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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2491/89
2491-A/89
2491-B/89

DECIDED ON : 7.4.1993

Sudhir Kumar & Others

... Applicants

Vs.

Delhi Administration & Ors.

... Respondents

CCRAM :

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

1. Whether to be referred to the Reporter ? *ys*
2. Whether reporters of local newspapers may *L*
be allowed to see the Judgment?
3. Whether to be circulated to other Benches ? *L*

S. R. Adige
(S. R. Adige)
Member (A)

J. P. Sharma
(J. P. Sharma)
Member (J)

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Shri J. P. Verghese, Counsel for Applicants
Shri O. N. Trisal, Counsel for Respondents

J U D G M E N T

Hon'ble Shri J. P. Sharma, Member (J) —

The applicants, Sudhir Kumar, Vijay Pal Singh and Anand Singh, were members of the Delhi Police force and were placed under suspension vide order dated 6.7.1987 on account of the fact that on 5.7.1987 they were carrying out illegal checking of trucks on the Outer Ring Road near Haiderpur Water Works and were not having any name plates as well as belt numbers on the uniform. Shri Surender Singh who was S.I.(Traffic) incharge of complaint section, while going to Jahangir Puri to see his ailing uncle along with Inspector Prabhu Dayal, via Outer Ring Road at about 10.00 a.m. on 5.7.1987 saw these Constables near Pulia of Haiderpur Water Works who were doing unauthorised checking of the trucks.. He inquired from the Constables as to how they were doing checking of the trucks and actually found one truck No. RNC 1032 stopped for checking which was driven by driver Rajender, who also told the Traffic Inspector that he had paid

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Rs.50/- to Constable Vijay Pal Singh for allowing entry. Constables Sudhir Kumar and Anand Singh slipped away from the spot and Constable Vijay Pal Singh named the two other Constables who had escaped. He reported the matter to the DCP/Traffic orally on which all these three Constables were suspended as said above, vide order dated 6.7.1987.

2. A preliminary inquiry was held under Rule 15⁽¹⁾ of the Delhi Police (Punishment and Appeal) Rules, 1980 vide order dated 20.7.1987 and thereafter vide order dated 12.1.1988 a disciplinary inquiry was ordered under Rule 15(2) of the aforesaid Rules. Shri Bhagwant Singh, Inspector, DE Cell, Vigilance, Police Headquarters, Delhi, was appointed inquiry officer and he served the summary of allegations dated 28.2.1988 on all the three Constables (applicants herein) which is reproduced below :-

"It is alleged that on 5.7.87, Ct. Vijay Pal Singh No. 483/T, Ct. Sudhir Kumar, No.889/T and Ct. (Driver) Anand Singh, No.1301/T, without name plates and wearing belts without number were found carrying unauthorised checking of trucks on the outer-ring road near Haider Pur Water Works. S.I. Surender Singh along with Sh. Prabhu Dayak inspector while passing that way detected those constables doing unauthorised checking. A truck No. RNC-1032, was also found at the place of checking. On enquiry, Mr. Rajender Singh, R/o Ward No.9, Near Railway Station, Surat Garh, Rajasthan. The Driver told to S.I. Surender Singh that he had paid Rs.50/- as entry fee to Ct. Sudhir Kumar, No.889/T. Thus, they were found making unauthorised checking without any police officer and had malafide intention of prabbing money. This act of Ct. Vijay Pal Singh, No.483/T, Ct. Sudhir Kumar, No.889/T and Ct. Driver Anand Singh, No.1301/T, making unauthorised checking of trucks with malafide intention and ulterior motives amounts to gross misconduct and rendering them liable for departmental action U/s 21 D.P. Act."

A charge was also framed against the applicants which is reproduced below :-

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"That you Constable Sudhir Kumar No. 483/T & Constable Vijay Pal Singh No. 839/T were found in uniform without wearing name plates & belts without number at the Outer Ring Road near Haider Pur Water Works while checked by S.I. Surender Singh of Traffic Unit on 5.7.87 at about 10 AM.

That you Constable Sudhir Kumar, Constable Vijay Pal Singh and Driver Const. Anand Singh, No. 1301/T were found conducting unauthorised checking of trucks at outer ring road near Haider Pur Water Works on 5.7.87 at about 10AM when checked by SI Surender Singh of Traffic Unit.

The above said acts on the part of all of you Constables amounts to gross misconduct and render you liable for departmental punishment u/s 21 Delhi Police Act, 1978."

3. Subsequently, all these Constables were reinstated after the revocation of the suspension order vide order dated 11.5.1988. The inquiry officer gave his finding on 14.2.1989 on which a show cause notice was issued by the LCP (Traffic) on 23.3.1989 and thereafter vide order dated 12.5.1989 the punishment was imposed on all the applicants and they were dismissed from service from the date of issue of the aforesaid order. An appeal against this order was preferred to the Addl. Commissioner of Police and the Addl. Commissioner vide order dated 25.9.1989 rejected the appeal and upheld the order of dismissal passed by the disciplinary authority.

4. The applicants aggrieved by the aforesaid order dated 12.5.1989 and the appellate order dated 25.9.1989 filed this joint application assailing the aforesaid order and have prayed for the following reliefs :-

- "(i) SET ASIDE the impugned order of dismissal from service dated 12.5.1989.
- (ii) REINSTATE the petitioners with effect from 12.5.1989 with all consequential benefits, including arrears, forthwith.
- (iii) DIRECT the Respondents to produce the enquiry files of the petitioners in this Hon'ble Tribunal for perusal.

