

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1134
T.A. No.

1987

DATE OF DECISION 23.2.1990

Ex. Constable Mohinder Singh Petitioner

Shri Shyam Babu Advocate for the Petitioner(s)

Versus

Lt. Governor of Delhi & others Respondent

Mrs. Avnish Ahbawat Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G. Sreedharan Nair, V.C.

The Hon'ble Mr. P.C. Jain, M(A)

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. Whether it needs to be circulated to other Benches of the Tribunal? ☒ (G. Sreedharan Nair)

Vice-Chairman

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Registration No.D.A.1134 of 1987

Date of decision 23.2.1990.

Ex-Constable Mohinder Singh .. Applicant

- versus -

Lt. Governor of Delhi and others .. Respondents

CORAM :

Hon'ble Shri G.Sreedharan Nair, Vice-Chairman

Hon'ble Shri P.C. Jain, Member (Administrative)

Counsel for the applicant : Shri Shyam Babu.

Counsel for the respondents : Mrs. Avnish Ahlawat.

ORDER

(Passed by Hon'ble Shri G.Sreedharan Nair, Vice-Chairman):-

The applicant, a Constable in Delhi Police, while serving in the Traffic Unit was proceeded against by the issue of a memorandum of charges dated 8.3.1985 for gross misconduct in the discharge of official duties. The imputation was that on 12.9.1984, while posted in Punjabi Bagh Circle, he stopped the car driven by Shri D.C.Gupta and on the threat of prosecuting him for making commercial use of the private vehicle, extorted Rs.200/- from him. An enquiry was conducted. Six witnesses including the said Shri Gupta were examined by the Enquiry Officer. In the course of the enquiry Gupta stated that the applicant is not the Constable who stopped the car and received the amount. The Enquiry Officer, holding that Gupta has been won over by the applicant found that the charge is established from the testimony of the other witnesses. The disciplinary authority by its order dated 23.5.1985 accepted the report of the

Enquiry Officer and holding that the charge of misconduct is proved, imposed upon the applicant the penalty of dismissal from service. The appeal as well as the revision petition filed by the applicant were rejected. The applicant prays for quashing the aforesaid orders and for reinstatement in service with consequential benefits.

2. It is urged that the report of the Enquiry Officer is based on no evidence and hence the order of dismissal cannot be sustained. It is stated that the applicant was falsely implicated on account of the annoyance, ~~with~~ the Assistant Sub-Inspector had against him.

3. In the reply filed on behalf of the respondents, it is stated that the finding has been arrived at on the basis of the evidence that was let^d in during the enquiry, and as such the order imposing the penalty cannot be assailed.

4. The point that was stressed by counsel of the applicant was that when D.C. Gupta himself unequivocally testified before the Enquiry Officer that it was not the applicant who stopped his car and received the amount of Rs.200/-, in the absence of the statement of any other witness that he actually saw the applicant stopping the car of Gupta and receiving the amount from him, a finding cannot be reasonably arrived at that the charge is established. Though counsel of the respondents countered this submission, we are of the view that it has to be accepted.

5. Admittedly, the proceedings were initiated on the strength of a complaint by D.C. Gupta. According to the respondents, after giving the money, Gupta reported the matter to the Assistant Sub-Inspector, who was examined as P.W. 3 in the course of enquiry, and on the next day when Gupta was

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sent along with Constable Raghbir Singh examined as P.W.1 in the enquiry, he identified the applicant as the Constable who extorted the money. However, while examined before the Enquiry Officer Gupta stated in his chief-examination that a Traffic Constable stopped his car and received the amount of Rs.200/-. But in the course of cross-examination he stated in unambiguous terms that the applicant who was present before the Enquiry Officer was not the Constable who stopped the car or who demanded and received the amount of Rs.200/-. He further stated that the applicant was not the person who was identified ^{by} ~~before~~ him on 13.9.1984.

6. In the face of the aforesaid categorical statements, the testimony of P.W.1 that the person identified was the applicant himself cannot be the foundation for holding the applicant guilty of the charge. The testimony of P.W.3 ⁶⁰⁰ is of no assistance for it only establishes that P.W.1 was sent along with Gupta for identifying the particular Constable, who is alleged to have received the amount. The version of the other P.Ws. also does not lead to the establishment of the charge.

7. It is seen from the report of the Enquiry Officer that he was conscious of the fact that in view of the testimony of Gupta it is not reasonable to hold that the charge is established. But on the assumption that Gupta "has been won over by the defaulter Constable" he held that "otherwise the charge stands fully proved". The disciplinary authority is also seen to have presumed that Gupta has been won over. That Gupta is "a respectable citizen" is acknowledged in the order of the disciplinary authority. Nothing has been brought out or even suggested

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in the examination of Gupta to indicate that he is interested in the applicant or to infer that he has been won over. If it was the applicant who actually misbehaved with Gupta and extorted money from him, there is no reason to think that the latter, specially after reporting the matter to the Police would have attempted to protect the applicant in the course of the enquiry.

8. It was argued by counsel of the respondents that in departmental proceedings the standard of proof expected in criminal proceedings is not required. The submission is unexceptionable. But even in departmental proceedings there has to be reliable proof about the truth of the imputation, in the absence of which the charge cannot be held to be established.

9. It is seen from the memorandum of appeal preferred by the applicant that he highlighted this aspect. But the appellate authority has not given due consideration to it.

10. In the result, the order of the disciplinary authority dated 23.5.1985 as confirmed by the orders on appeal and revision, is hereby quashed. The applicant shall be reinstated in service forthwith. He shall be treated as having been in continuous service from the date of dismissal till such reinstatement and shall be allowed all consequential benefits except the wages during the period when he had not actually worked in the post.

11. The application is allowed as above.

(P.C.Jain) 23/3/1990
Member(A)

(G.Sreedharan Nair)
Vice-Chairman