

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXX~~
PRINCIPAL BENCH

O. A. No. ~~XXXXX~~ 1858/87 ~~199~~

DATE OF DECISION 24-3-1992

Shri Chaman Singh Applicant (x)

Smt. Meera Chhiber Advocate for the Applicant (x)

Versus

Delhi Administration Respondent (s)

Shri Jagdish Vats Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. A.V. Haridasan - Judicial Member

and

The Hon'ble Mr. I.K. Rasgotra - Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

Shri Chaman Singh, Head Constable attached to the Office of the Deputy Commissioner of Police, Traffic, Delhi, has filed this application under Section 19 of the Administrative Tribunals Act impugning the enquiry report, the order dated 10.10.1986 of the DCP (Traffic), Delhi, the respondent No.3 imposing upon the applicant a punishment of reduction in rank from the post of ASI to that of Head Constable, the order dated 9.2.1987 of the second respondent, Additional Commissioner of Police, Delhi, rejecting his appeal and the order dated 28.6.87 of the Commissioner of Police, Delhi, rejecting his revision.

2. The factual matrix is as follows. While the applicant was working as ASI in the Traffic Department of Delhi Police, he and Constable Naresh Kumar were charge sheeted for alleged unauthorised checking of vehicles. It was alleged in the charge sheet that at about 6.30 a.m. on 27.3.85, the applicant and Constable Naresh Kumar were found indulging in unauthorised checking of vehicles near outer Ring Road, Wazirabad bridge by DCP, Dr K.K. Paul and that at about 6 a.m. on 28.4.1985, the patrol party consisting of Shri D.P. Pandey, Traffic Inspector, Shahdara, S.I. Kishan Singh and S.I. Tek Chand detected the applicant and Constable Naresh Kumar carrying on unauthorised checking of vehicles near Rainy Well No.2 at Wazirabad. It was alleged that as the applicant and Constable Naresh Kumar were posted in Notice Branch, they had no business to be seen at the above said places and that, therefore, they have committed grave misconduct. The applicant denied the charge. He had explained that in the month of March, 1985 when DCP, Dr.K.K. Paul happened to see him near Wazirabad bridge, he was on his way to his father-in-law's house in Bawana and that on 28.4.1985 near Rainy Well No.2, Wazirabad, he was attending to some repairs on his motor cycle while he was on his way on a personal matter. As the explanation submitted by the applicant was found to be not satisfactory, an enquiry was held. Six witnesses were examined to support the charge and 3 witnesses were examined in defence. The enquiry officer submitted a report holding that the charge of unauthorised checking on 27.3.1985 was not proved and that the second charge that the applicant

and Constable Naresh Kumar were indulging in unauthorised checking with mala fide intention on 28.4.1985 was semi proved. The enquiry officer, however, recommended a punishment of forfeiture of one year's temporary service in the case of the applicant and a punishment of censure in the case of Constable Naresh Kumar. The third respondent, on receipt of the enquiry report, disagreeing with the findings and the recommendations of the enquiry officer, held that the applicant is guilty of the charge and issued a show cause notice to him proposing to impose upon him a punishment of dismissal from service. After considering the explanation submitted by the applicant to the show cause notice, the third respondent by the impugned order at Annexure-I dated 21.10.1986 imposed upon the applicant a punishment of reduction in rank to the post of Head Constable with immediate effect. The appeal submitted by the applicant was rejected by the second respondent by order dated 9.2.1987 at Annexure-J and the revision filed against the rejection of the appeal was also dismissed by the Commissioner of Police vide order dated 28.6.87 at Annexure-K. While rejecting the revision, the Commissioner of Police had directed that the disciplinary authority should issue a corrigendum to the order of punishment specifying the period of reduction to lower rank. Accordingly, the second respondent issued a corrigendum at Annexure-L specifying the period of reduction in rank to be two years. It is challenging these orders that the applicant has filed this application. It has been averred in the application that the enquiry has been conducted in violation of the principles of natural justice as a copy of the report of the Assistant

Commissioner of Police who conducted the preliminary enquiry on report made by DCP, Dr. K.K. Paul was not supplied to him and as the enquiry officer has acted as prosecutor as well as judge. The main ground on which the impugned orders has been attacked is that the disciplinary authority has held the applicant guilty without any legal evidence and therefore, the ~~finding~~ ^{finding} of the disciplinary authority is perverse. The ~~appellate~~ and revisional orders also have been challenged on the ground that this aspect of the case has been lost sight of by the authorities concerned.