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- (iv) DECLARE the Rules 15 and 16 of the Delhi Police (Punishment and Appeal) Rules, 1980 ultra vires to Sections 21, 22, 147 and 148 of Delhi Police Act and violative of Articles 14, 16 and 311 of the Constitution of India."

Learned counsel for the applicants did not press nor even argue the relief No. (iv) aforesaid. So, the application has been pressed only with regard to reliefs (i) to (iii) quoted above.

5. The respondents filed their reply and contested the application stating that the applicants have no case and the orders have been passed for dismissing the applicants from service after holding the proper disciplinary inquiry under the Delhi Police (Punishment & Appeal) Rules, 1980 read with section 21 of the Delhi Police Act, 1978.

6. We have heard the learned counsel for the parties at length. Learned counsel for the applicant argued that this is a case of no evidence against the applicants. The inquiry officer while giving a conclusion of the findings on the departmental inquiry has observed that "On the basis of PWs/DWs and scrutiny of the documents available on the file, the part of charge mentioned at No.1 is proved while second part of the charge could not be proved." The charge at No.1 in the report of the inquiry officer reads as follows :-

"That you Const. Sudhir Kumar No.483/T and Const. Vijay Pal Singh, No.889/T were found in uniform without wearing name plates and belts without numbers at outer ring road near Hider Pur Water Works on 5.7.87 at about 10 AM when checked by SI Surender Singh of Traffic Unit."

The charge No.2 reads as follows :-

"That you Const. Sudhir Kumar, Vijay Pal Singh and Anand Singh were found conducting unauthorised checking on the trucks at outer ring road near Haider Pur Water Works on 5.7.87 at about 10 AM when checked by SI Surender Singh of Traffic Unit."

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A perusal of the above will show that the name of Const. Driver Anand Singh is missing from charge No.1. During the proceedings of the inquiry, Shti Tilak Raj, Constable, DW2 was examined and he deposed that according to the Chitha of 5.7.1987 Constable Vijay Pal Singh No. 485/T was detailed on duty at ingate of Subzi Mandi from 8 AM to 11 AM and 5 PM to 8 PM while Constable Sudhir Kumar No. 889/T was detailed on duty with office staff. Const. Driver Anand Singh No.1301/T was attached with T.I./Circle and his name was only entered in Chittah without mentioning the place etc. Constable Vijay Pal Singh went to perform his duty vide DD entry No.2 and returned after performing his duty vide arrival DD entry No.8 on 5.7.1987. The witness also stated after checking the daily diary that there is nothing mentioned about any absence etc. of the defaulters on 5.7.1987 in the daily diary.

7. In view of the above features of this particular case regarding all the three delinquent officials, what misconduct they have committed is not established from the charges levelled against them. In the charge No.1 which said to have been proved by the inquiry officer, the name of the third delinquent, Shri Anand Singh, is not mentioned. Charge No.2 according to the inquiry officer has not been established against any of these delinquent officials. So, in fact no punishment can be passed by the disciplinary authority against Anand Singh when the charge No.1 has not been established against him. If the inquiry officer has omitted to mention the name of Anand Singh as a delinquent in the report, then the disciplinary authority should have pointed out this fact rather than accepting the finding as submitted to him. Thus, there is no evidence at all against Anand Singh and any punishment passed against him by the disciplinary

authority which has been subsequently upheld by the appellate authority is liable to be quashed.

8. Regarding two other constables, Sudhir Kumar and Vijay Pal Singh, the only charge which is said to have been established against them is that they were found in uniform without wearing name plates and belts without numbers at outer ring road. In fact, they were never posted at outer ring road on any duty. There is no report that the Constables did not attend to their duties on the fateful day, i.e., on 5.7.1987, where they were posted at the relevant time. Constable Vijay Pal Singh is said to be posted on duty at Subzi Mandi and Constable Sudhir Kumar was detailed on duty with office staff. There is no report whatsoever produced before the inquiry officer nor it is mentioned in the summary of allegations against the delinquent Constables or ultimately in the chargesheet framed against them that they did not report for the duty where they were posted. The duty of a Constable is fixed by a mention in the general diary or the station diary and both his time of departure as well as arrival has to be written down. That DD entry is a material document and that has not been produced by the departmental authorities in the inquiry. Even if it is taken for granted that the applicants were on the outer ring road and they were having no name plates or belt numbers, then if they were not on duty they cannot be forced to fix name plates as well as wear a belt with the number and if they had not done so, then it cannot be said to be a misconduct. The disciplinary as well as the appellate authorities did not consider this matter in the right perspective.

9. In view of the above facts and circumstances, the order of dismissal from service dated 12.5.1989 passed against the applicants as well as the order of the appellate authority

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dismissing their appeal vide order dated 25.9.1989 is set aside and quashed. The applicants shall be reinstated in service forthwith. As regards backwages, the respondents shall pass a final order in the circumstances of the case specifying themselves that the applicants did not work at any other place during this period from 12.5.1989 till the date of reinstatement and then pass a final order preferably within a period of four months from the date of receipt of a copy of this judgment. In case the applicants were not gainfully engaged elsewhere, in that event the respondents shall consider the award of backwages to the applicants. In the circumstances, the parties shall bear their own costs.

S. R. Adige
(S. R. Adige)
Member (A)

J. P. Sharma
(J. P. Sharma)
Member (J)
7.4.93

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