospital. No money at all was deposited in the hospital.

The above act of ASI Bishamber Singh No.153/DAP, Const. Joginder Singh 3039/SD and Ct. Dvr. Dharam Pal 1881/W amount to gross misconduct and dereliction in the discharge of their official duties. This also amounts to unbecoming them of a police officer and bringing a bad name to the Deptt. This renders them liable for departmental action u/s 21 of Delhi Police Act, 1978".

3. The Enquiry Officer who conducted the enquiry concluded in his report dated 24.4.1989 that there was only suspicion against the applicant but the charge against the defaulters was not proved. However, the disciplinary authority disagreed with the findings of the Enquiry Officer and imposed on the applicant the penalty of dismissal from service by the impugned order dated 4.7.1989. The disciplinary authority observed that he has gone through the findings of the Enquiry Officer and entire evidence on record in the light of the facts and circumstances of the case. He has

stated that "in fact the version that some member of the public removed the money from the pocket of the deceased police man is only an after thought and formal defence. Policeman living alone in Delhi and going home after the pay day would carry his total salary for family . Among the public no one dares to touch a dead body on the road, what to say <sup>of</sup> taking out the money. I am convinced that the money has been removed by the PCR men who removed the dead body from the spot. There is nothing more shocking and reprehensible than the fact that the police men robbed the dead police man."

4. The applicant submitted an appeal to the appellate authority on 27.7.1989 which was rejected by the appellate authority by his order dated 12.10.1989.

5. The applicant has raised several contentions including that there was no evidence to sustain the charge and that the disciplinary authority did not give an opportunity of representation before he decided to disagree with the findings of the Enquiry Officer and imposing the penalty of dismissal on him.

6. We have carefully gone through the records of the case and considered the rival contentions. We are conscious of the fact that in a case of this kind, 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 applicant with the charge. There is no evidence as to who removed the amount from the pocket of the deceased.

7. Apart from the above, it is well settled that before the disciplinary authority disagrees with the findings and records its own finding based on reasons, the delinquent officer should be given an opportunity of representation to show cause as to why

an

the finding in his favour should not be disturbed for the reasons given in the show cause notice. In Narayan Mishra Vs. State of Orissa, 1969 SLR 657, the Supreme Court has held that in a case where the delinquent official has been acquitted of some charges and the punishing authority differ from the findings of the Enquiry Officer and hold him guilty of charges, notice or opportunity should be given to the delinquent official by the punishing authority in order to conform to the principles of fair play and natural justice. In the instant case, no show cause notice was given to the applicant and on this short ground, the impugned order of dismissal from service dated 4.7.1989 and the impugned appellate order dated 12.10.1989 are not legally sustainable.

8. Accordingly, we set aside and quash the impugned order of dismissal from service. The respondents are directed to reinstate the applicant as expeditiously as possible, but preferably within 3 months from the date of receipt of this order. The applicant would also be entitled to back wages from the date of dismissal from service to his reinstatement. The application is disposed of on the above lines.

There will be no order as to costs.

*(Signature)*  
(I.K. RASGOPTRA)  
MEMBER(A)  
15.05.1992

*(Signature)*  
(P.K. KARTHA)  
VICE-CHAIRMAN(J)  
15.05.1992