3. The respondents in their reply statement have contended that as the guilt of the applicant was established by cogent and convincing evidence in an enquiry held in conformity with the principles of natural justice, there is no justification to interfere with the impugned orders.

4. We have perused the pleadings and documents carefully and have also heard the arguments of the counsel on either side.

5. The charge against the applicant is based on two incidents. The first is that on 27.3.1985, the applicant along with Constable Naresh Kumar indulged in unauthorised checking of vehicles at the outer Ring Road near Wazirabad bridge. The evidence in regard to this consists of the testimony of Dr. K.K. Paul, DCP, examined as PW 6 and that of Constable Driver Raghubir Singh who was driving the official car of Dr K.K. Paul at the time of the alleged incident, examined as PW 1. The testimony of Dr. K.K. Paul is very brief, the English translation of which reads as follows:-

"It was either on 27th or 28th March, 85. I was proceeding on the official car on duty towards Punjab at about 6.30 a.m., when I saw ASI Chaman Singh along with a Constable in uniform stopping and checking vehicles near Wazirabad bridge on outer ring road, I had my car stopped and shouted at him, but he tried to escape. The Constable whom I did not recognise, did manage to disappear. I recognised Chaman Singh very well, since he had worked with me.

XXXXXXXXXX

I did not see taking any thing. I did not see any necessity to note down the truck number.

XXXXXXX Naresh Kumar.

I have said in my statement that Constable who was in uniform I can not recognise him."

Dr. Paul has seen only two stationary trucks and the applicant on the road. He has not seen the applicant taking anything from the truck drivers. He has also not cared to take down the numbers of the trucks. If, as a matter of fact, Dr Paul had suspected that the applicant was indulging in unauthorised checking, he should have questioned the truck drivers and recorded a statement. Further, Dr. K.K. Paul was not sure whether it was on 27th March or 28th March of 1985 that he saw the applicant indulging in alleged unauthorised checking. The only other witness who has given evidence about this incident, is the official driver of Dr K.K. Paul, who has stated that when the car in which Dr. K.K. Paul was travelling neared the ring road, Dr Paul asked him to stop the vehicle and at that

15

time he found the applicant repairing the motor cycle near the ring road at Wazirabad bridge. This testimony of the DW 1 is in tune with the case of the applicant. Based on the testimony of Dr K.K. Paul that on 27th or 28th of March, 1985 at about 6.30 a.m. the applicant was seen near ring road at Wazirabad bridge and that two trucks were found stopped there, it is not possible to reach a legitimate conclusion that the applicant was, in fact, indulging in unauthorised checking/ on 27.3.85 at 6.30 a.m. As Dr Paul himself was not sure of the date and as the statements of the truck drivers were not taken and as even the numbers of the trucks alleged to have been stopped are not available, we are of the view that the conclusion of the disciplinary authority that this part of the charge is established is perverse as no reasonable person can come to such a conclusion on the basis of the evidence available.

6. Regarding the charge that the applicant was indulging in unauthorised checking of vehicles near Rainy Well No.2, Wazirabad, the evidence consists of the testimonies of Shri D.P. Pandey, Traffic Inspector, Shahdara, SI Kishen Singh and SI Tek Chand, Constable H.C. Attar Singh, the driver of the jeep in which the patrol party was travelling and Shri Jaginder Singh, ACP. Of these witnesses, ACP Jaginder Singh has no personal knowledge about the occurrence. He has stated before the enquiry officer that he was told by Traffic Inspector D.P. Pandey that on the morning of 28.4.1985, when the patrol party consisting of Inspector D.P. Pandey, SIs Kishan Singh and Tek Chand were patrolling in the Wazirabad

