

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 795 of 1989

This 25th day of February 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

Bhagwan Singh
S/O Shri Lulu Ram,
Village & Post Office Bijwasan,
New Delhi-61

..... Applicant

By Advocate: Shri J.K. Bali

VERSUS

- *. Lt. Governor, through
Cheif Secretary,
Delhi Administration,
Alipur Road,
Delhi.
- 2. The Commissioner of Police,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
- 3. The Addl. Commissioner of Police,
D.A.P., Police Headquarters,
MSO Building, IP Estate,
New Delhi.
- 4. The Deputy Commissioner of Police,
6th Battalion,
DAP, Police Lines,
Model Town,
New Delhi.

..... Respondents

By Advocate: Ms. Avnish Ahlawat

O R D E R (Oral)
(By Hon'ble Mr. J.P. Sharma, M(J)

The applicant, Bhagwan Singh, Constable Driver, has been departmentally proceeded under Section 21 of Delhi Police Act 1978 and Delhi Police (Punishment & Appeal) Rules 1980 for alleged misconduct that he alongwith Dharam Raj, while posted at Teen Murti Lines took out diesel from the government Truck No. DEL-673 for illegal sale on the night between 9th and 10th November 1987 and kept the said diesel in two cans at the shop of one Surendra Pal nearby the lines which was recovered by Sh. Shri Kishan, S.I. The

S.I. Shri Kishan kept the diesel in his room and went to report the matter to Inspector Jai Chand who was Company Commander of 'A' Company of 6th batallion of DAP. In the meanwhile the applicant, Constable Bhagwan Singh took out the diesel from the room of the SI and scattered the same on the roof to destroy the evidence. Regarding Constable Driver Dharam Raj it was said that he attempted over-writing inthe log-book of the said truck at Sl. No. 7,8 and 10. The summary of allegation was issued onwhich departmental enquiry was held and Inspector Mahavir Singh was appointed as Inquiry Officer who examined 6 witnesses on behalf of administration and 3 witnesses on behalf of the applicant. Thereafter after discussing the material evidence oral and documentary, the I.O. submitted his report dated 20.4.88 to the Disiciplinary Authority who by the order dated 18.8.88 passed the order of dismissal from service against both the constables and the appeal in the same was rejected by the Addl. Commissioner of Police by the order dated 3.11.88.

2. The present application was filed in April 1989. The respondents in their reply have taken a stand that the Company Commander of 'A' Company received information that Constable Driver Dharam Raj was selling diesel of the government truck No.DEL-673. He instructed all his three officers i.e. SI Sh. Shri Kishan, Surender Singh and Kanwar Singh to keep an eye on the said Dharam Raj and to catch him red handed. It is said that a raid was laid on the night betwen 9th and 10th November 1987 on the information by an informer that Constable Driver Dharam Raj had taken diesel fromthe said truck and had kept it somewhere on which Sh. Shri Kishan made a thorough search in the lines. On the next day when he went to take tea at the nearby 'kohokha' he found two cans of diesel in the 'Khokha' owned by Surender Pal. The said Surender Pal told him that Constable -Driver Dharam Raj and Constable Bhagwan Singh had kept these cans at 9.00 p.m. on the previous night and also told that they will take the cans today.

Sh. Shri Kishan, SI took those cans from the tea stall and kept them in 'Kot' of 9th Bn. under the charge of Constable Subhash. Constable Subhash took the cans and kept them in the room of Sh. Shri Kishan as per his instructions. When SI Kishan was reporting to the Inspector Jai Chand, Constable Bhagwan Singh, MC Rider, who also present there, fled away immediately. SI Kishan sent Constable Virender Singh to bring the cans from his room. On return Constable Virender Singh reported that no such cans are available in his room. Thereafter SI Sh. Kishan informed that the diesel was ^{sealed} ~~sealed~~ on the roof. It is said that the witnesses, particularly the key witnesses, Surender Pal, who also lodged a report mentioning both the present applicant, Bhagwan Singh and Constable-Driver Dharam Raj that they had on the night between 9/10.11.87 placed the two cans of diesel in his tea stall.

3. We have heard the learned counsels for the parties. The matter was also taken up yesterday but the departmental file was not available. So it was adjourned for hearing today.

