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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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OA No.716/89

Date of decision:30.4.93

Sh.Sushil Kumar

..

Applicant

versus

Delhi Admn. Delhi
& ors.

...

Respondents

CORAM:

THE HON'BLE MR.I.K.RASGOTRA, MEMBER(A)

THE HON'BLE MR.J.P.SHARMA, MEMBER(J)

1.Whether the reporters of local papers may
be allowed to see the Judgement?

2.To be referred to the reporter or not?

J.P. Sharma
(J.P.SHARMA)
MEMBER(J)

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vs.

Delhi Administration
through its Chief Secretary,
Delhi & ors. ..

Respondents

CORAM: THE HON'BLE SH.I.K.RASGOTRA, MEMBER(A)
THE HON'BLE MR.J.P.SHARMA, MEMBER(J)

For the Applicant .. Sh.Shyam Babu, Counsel

For the Respondents .. Sh.Ravinder Dayal,
Counsel.

JUDGEMENT

(BY HON'BLE MR.J.P.SHARMA, MEMBER(J))

The applicant was posted as Constable in Delhi Police in November, 1987. He was served with the memo of inquiry/ summary of allegations on 29.1.88. It was alleged that the applicant along with Constable Dhara Singh intercepted the tripple riders on a Motorcycle at the crossing of Madhuban Chowk and accepted Rs.50 to show favour to them by not challaning them for committing the breach and violation of the Traffic Rules. The Inquiry Officer proceeded with the inquiry under the Delhi Police(Punishment & Appeal) Rules, 1980 and the Deputy Commissioner of Police by the order dated 8.8.88 passed the punishment of dismissal of the applicant from service. The appeal against the said order of dismissal was rejected by the Additional Commissioner of Police vide order dated 8.2.89.

2. In the present application, the applicant has assailed the order of the disciplinary authority as well as the appellate authority dated 8.8.88 and 8.2.89 respectively besides challenging the inquiry report dated

15.5.88 and prayed that the aforesaid orders/report be quashed and set aside and the applicant be directed to be reinstated in service with retrospective effect with all consequential benefits of pay and allowances, seniority, promotion etc. He has prayed for the release of the pay and allowances for the period of suspension from 4.11.87 to 7.4.88.

3. The summary of allegations against the applicant is reproduced below:-

" You, Sushil Kumar No.439/W, was on picket duty at Madhuban Chowk from 4 P.M. to 12.M.N.on 4.11.87. Whereas Sh.B.S.Gurjan ACP/UT with Shri S.Nithianandan ACP(PROB) and and SPO Shri Inder Pal of P.S.Rajouri Garden had performed a tripple riding tour on M/Cycle No.DBA-22 as per direction of DCP/West. The above officers passed through Madhuban Chowk picket at about 9.50 P.M. and they were stopped by you and H.C.Dhara Singh, SPO Shri Inder Pal was driving the M/Cycle at that time. They were asked to produce the papers of the M/Cycle and driving licence. S.P.O.Shri Inder Pal showed his driving licence to them. You along with H.C.Dhara Singh checked the vehicle and driving licence of Shri Inder Pal Singh. You and H.C. Dhara Singh threatened to send them to Police Station Sarswati Vihar. They offered Rs.50/- as bribe to you to release them alongwith M/Cycle. You accepted Rs.50/- as bribe and allowed them to go, saying to H.C.Dhara Singh 1/C picket that he has enquired about all the three. Thereafter Shri B.S.Gurjar showed his identity card to you and incharge of the picket. S.H.O.Saraswati Vihar was also called at the picket who placed under suspension for the above lapse by the order of seniors and transferred to West Distt. line Tilak Nagar.

The above act of omission and commission on the part of Const. Sushil Kumar No.439/W amounts to grave misconduct and negligence in the performance of his duties rendering him liable for deparatmental action u/s.21 of Delhi Police Act 1978."

