

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.818/89

NEW DELHI THIS THE 29th DAY OF JULY, 1994.

MR.JUSTICE S.K.DHAON, ACTING CHAIRMAN
MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Raghunath Singh
S/o Shri Ram Rattan Ram,
R/o 178, Police Training School
(P.T.S), Malviya Nagar
New Delhi

APPLICANT

BY ADVOCATE SHRI G.D.GUPTA.

Vs

1. Delhi Administration,
through its Chief Secretary,
5 Sham Nath Marg,
Delhi-110054.
2. The Commissioner of Police
Police Headquarters, I.T.O.
New Delhi.
3. The Addl. Commissioner of Police,
New Delhi Range,
Police Headquarters,
I.P.Estate
New Delhi.
4. The Addl. Deputy Commissioner of Police,
South District,
New Delhi

RESPONDENTS

BY ADVOCATE SHRI SURAT SINGH.

ORDER

JUSTICE S.K.DHAON:

The applicant, a Constable in the Delhi Police, was subjected to disciplinary proceedings under the Delhi Police Act, 1971 and the Rules framed thereunder. The usual procedure was followed. The inquiry officer submitted his report to the disciplinary authority. The applicant was furnished with a copy of the report of the inquiry officer. He gave his explanation thereto. On 18.9.1987, the disciplinary authority awarded the punishment of dismissal from service to the applicant. On 31.12.1987, the Additional Commissioner of Police, acting as the appellate authority, dismissed the appeal preferred by the applicant. On 21.5.1988, the Commissioner of Police dismissed the revision application filed by the applicant. The three orders are being impugned in the present OA.

2. Indisputably on 14.4.1986, the applicant was detailed for duty at Eros cinema, Jangpura, New Delhi from 9.00 A.M. to midnight. The allegation against him was that while performing duty at Eros cinema, he was a party to the sale of tickets in the black market. The summary of allegation, as served upon him, runs as follows:

On getting information regarding black marketing of cinema tickets at Eros cinema at the behest of the applicant, a raiding party consisting of S.I. Habib Ahmed, Constable Desh Raj, Constable Chander Vir and Constable Bhoop Singh was directed to conduct a raid at the evening show. The raiding party found that the tickets were being sold openly in black market in the presence of the applicant. A black marketer Kalu was apprehended. 5 cinema tickets and Rs.30/- were recovered from him. The applicant started misbehaving with Constable Chander Vir of Vigilance Branch who was standing near him. He (the applicant) took away Rs.80/- forcibly from one of the pockets of Kalu when he was in custody.

3. Admittedly, witnesses were examined by the inquiry officer and thereafter, as required by the relevant rules, that officer framed charges which were substantially the same as contained in the summary of allegation.

4. Since the learned counsel for the applicant has vehemently urged that the findings of the three authorities below fall under "no evidence rule", we may, in brief, read the evidence of the prosecution witnesses, as material. They are:

(1) SI Habib Ahmed.

He deposed that on 14.4. 1986, he was present in the Jangpura area in connection with the patrol duty and for prevention of crimes. Constable

Chander Vir Singh and Jai Raj met him patrolling the area. In the meantime, an information was received that a young person was selling tickets at Eros cinema in black market. On getting the information, the Constables were deputed to keep a watch at Eros cinema. Constable Raghu Nath Singh (the applicant) was also present at Eros cinema. The applicant on seeing Constable Chander Vir Singh present at the hall got enraged and tried to remove him (Chander Vir Singh) from there by way of talking nonsense when Constable Chander Vir Singh did not leave the place, he hurled abuses at him. Constable Chander Vir Singh had apprised him about the incident. Constables Jas Raj and Chander Vir Singh overpowered a person named Kalu Ram when he was selling tickets in black market and when this was being done, the applicant had taken out some money from the pocket of Kalu Ram. At that time, he was at some distance from Kalu Ram. He was apprised about the incident by Constable Chander Vir Singh. Five tickets were recovered from Kalu Ram of the current show. An F.I.R No.124/86 dated 14.4.1986 u/s 7C(11) P.C.R. Act was got registered with Police Station Nizamuddin. Kalu Ram confessed his guilt in the court on 17.4.1986. He was fined Rs.50/- by the Metropolitan Magistrate, Patiala House. In cross-examination, this witness stated that he did not himself see the incident. He was informed about the incident by Constable Chander Vir.