4. The learned counsel for the applicant argued that this is a case of no evidence and that the finding of the I.O. is based solely on surmises and conjectures. We have gone through the findings of the I.O. In fact the earlier Inquiry Officer was Shri Chetan but subsequently the inquiry was completed by Shri Mahavir Singh. In only one paragraph the I.O. has drawn his conclusion. It is stated that the delinquents have taken the stand that they did not remove the diesel from the aforesaid truck. The I.O., however, considered the statement of Surender Pal who was examined as PW-2 and the report lodged by him (Exb.PW 2/A) and he ofcourse did not support his statement in the cross examination.

5. The I.O. against Dharam Raj also observed that the statement of DW-1 goes against that constable. This has no concern with the findings against the applicant, Bhagwan Singh.

6. The Tribunal cannot sit as an appellate authority nor it can appreciate the evidence which is the sole prerogative of the I.O. However, the Tribunal can interfere in the case where either there

no misconduct or there is no evidence whatsoever against the delinquent to establish the charge and lastly even if there is an evidence, the finding is perverse and not sustainable under law. We have confronted the learned counsel for the respondents with the statement of the witnesses examined on behalf of the administration. The key witness in this case is only Surender Pal, the owner of the tea stall. The other witnesses are only link witnesses who do not support any allegations either of taking out the diesel from the said truck or keeping the cans in the shop of Surender Pal or of one of the delinquents, Bhagwan Singh, removing the can from the room of SI Shri Kishan and splitting their diesel on the roof. The statement of Surender Pal, PW-2, of course, in the examination before the I.O. supports the writing of the report, Exhibit 2/A, but that report itself cannot be said to be a document to draw an inference that the cans of diesel were kept by the applicant alongwith Constable-Driver Dharam Raj in the tea stall of Surender Pal. In fact this witness has clearly stated that he did not know the name of the constables and that he came to know subsequently from some other person. He does not know that person also. When the I.O. himself put a question, Surender Pal said he does not recognise those constables even by face. This deposition of Surender Pal does not connect the applicant, Bhagwan Singh either by name or by the appearance to the persons who have placed the diesel cans in his shop. There may be certain suspicion that these may be those persons as Surender Pal in the report Exhibit 2/A ^{has} given their names. But suspicion cannot take place of a proof. In a departmental inquiry also a fact has to be established either by circumstances of the case or by any documents admissible and proof on record or by oral disposition of eye witnesses. That is lacking in this case.

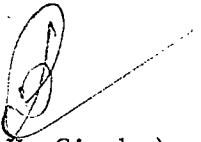
7. The learned counsel for the respondents, Ms. A. Ahlawat, giving ^{support} to the finding of the I.O. said that the finding arrived at were justified on the basis of evidence on record before the Inquiry Officer. In view of this fact we find that the finding of

the I.O. has not been rightly considered by the Disciplinary Authority and he failed to apply strictly his mind on the whole case. He merely agreed with the findings without going through the various evidence produced by the administration. Here it may be pointed out that the case of the applicant, Bhagwan Singh, Motor Cycle Rider, is different from the other delinquent, Dharam Raj, Constable-Driver. Dharam Raj is the driver of the truck and there was information with the Company Commander that the said Constable-Driver is of the habit of selling diesel of the government truck after taking away the same from the vehicle. The log book also had certain over-writing. We are, therefore, not touching the finding given by the I.O. against the said Dharam Raj nor do we observe that the Disciplinary Authority did not rightly exercise his decision in the case of Dharam Raj. Our observation in this judgment are confined to the applicant, Bhagwan Singh only.

8. We have gone through the orders of the appellate authority and the orders of the Additional Commissioner of Police who did not differentiate the case of the two, i.e. the present applicant and Dharam Raj, Constable-Driver. In view of the above facts and circumstances we find that the impugned order of punishment cannot be sustained and the orders of the punishment against the present applicant, Bhagwan Singh, are quashed and set aside. He shall be reinstated in service within a period of one month after the receipt of these orders. He shall be entitled to full wages and allowances. ^{from the date of his reinstatement in pursuance of the order.} The applicant shall make a representation for the grant of back wages from the date he was dismissed from service to the date of his reinstatement. If the applicant satisfies the respondents that he was not gainfully engaged elsewhere during this period from the date of his removal from service, he shall be entitled to all the wages of that period also. In any case this period shall be treated as spent on duty for all purposes and he

shall be entitled to all benefits of promotion etc. on that basis.

There will be no order as to costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

vpc