area near Rainy Well No.2 they saw the applicant and Constable Naresh Kumar stopping trucks in an unauthorised way and that this showed that they were doing so in order to make some money. So, his testimony is based on hear-say evidence. Shri Pandey, Traffic Inspector, Shahdara, has sworn that near Rainy Well No.2 at Wazirabad at about 6 a.m. on 28.4.1985, while he along with SIs Kishan Singh and Tek Chand were patrolling, saw the applicant and Constable Naresh Kumar stopping trucks with intention of obtaining illegal gratification from the drivers. He has sworn that when the patrol party went near, they saw the applicant and Constable Naresh Kumar standing on the road where two trucks were parked and that on their nearing the spot, the trucks were allowed to go. He has further sworn that as the distance between the truck and the jeep in which they were travelling, was considerable, the patrol party could not note the number of the trucks. Anyway, he has deposed that the applicant was not found asking or receiving any money from the truck drivers. Because the applicant was not posted in that area, the witness inferred that the applicant must have stopped the trucks to conduct illegal checking with a view to get illegal gratification. SI Tek Chand also has sworn that he saw the applicant and Constable Naresh Kumar near Rainy Well No.2, Wazirabad while two trucks were seen parked on the road and that when the Inspector Pandey questioned them, they admitted and said their mistake that they would not commit the same in future. This witness also has not sworn that he saw the applicant stopping the trucks or taking any money from the truck drivers.

91

SI Kishen Singh also has given the same evidence as SI Tek Chand. According to Traffic Inspector Pandey, SIs Kishen Singh and Tek Chand, when they reached the spot the trucks had already left while the applicant and Constable Naresh Kumar were standing there and because of the distance between the trucks and the jeep in which the witnesses were travelling, the numbers of the trucks could not be noted. But according to Constable H.C. Attar Singh who was the driver of the jeep in which the patrol party consisting of Inspector Pandey and SIs Kishen Singh and Tek Chand were travelling, at the direction of the Traffic Inspector Pandey he chased the trucks and stopped them from which Constable Naresh Kumar got down. But he has sworn that even though the trucks were stopped, he did not know whether the SI Kishen Singh had noted the number of the trucks. This witness has also sworn that he did not see the applicant or Constable Naresh Kumar taking any money from the truck drivers or stopping the trucks. So, the inference that the applicant was indulging in unauthorised checking was gathered by Traffic Inspector Pandey and his companions from the circumstance that the applicant who was not posted on duty at Wazirabad area was found there at that early hour of the day and that two trucks were seen parked on the road. While according to the Traffic Inspector and the two Sub Inspectors the trucks left before they reached the scene and the numbers of the trucks could not be noted as the distance was considerable, the testimony of the jeep driver, Shri Attar Singh, is absolutely inconsistent with this version because he has sworn that he

✓


chased the trucks and stopped them. As a matter of fact, as the trucks had been stopped by Shri Attar Singh, the patrol party could have noted the numbers of the trucks and questioned the truck drivers so that instead of merely inferring that the applicant was indulging in unauthorised checking, they could have collected cogent and convincing evidence in this regard. The mere fact that the applicant, a police officer not posted on traffic duty at Wazirabad, was found on the road where two trucks were seen parked, a legitimate inference that he was indulging in unauthorised checking with a view to obtain illegal gratification cannot be drawn. It appears that the whole charge that the applicant was indulging in unauthorised checking of vehicles for making illegal gratification was based on mere suspicion. Suspicion, however strong it may be, cannot be a substitute for legal proof. Though a re-appreciation of the evidence is not permissible in a proceedings of this nature, in order to find out whether the finding of the disciplinary authority is justified by any evidence at all or whether it is absolutely perverse, we have to go through the evidence adduced at the enquiry. On a careful scrutiny of the evidence adduced before the enquiry officer, we are convinced that there is no dependable evidence at all which would enable a reasonable person to reach a legitimate conclusion that the applicant was indulging in unauthorised checking of vehicles on the two occasions as alleged in the charge sheet. We are, therefore, of the view that the finding of the disciplinary authority that the applicant is guilty of the charges, being based on no legal evidence, is perverse. We find that the appellate authority as well as the


23

revisional authority have not applied their minds to the grounds raised by the applicant and have not cared to scrutinise the evidence recorded before the enquiry officer before deciding to uphold the finding of the disciplinary authority.

7. In the conspectus of facts and circumstances, we find that the impugned orders are unsustainable and, therefore, we allow the application set aside the impugned orders of the disciplinary authority, appellate authority and the revisional authority and direct the respondents to restore the applicant to the post of ASI as if the impugned order of punishment has not taken effect, to pay him the difference in salary during the period and also to treat the period under suspension as duty for all purposes. Action on the above lines should be completed within a period of two months from the date of receipt of this order.


8. There is no order as to costs.


(I.K. RASGOTRA) 24/3/1992
ADMINISTRATIVE MEMBER


(A.V. HARIDASAN)
JUDICIAL MEMBER

Pronounced by me today in the Open Court.

*ps


(I.K. Rasgotra)
Member(A)
24.3.92.