(2) Inspector Lakshmi Narayan:

On 14.4.1986, an informer informed him that tickets were being sold in black at Eros cinema. On getting this information, a raiding party comprising S.I. Habib Ahmed, Constables Desh Raj, Chander Vir Singh and Jaswinder Pal Singh was deputed to organise a raid at Eros cinema. He was informed by S.I. Habib Ahmed and Constable Chander Vir Singh that

a person named as Kalu Ram was selling tickets in black market. Whereupon Constables Chander Vir Singh and Desh Raj were sent to watch him and the other members of the raiding party stood at some distance. At that time, the applicant was on duty at Eros cinema. The informer informed the raiding party that the applicant himself was selling tickets in black. During the watch, the applicant came to know that Constable Chander Vir Singh was watching Kalu, the black marketer. The applicant started hurling abuses at Constable Chander Vir Singh. Constables Chander Vir Singh and Desh Raj overpowered Kalu and seized five tickets from his hand. Meanwhile, the applicant had taken out Rs.80 from the pocket of Kalu. Rs.30/- were recovered from the right pocket of the pant of Kalu. In cross-examination, this witness stated that SI Habib Ahmed incharge of the raiding party of the Vigilance and Constable Chander Vir Singh told him about the quarrel took up by the applicant. He also stated that the informer had come to the Vigilance office and informed that the tickets were sold in the black market at Eros cinema. Thereupon he sent a raiding party comprising Habib Ahmed S.I. to organise a raid. A question was put to this witness that he had implicated the applicant at the instance of Constable Chander Vir Singh since an altercation had already taken place between him (the applicant) and Constable Chander Vir Singh. The answer given was that Constable Chander Vir Singh had never disclosed to the witness about any altercation with the applicant nor the witness had implicated the applicant. In fact, the informer had disclosed that the applicant himself was doing black of tickets at Eros cinema. That is why, he deputed S.I. Habib Ahmed to arrange an anti-black-marketing raid at Eros cinema.

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(3) Constable Bhoop Singh:

He along with the raiding party reached the Eros cinema at about 6 O' Clock. He and the party noticed a boy selling tickets in black near the cycle stand. On inquiry that boy disclosed his name as Kalu. He was selling tickets of Rs.2/- for Rs.5/- when he was overpowered. The applicant who was posted there came and took out Rs.80/- from the front pocket of the shirt of Kalu Ram. On the search of the person of Kalu Ram, five tickets and Rs.30/- were recovered from the pocket of his pants. Kalu Ram was apprehended. To a question put to this witness by the applicant as to where he(the applicant) was at the time Kalu Ram was apprehended. The answer is "You were standing there itself when we had apprehended Kalu Ram".

(4) Constable Chander Vir Singh

While patrolling the area along with others, Habib Ahmed, SI informed him and others that the Film " Saltanat" was being exhibited at Eros cinema and the tickets were being sold in black. S.I. Habib Ahmed deputed them to have a watch. This witness stood aside. The applicant reached there and asked him to leave the place. He left the place and took another side. The applicant reached there also. Thereupon the applicant asked him to leave the place otherwise, he(the applicant) will break his legs by way of hitting him with lathis. He just kept quite. However, the applicant started hurling filthy abuses at him. To avoid any ugly scene, this witness left the place and went to the SI and apprised him of the facts. The other Constables apprehended Kalu Ram. In the meantime, the applicant came over there and took out Rs.80/- from the front pocket of Kalu .

(5) Constable Desh Raj

He was posted on patrol duty in Jangpura area along with Constables Chander Vir Singh Jasvinder Singh. All of them started having a watch at Eros cinema. They caught hold of a boy who was indulged in black-marketing of the tickets, who on interrogation turned out to be Kalu. When personal search of Kalu was going on, the applicant came and took Rs.80 from the front pocket of Kalu. A question was put to him that the applicant had a quarrel with Constable Chander Vir in Police Station Nizam-Uddin. In order to take revenge, they had brought that boy from somewhere else to implicate him.