4. The charge framed against the applicant is also reproduced below:-

" I, Inspector Pratap Chand Tanwar S.H.O. Moti Nagar Charge you Constable Sushil Kumar No.439/W that while you were on picket duty at Madhuban Chowk from 4 P.M. to 12 midnight on 4.11.1987, Shri B.S.Gurjar ACP(UT) Sh.S.Nithianandan A.C.P.(UT) and S.P.O. Inder Pal Singh of P.S.Rajouri Garden performed a Tripple riding tour on Motor Cycle No.DBA-22. They passed through Madhuban Chowk Picket at about 9.50 P.M. They were stopped by you and H.C.Dhara Singh. They were asked to produce the papers of Motor Cycle and Driving Licence Shri Inder Pal Singh S.P.O. who was driving the Motor Cylce showed you his driving licence. You alongwith H.C.Dhara Singh checked the Motor Cycle and driving Licence of Shri Inder Pal Singh and threatened to send them to Police Station Saraswati Vihar. They offered Rs.50/- as a bribe to you to release them alongwith Motor Cycle. You accepted Rs.50/-as bribe and allowed them to go, saying to H.C. Dhara Singh that he has enquired about all the three Shri B.S.Gurjar A.C.P. Showed his identity card to you. S.H.O. Saraswati Vihar was also called at the picckt. You were placed under suspension and transferred to West Distt. Line, Tilak Nagar."

5. The Inquiry Officer, S.H.O. Moti Nagar, vide report dated 15.5.88 held that the charge against the applicant stand proved. Thereafter, a show cause notice was given by the Deputy Commissioner of Police dated 16.6.88 to the applicant as to why the proposed punishment should not be inflicted upon him and he can make representation against the same. The applicant replied to the show-cause-notice by letter dated 1.7.88. Thereafter, the disciplinary authority passed the impugned order and on appeal by the applicant on 5.9.88, the appellate authority Additional Commissioner of Police passed the order rejecting the appeal on 8.2.89.

6. The respondents in their reply stated that the applicant was proceeded against under Delhi Police(Punishment & Appeal) Rules, 1980 vide order dated 18.1.88. The applicant had been given due opportunity to represent ^{and} his case/ on the basis of the finding of the Inquiry Officer, the impugned orders were rightly passed which need no interference and the applicant had been rightly dismissed from service.

7. The applicant in the rejoinder has reiterated the same facts as he has averred in the OA.

8. We have heard the learned counsel for the parties at length and have gone through the records of the case carefully. The learned counsel for the applicant firstly argued that the acceptance of Rs.50 by the applicant as a bribe is not at all established on the evidence of witnesses examined by the department. It is argued that there is a lot of contradiction in the departmental evidence regarding giving and accepting of the alleged bribe of Rs.50. The learned counsel for the applicant also took us to the deposition of these departmental witnesses, Bharon Singh, PW-2 and Inder Pal Singh, PW-5 and read out portion of their statements and thereby argued that these are contradictory in nature and are not reliable. The Tribunal cannot go into appreciation of the evidence and it is the sole function of the Inquiry Officer. The Tribunal can interfere only when there is a case of no evidence and the conclusion has been arrived at by the Inquiry Officer on surmises and conjectures. This is not

the case here. A perusal of the statements of Sh. Bharon Singh PW-2 and Shri Inder Pal Singh PW-5 goes to show that they have stated facts on the basis of their understanding and observations. The conclusion drawn by the Inquiry Officer from their statements cannot be taken to be unreasonable or perverse. The learned counsel for the applicant has placed reliance on the following authorities:-

- (1) AIR 1985 SC 1121 (Khalli Ram Vs. State of Rajasthan)
- (2) AIR 1979 SC 1408 (Anil Kumar Vs. Presiding Officer)

The authority of 1985 Supreme Court relates to the appreciation of evidence in a bribe case where there were certain contradictions and in spite of that the Trial Court and the High Court maintained the conviction but the Hon'ble Supreme Court set aside the conviction after re-appraisal of the evidence of the witnesses. In the present case, the Tribunal has no power to appreciate the evidence and all the same there is no material contradiction in the testimony of the witnesses.

