

and fitted in the Car No.DIA 6357. After checking the genuinity of the work done and the spare parts fitted, SI Bheg Singh, ASI Kishan Lal and SI Kulwant Singh were satisfied and the Car was handed over to the authorities. He thereafter went on leave from 1.2.1985 to 2.3.1985 during which time, the Car was again brought to the MT workshop with some defects in the gear box and was found that Gear box having marks 'GA/4 IW000' was found fitted in the Car and the counter Gear was also found to be in duplicate as against the same supplied by the firm. An enquiry was conducted against him and the Enquiry Officer gave his report recording the finding that the charge has been proved and found the applicant responsible for the replacement of genuine counter gear with duplicate one. The applicant states that the charge proved is arbitrary and without any evidence on record and acted at the behest of his superior officer. A show cause notice was served against him and the applicant in his reply stated that his duty involves only assisting the repairing team and not buying or confirming the genuineness of spare parts of the vehicle and that he had fitted only after the approval of Senior Officer. On 29.1.1987, the applicant was served with the impugned order and on 22.2.1987 the applicant filed an appeal to the Additional Commissioner of Police (Operation) against the order which was rejected. The applicant has prayed

for calling the record of the case and set aside and quash the Enquiry Report dated 9.10.1986, the impugned order dated 29.1.1987 forfeiting one year's approved service and the appellate order dated 24.9.1987 rejecting the appeal, with all consequential benefits including seniority and promotion.

3. The respondents have stated in their counter affidavit that a new counter gear, counter gear shaft and top gear bearing were purchased by the purchase clerk only on the confirmation of genuineness of these parts by the applicant, who had accompanied the purchase clerk to the local market. These spare parts were then issued to him for fitting in the said vehicle. When the Car was brought to the PCR workshop with defects in its gear box, it was found on dismantling that a duplicate counter gear having marks "GA/4, IW000" had been fitted instead of a genuine one. The firm from where the spare part was purchased has denied to have supplied that duplicate counter gear and submits that only after the approval of the technicians of PCR workshop that a genuine HM counter gear was supplied. The respondents allege that the counter gear was purchased only after the applicant confirmed its genuinity and instead of fitting the genuine counter gear, he replaced the same

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with the duplicate one. After the departmental enquiry proved the charges levelled against him, a show cause notice proposing to forfeit his three years approved service permanently entailing proportionate reduction in his pay was issued to him. The applicant's reply dated 3.12.1986 was considered and was also heard in orderly Room on 2.1.87 which were found unsatisfactory. His appeal was also considered and rejected.

4. The applicant has alleged in his rejoinder that he is only a member of the repairing team and has nothing to do with the purchase of spare parts nor it is his duty. Since the confirmation of genuineness of spare parts was not his duty the alleged confirmation by him, is immaterial. The purchase clerk (PW-1) and (PW-3) are wholly responsible for the alleged irregularities. However, the respondents acted wholly arbitrary and mala fide in not proceeding against PW-1 and PW-3 and other officers who are responsible. He specifically denies that he did not give any confirmation of genuineness of the parts as alleged by the respondents. There is no evidence on the record to the effect that the counter-gear allegedly fitted by the repairing team bears which marks. The testimony of PW-2 is not reliable at all to show that the said counter gear was not supplied by the firm. No witnesses from the firm from which the spare parts were purchased has been examined by the respondents and,

therefore, has not been proved that the counter gear was not supplied. Therefore, the alleged certificate supplied by the firm has no value. The Enquiry Report submitted by the Enquiry Officer is arbitrary and unjustified as the Enquiry Officer has jumped to the conclusion ignoring the material evidence on the record. The punishment awarded to him is excessive in nature and rejection of appeal by the Appellate Authority was also illegal and unjustified.

5. We have heard learned counsel for both the sides and perused the record. The main crux of the arguments is that there is no evidence to connect the accused with the case and punishment awarded to him is illegal and arbitrary.

6. We have seen the departmental enquiry proceedings produced by the learned counsel for the respondents. When we directed them to produce the english translation of the depositions, the learned counsel for the respondents produced before us on 21.5.1993.

In Khyali Ram's statement, the deposition is as under:

"On opening the gear box the counter gear was removed. It had "GA/4 IW000" mark and this was not the genuine part of HM..."