5. The applicant upon a question being put by the inquiry officer deposed:

His duty was at Eros cinema from 9A.M. till the last show in the midnight. No report regarding a quarrel between him and Constable Chander Vir Singh at Nizam Uddin had been lodged or got recorded. No inquiry in regard to the said altercation was made. His duty at Eros cinema on 14.4.1986 was his first duty. His posting at Police Station Jangpura was made either on 7.4.1986 or 8.4.1986.

6. In his defence, the applicant examined S/Shri Ram Kumar, Devi Singh and Kalu Ram. An uncomplete copy of the statements of Shri Ram Kumar alone has been filed as one of the annexures to this OA by the applicant. The statement of the said witness as paraphrased by the inquiry officer in his report runs:

(1) D.W.1 Shri Ram Kumar

He states that he works at the Vijay Cycle Stand at Eros cinema. On 14.4.1986 Kalu was standing at the picture hall at about 6.00 P.M. 3/4 persons came there in plain clothes and apprehended Kalu. They searched Kalu and recovered 5 cinema tickets

from his person. Neither any money was recovered nor any struggle took place. Kalu was convicted earlier for the sale of cinema tickets in black. 700/800 persons gathered at the spot where Kalu was apprehended.

(2) D.W.2 Devi Singh

He works on a water rehri at Eros cinema. 3/4 persons in plain clothes apprehended a boy. The constable on duty was not there. He was standing at some distance at the booking window. The boy apprehended was known as Kalu. Kalu was apprehended while selling cinema tickets in black market.

(3) DW 3 Kalu

He admitted that he was apprehended on 14.4.1986 for selling tickets in black market. He was released on bail at P.S.Hauz Khas. The court convicted him for the offence of selling tickets in black market. He was fined Rs.50/-. He had no money in his pocket and, therefore, the question of taking out some rupees from his pocket did not arise. No altercation between the applicant and the policemen who apprehended him took place. The applicant was not present there.

7. The inquiry officer considered the evidence of the prosecution witnesses and the defence witnesses. He rejected the testimony of Kalu on the ground that he had a shady character. He believed the version of the prosecution witnesses that the applicant had taken out some money from the front pocket of the shirt of Kalu when he was apprehended for selling tickets in black market. He recorded a finding that the prosecution witnesses proved that the applicant was present on duty when Kalu was selling cinema tickets in black market but the applicant did not take any action against Kalu prior to his being apprehended.

He concluded:

"All these goes to prove that the defaulter Const. was mixed up with Kalu in the sale of cinema tickets in black."

He summed up:

"I am of the opinion that the charges framed and served upon the defaulter stand proved."

8. The disciplinary authority while awarding the punishment of dismissal from service observed that he had carefully gone through the reply, oral submissions in O.R. and the records available on the D.E. file. It also observed that the Constable (the applicant) was on duty at the cinema hall and was supposed to ensure no black marketing of cinema tickets in his presence, but he failed in his duty. Therefore, he has no ground to continue in the force and he has nothing to say in his defence.

9. The appellate authority observed that he had carefully gone through the appeal, the departmental file and other relevant papers leading to the punishment given to the applicant. His plea that the black marketer had not been examined during the departmental proceedings is not tenable because the inquiry officer has not deemed it proper and that no reliance can be given to the statement of such a person. His next plea that there is clear cut contradiction in the admissions of P.W.I Constable Desh Raj who has admitted in cross-examination, "Const. Raghu Nath was not there when they caught Kalu. They then took Kalu towards cycle-stand. At that time Const. Raghu Nath came there". Whereas P.W. Const. Chandervir Singh has admitted on cross examination that "they caught Kalu from the cycle stand of Eros cinema and Const. Raghu Nath was present there at that time." This plea of the applicant has no force. Although there is a slight contradiction in the statements of the

P.W.I and P.W.2, yet it cannot be denied that the applicant was not present at the spot at the time of the incident. The cycle stand and the place from which the said black marketer was apprehended are within the premises of the cinema hall. According to the admission of the applicant himself, he was on duty at the cinema hall from 9 A.M. to the closing of the last show. Thus he cannot escape the responsibility of not apprehending the black marketer for the sale of the cinema tickets. The mere fact that Kalu has not been produced as one of the prosecution witnesses does not disprove the fact that a sum of Rs.80 was in the pocket of Kalu and the applicant had taken out the said sum from his pocket(Kalu's). Kalu's testimony is not worthy of reliance because of his bad character.