9. In the case of **Vishwamber Patnaik Vs. Union of India & ors.** (1992(1) CSJ 18), the Hon'ble High Court of Orissa has considered the similar matter and observed that interference is justified where departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where extraneous considerations to the evidence and merits of the case influenced

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the result of the enquiry .The interference is also justified where the conclusion drawn in the departmental proceedings on the very face of it is purely arbitrary, capricious that no reasonable person could have ever arrived at that conclusion. The High Court or the Tribunal cannot sit as appellate authority over the findings arrived at by the Inquiry Officer and the disciplinary authority. Looking to the charge against the delinquent the misconduct alleged is that on 4.11.87 at about 9.50 P.M. at Madhuban Chow picket Shri Bharon Singh Gurjar, ACP, Shri Nithianandan and Shri Inder Pal Singh all Police Officers were passing on a Motor Cycle (Tripple riding as a test). They were stopped by the picket. Constable Sushil Kumar i.e. applicant took Rs.50 as a bribe from Shri Bharon Singh and allowed them to go without checking verification. The contention of the learned counsel for applicant that the Inquiry Officer has given no reason at all to arrive at the findings given in the inquiry report and holding the charge proved is not sustainable. Mere discrepancy which has been pointed out by the learned counsel cannot alone bring out a finding of not guilty against the applicant. When a number of witnesses describe the same incident in their own way then there bound to be certain variations in their statements. Otherwise, if all of them state same thing it can easily be stated to be prompted by tutoring . The Inquiry Officer has discussed the evidence of each of the departmental witnesses as well as of the defence witnesses

and in the concluding para he has drawn conclusion from the evidence brought before him. The learned counsel's contention is that the Inquiry Officer should have given more detailed reasons covering all the discrepancies in the statements of the departmental witnesses. But this Tribunal cannot sit as an appellate authority and re-appreciate the evidence. Thus, the conclusion drawn by the Inquiry Officer cannot be said to be perverse or capricious.

10. The learned counsel for the applicant has argued that the disciplinary authority has not given any detailed reasons of agreeing with the findings of the Inquiry Officer. We have perused the order passed by the disciplinary authority and he has discussed the matter in quite detail. In para 3 of the order of the disciplinary authority, he has discussed whole of the summary of the evidence of the departmental witnesses. In view of the authority of the Hon'ble Supreme Court in the case of IIT BOMBAY VS. U.O.I.(1991 SCC(L&S) 1137), the disciplinary authority is not required to give detailed reasoning.

11. The learned counsel for the applicant further argued that the copies of certain documents were not supplied to the applicant. It was a simple case which was not at all based on any document but on certain factual happenings which transpired between the delinquent and the trap witnesses at Madhuban Chowk on 4.11.87. It has not been specifically stated that non-supply of any particular document has resulted in prejudicing the defence of the applicant. The applicant has

been given adequate opportunity and he has also examined the defence witnesses. The only grievance appears to be is that certain documents were supplied ^{with delay} to the applicant as is evident by his request made on 14.3.88 (Annexure G). In this letter, the applicant has admitted that the documents have been supplied to him quite late and certain PWS be recalled. Thus, the contention of the learned counsel has no basis.

12. The learned counsel for the applicant also argued that the Inquiry Officer has acted as Presenting Officer and has cross examined the witnesses. Under Rule 16(V) of the Delhi Police(Punishment & Appeal) Rules, 1980, the Inquiry Officer has, been given a right to question the witnesses to test their credibility and remove any ambiguity which has crept in the statement. Thus, the Inquiry Officer has not committed any breach of the rules in any respect. The counsel for the respondents argued that there is no challenge to this rule.

13. The learned counsel for the applicant has also argued that he has been falsely roped in because of certain animosity with the S.H.O. of the Police Station. We do not find any substance in this contention. Nor there is any specific allegation of malafide to justify any malicious act of omission or commission by the S.H.O and further, the said S.H.O. has not been made a party to these proceedings to rebut any allegation of malafide.

14. We have given our careful consideration to all aspects of the matter. We find no

substance in the arguments to differ with the conclusion arrived at by the disciplinary authority.

15. The appellate authority has also considered the various points raised in the appeal and passed a reasoned order. Thus, the applicant should not have any grudge on this count also as he has been given ^{the} fullest opportunity and has also been heard in person. Paragraph 6 of the appellate order dated 8.2.89(Annexure Q) fully dealt with the matter in issue.

16. In view of the above discussion, we find no merit in the present OA and the same is dismissed with no order as to costs.

J. P. Sharma
(J.P.SHARMA) 30.4.93
MEMBER(J)

I. K. Rasgotra
(I.K.RASGOTRA)
MEMBER(A)