"About this, he gave a certificate to Inspector Malhotra in writing which is Ex.2/A. In this respect it was felt that Mechanic Kul Bhushan Kumar was responsible. Therefore,

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officers asked him to repair the Car at his own expenses who repaired it at his own expenses. But after few days this counter gear was again out of order whose report was prepared and sent to the senior officers. When the car came for repair second time, counter gear found in that Car was sealed by Inspector (MT) after obtaining a certificate from the suppliers".

This witness has not been cross-examined in spite of opportunity given to the applicant who stated that 'I do not want to cross-examine SI Khyali Ram Sahib about his above statement'.

7. In the statement of Shri Yadav Chand Sharma, PW-2, it was stated that 'on 15.2.1985 I gave a counter-gear make 'HM' towards bill No.800 which was purchased by Shri Kul Bhushan Kumar present Mechanic PCR, Purchase Clerk Keshar Singh from my shop. The counter gear was checked by Shri Kul Bhushan Kumar and found to be genuine'. It was further stated that 'when the applicant came to me and showed me a broken counter gear and said that this was supplied by me and this counter gear is broken, I, after seeing the broken counter gear, found that it was not the same counter gear which I had given to the applicant, but this counter gear was of 'Alfa general' mark and they did not give the same'. The applicant is questioned on

cross-examination. Except the date of 22.1.1985 he is telling 15.2.1985. On re-examination it is clarified that the date is 22.1.1985. On re-examination, there is no cross-examination ~~by the applicant.~~

8. In the statement of Head Constable Keshar Singh, PW-3, we find that "Inspector/MT called Mechanic Kul Bhushan and told him that he had supplied HM make counter-gear and not Alfa make. He will take action in this respect and will inform the officers about this. On this, Kulbhushan accepted his fault and said that he will repair the vehicle at his own cost. Thereafter, after about 3-4 days he repaired the vehicle and sent it out. But the vehicle came back after 3-4 days with the same defect. On opening the vehicle the counter gear was found to be broken and welded which was sealed by the Inspector Sahib and wrote about this to officers". This witness also the applicant did not cross-examine stating that I do not want to cross-examine HC Keshar Singh No.828/ND about his above statement. The defence witnesses (DW-1 to 3) were examined. Their evidence is almost identical.

9. There is no presumption that the prosecution witness ^{es} speak lies or they are interested witnesses. But on the other hand, the defence witnesses are interested to save the applicant. But they did

not say anything in support of the applicant. So these defence witnesses are not useful to the applicant.

10. We are conscious of the facts that we are not an appellate court under ^{which} ~~which~~ jurisdiction we are ^{not} supposed to appraise the evidence. We have just looked into these aspects of the depositions because the arguments of the learned counsel for the applicant are that there is no evidence connecting the applicant to ^{the} incident. It is seen therefore, by his own showing the applicant admits he will repair at his own costs and refuses it and again goes back. At one place, he admits that he has visited the shop. The Reviewing Officer has already taken a lenient view and reduced the sentence to the present impugned order dated 29.1.1987 forfeiting one year's approved service of the applicant permanently. Besides, in Parmanand's case which is reported in AIR 1989 SC 1185, their Lordships held with regard to quantum of punishment;

"Courts cannot interfere with the punishment imposed by the competent authority consistence with rules and in accordance with the principles of natural justice".

Therefore, we are not inclined to interfere with the punishment given to the applicant by the competent authority which has already taken a lenient view. We see by the above admissions that the applicant has made out a case against himself rather than demolishing the case of the respondents.

A man may speak wrong but the circumstances will not speak wrong. We see that there are ample circumstance to connect the applicant. By his own showing, there is enough evidence for the disciplinary authority to draw a conclusion that the charge is proved.

11. The other arguments are not germane to the main case. In the departmental proceedings to prove the charge, the perponderance of probability are sufficient whereas in criminal proceedings the case has to be proved beyond a reasonable doubt.

12. In view of the observations made by us, we are not persuaded to interfere and to show indulgence in this matter. However, the applicant may again make a representation in view of the long suffering since 1988. The respondents are at liberty to reconsider his case with reference to punishment awarded to him, if they so choose.

13. With these observations, this O.A. stands disposed of. No costs.

(C.J. ROY)
MEMBER (J)

6/7/93

'SRD'

(A.B. GORTHI)
MEMBER (A)