10. The appellate authority dealt with the plead of the applicant that the allegation of misbehaviour with P.W-2 Constable Chander Vir could not be proved because none of the eye-witnesses had supported the allegation. He relied upon the statements P.Ws 1,2 and 6 for coming to the conclusion that the applicant had himself misbehaved with Constable Chander Vir Singh. The plead that Constable Bhoop Singh was not a member of the raiding party, and how he came at the cinema hall as a P.W. is met by the appellate authority by saying that Constable Bhoop Singh was also patrolling in the area of P.P.Jangpura who later on went to the cinema hall with the vigilance staff. The appellate authority recorded a finding that the presence of the applicant on the relevant date has been established and it has also been conclusively proved that black marketing was going at the cinema hall. He also recorded the finding that a sum of Rs.80 was pulled out by the applicant

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from the pocket of Kalu since the tickets were being sold in the black market. The connivance of the applicant with the black marketers has been established. He concluded that the retention of the applicant in the force will not be in the interest of the discipline.

11. The revisional authority while endorsing the findings recorded by the appellate authority further recorded a finding that the plea of the applicant that he did not have good terms with Constable Chander Vir Singh was baseless. He also recorded a finding that he could not prove this version during departmental proceedings. He also recorded a finding that the charge levelled against the applicant has been fully proved during the departmental proceedings. It also recorded the finding:

" The charge against the petitioner is serious which will render him unfit for police service."

12. Before we deal with the submissions made on behalf of the applicant, we would like to clear the ground. Unlike a criminal trial in the departmental proceedings, a charge need not be proved beyond any shadow of doubt. In departmental proceedings, the rule of evidence applicable is preponderance of probabilities. In departmental proceedings even hearsay evidence is admissible. In an application under Section 19 of the Administrative Tribunals Act, 1985, we are not competent to re-appraise the evidence. What has to be seen is a fair-play-in action. No procedural irregularity has either been pointed out or exists.

13. The learned counsel for the applicant did not advance any argument that the procedure has not been followed; that the applicant has not been dealt with fairly during the course of the inquiry and

furthermore a reasonable opportunity had not been given to the applicant to defend himself.

14. The learned counsel for the applicant has in the first place urged that this is a case where "no evidence rule" is applicable. He also urged that the findings recorded by the authorities below are perverse. To substantiate this statement, he has tried to show that there are inherent contradictions in the prosecution witnesses. The task of the disciplinary authority and the appellate authority as well as the revisional authority was to separate the wheat from the chaff. That has been done according to us quite satisfactorily. Minor contradictions here or there will not vitiate the findings. We have already referred in detail to the oral evidence on record and we are satisfied that while appreciating the testimonies of the prosecution witnesses or defence witnesses, the authorities did not misdirect themselves. It was within their jurisdiction to accept one version and to reject the other version. We are satisfied that the findings of the authorities below are based on relevant material. The findings of fact, therefore, cannot be interfered with by us.

15. The counsel next urged that the charge that the applicant had misbehaved with Constable Chander Vir Singh has not been established. He urges that apart from the testimony of Constable Chander Vir Singh, there is no other corroborative evidence in the sense that no witness directly supports the version of Constable Chander Vir Singh. Be that as it may, the finding can be sustained on the sole testimony of Constable Chander Vir Singh. The revisional authority has pointed out that the applicant failed to establish that Chander Vir Singh had animosity towards

the applicant. The alleged altercation between Constable Chander Vir Singh and the applicant was neither reported to the higher authority nor did he care to lodge any report about this allegation. This aspect has been emphasised by the appellate authority and the revisional authority.

