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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1102/90

New Delhi this 19th day of August, 1994.

Hon'ble Mr. S.R. Adiga, Member(A)

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

Shri Azad Singh, aged about 30 years,
s/o Shri Randhir Singh,
Ex. Constable, 2244/N,
Police Station, Ashok Vihar, Delhi,
r/o House No. 501, Gali No. 3 Ambedkar Nagar,
Delhi-42Applicant.

By Advocate Shri S.K. Sawhney.

Versus

1. Secretary, Home Department,
Delhi Administration,
Delhi.

2. Commissioner of Police,
Delhi.Respondents.

By Shri Yashpal, Departmental Representative.

JUDGMENT

By Hon'ble Mr. S.R. Adiga, Member(A).

In this application, Shri Azad Singh,
Ex. Constable, Delhi Police, has impugned the order
dated 15.9.89(Annexure-A1), passed by the
Disciplinary Authority removing him from service,
which has been upheld by the Appellant Authority
in his order dated 30.11.90 (Annexure-A2).

2. The applicant was proceeded against
departmentally on the charge that while on duty,
as Motor Cycle Rider along with H.C. Avtar
Singh on 7.10.87 in the Ashok Vihar Police Station
Area, he stopped a tempo loaded with goods of
Shri Kamal Kumar near railway gate, Wazirpur and
asked him to take the loaded tempo to the police

station or to pay Rs.500/- to him, upon which Shri Kamal Kumar paid Rs.500/- to him. On 17.10.87 he again stopped the loaded tempo of Kamal Kumar this time near Satyawati College. He again demanded Rs.200/- as illegal gratification. The third time on 19.10.87 he met Shri Kamal Kumar near Railway Gate, Wazirpur Industrial Area and asked him to settle the fixed amount to be paid on monthly basis for transportation of his goods.

3. The Enquiry Officer held that the charges against the applicant stood fully proved on the basis of which a show cause notice dated 18.5.89 (Annexure-A6) was issued to the applicant to show cause why he should not be removed from service on the basis of reply dated 27.6.89 (Annexure-A8) filed by the applicant. After considering the applicant's reply dated 27.6.89 (Annexure-A8), the Disciplinary Authority inflicted the impugned penalty of removal from service which was confirmed in appeal against which the applicant has now come before the Tribunal.

4. The first ground taken is that no proper charge sheet was issued to the applicant. This ground has no merit, in view of charge-sheet dated 28.12.88 (Annexure-A4) containing specific instances of alleged misconduct which was served upon the applicant.

5. The second ground taken is that the preliminary enquiry was held at the applicant's back and he was not supplied with the findings of the preliminary enquiry. The respondents have correctly pointed out that the preliminary enquiry is a fact finding enquiry in which the suspected police officer may or may not be present. There is no such provision that a copy of the preliminary

enquiry report must be submitted to the suspected police officer.

6. The next ground taken is that no efforts had been made to establish the defaulter's identity in the preliminary enquiry. The respondents have pointed out that the applicant's identity was established by Inspector Ram Prasad, SHO, Ashok Vihar. Furthermore, ^{from} the impugned order of the disciplinary authority dated 15.9.1989, it is clear that this ground had been taken by the applicant before that authority also, who rejected the same because there was enough evidence to establish that it was the applicant and none other who had demanded the money from the complainant on the relevant dates. The disciplinary authority has also observed that the applicant deliberately absented himself from the D.E. proceedings, to avoid having to face the complainant, and to enable him to take the plea later on that he was not the same person who had demanded the money. If the applicant was indeed not the same person who had demanded the money, he would have approached the E.O. in the D.E. or any other senior officer to get his identity established, but he did not do so. The disciplinary authority has rejected the affidavits of the complainant produced by the applicant during the D.E. as having no relevance at that stage and characterising it as 'stage-managed' by the applicant. The Tribunal is not required to go into the sufficiency of evidence in such cases. This is not a case where there is no evidence or where the penalty has been based purely on surmises and conjectures or where

the decision is arbitrary or ^{per}verse and hence this ground fails.

7. The next ground taken that copies of statements of witnesses were not supplied is also devoid of merit, as the applicant never complained of non-supply of any documents either during the course of the B.E. or in his appeal petition. Similarly, the ground taken that the D.E. proceeded ex parte without affording the applicant an opportunity of defence, also fails as it was the applicant's own non-cooperation which compelled the D.E. to be held ex parte.

8. It has been urged by Shri Sawhney that the disciplinary authority was not competent to pass the impugned orders, because the applicant was appointed by the Dy. Commissioner of Police while his services were terminated by an officer lower in rank, viz., Addl. Dy. Commissioner of Police. In this connection, Shri Sawhney relies upon the certificate of appointment issued to the applicant in form 12.22(1) (Annex. A-3) signed by the Dy. Commissioner of Police, 4th Bn. DAP, Delhi. From a perusal of its contents, it is clear that it is not a letter of appointment, but a certificate which certifies that the applicant has been appointed as a member of the Police Force under Act 5 of 1861 and vested with the powers, functions and privileges of a police officer. If it were the appointment letter, it would have set-out the terms and conditions of appointment, including the pay scale etc., but this certificate does not do so. Hence, the certificate

at Annexure A-3 does not help the applicant and merely upon the basis of that certificate, it cannot be held that the applicant was removed from service by an authority lower in rank than one who appointed him. Hence, this ground also fails.

9. The order of the disciplinary authority, which has also been upheld in appeal and a detailed and well-reasoned one, and the applicant's contention that it was passed with a closed mind or is cryptic or non-speaking has to be rejected. In so far as the quantum of punishment is concerned, the Hon'ble Supreme Court in Union of India vs. Parmama Nanda AIR 1989 SC 1185, has held that the adequacy of penalty, unless it is mala fide, is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the E.O. or the competent authority is based on evidence.

10. In the light of the discussion above, the impugned orders warrant no interference and this application fails and is dismissed. No costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

S. R. Adige
(S. R. Adige)
Member (A)

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