16. The counsel next urged that the inquiry officer had not recorded any specific finding that the applicant had misbehaved with Constable Chander Vir Singh. That is not so. There is no finding of the inquiry officer that the charge that the applicant had misbehaved with Constable Chander Vir Singh remained unproved. The inquiry officer dealt with the testimony of the prosecution and defence witnesses. In its finding the misbehaviour of the applicant with Constable Chander Vir Singh was implicit. Assuming, the inquiry officer has not recorded any finding on the question of misbehaviour of the applicant with Constable Chander Vir Singh that factor did not debar or prohibit the appellate authority for going into that question. It is a trite law that an appeal is a continuation of the original proceedings. The appellate authority, therefore, was fully competent to examine this question.

17. The next contention was that the disciplinary proceedings stood vitiated because Kalu has not been produced as a prosecution witness. Since Kalu had been produced as a defence witness no prejudice whatsoever was caused to the applicant by not producing Kalu as a prosecution witness. Moreover, Kalu having admitted that he was caught indulging in black marketing of the cinema

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tickets and later on he was acquitted for the same offence by the competent court goes to show that Kalu was, in fact, present on the spot and ^{he} really indulged in the sale of cinema tickets in black market on the day when the applicant was posted at Eros cinema from 9A.M till the last show in the midnight. The authorities below were within their jurisdiction in accepting one part of the testimony of Kalu and rejecting the other part of his testimony, namely that Rs.80 had not been taken out from his person by the applicant. Nothing will turn upon the fact that he supported the defence version with respect to the charge relating to the taking away of Rs.80 by the applicant from the pocket of Kalu.

18. It is next urged that the disciplinary authority has not dealt with the reply given by the applicant. The disciplinary authority has passed an order which shows due application of mind. It has agreed with the finding of the inquiry officer. It cannot be said that it was oblivious of the reply given by the applicant.

19. It is next contended that the appellate order was passed without application of mind. This is not so. The appellate order contains reasons and also discloses due application of mind.

20. Lastly, it is contended that the order of the disciplinary authority does not disclose that it has applied its mind on the question of punishment to be awarded in so far as it failed to record a categorical finding that the applicant was guilty of grave misconduct and was unfit to be a member of the Police force.

21. The law on the subject is that in a given ^{an} case, there should be either express or implied finding that the misconduct attributed to a delinquent servant is so grave that it warrants his dismissal

or removal from service. The further requirement is that on account of the misconduct attributed, the delinquent servant should be considered to be unfit to be a member of the police force. Even the finding on the last issue, namely fitness of a person to be a member of the police force can be either express or implied. So long as the application of mind of the authority passing the order is demonstrated or discernible, the order will not be bad for want of the due application of mind on requirement of Rule 8 of the Delhi Police(Punishment & Appeal) Rules, 1980.

22. The summary of allegation itself states that the acts of the applicant amounted to gross misconduct. The charge framed against the applicant contained the recital:

"The above act on the part of you amounts to gross misconduct which render you liable for Departmental action u/s 21 of D.P.Act, 1978."

The disciplinary authority observed amongst others that the applicant has no ground to continue in the force. The appellate authority observed amongst others that the retention of the applicant in the force will not be in the interest of the discipline. The revisional authority observed that the charge against the applicant was serious which rendered him unfit for police service. The summary of allegation, the charges framed against the applicant, the findings recorded by the three authorities below lead to an irresistible conclusion that the requirement of Rule 8 of the aforesaid Rules was substantially complied with. The award of punishment of removal from service to the applicant cannot be disturbed by us on the ground that / this Tribunal in OA No.1712/91(Mool Chand Vs.Delhi Administration & ors.) and two similar OAs rendered on 10.9.1993 on the interpretation of Rule

8. ^{and} ~~is~~ applicable. We repeat that the ratio laid down by this Tribunal in the aforesaid cases has been substantially complied with keeping in view the facts and circumstances of this case.

23. This application has no merit. It is dismissed but without any order as to costs.

B.N.Dhundiyal
(B.N.DHUNDIYAL)
MEMBER(A)

S.K.Dhaon
(S.K.DHAON)
ACTING CHAIRMAN

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