

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.
NEW DELHI.

O.A.No.1196/90

New Delhi, this the 12th day of December, 1994.

Hon'ble Mr. Justice S.C. Mathur, Chairman.

Hon'ble Shri P.T. Thiruvengadam, Member (A)

Ex. Head Constable No. 1201/ND/188/SB

Lal Singh s/o Shri Jhabbu Ram

Head Constable

Delhi Police

W&PD Khurd, P.O. Rata Kalan,

Distt. Mohinder Garh (Haryana)

..Applicant

(By Shri TVSR Krishna Shastri Advocate)

Vs.

1. Lt. Governor, Delhi Administration,
Delhi-54.

2. The Commissioner of Police, P.H.Q.
New Delhi.

2. The Commissioner of Police, PHQ New Delhi.

3. The Addl. Commissioner of Police (R),
PHQ., New Delhi.

4. The Addl. Deputy Commissioner of Police,
Parliament Street, New Delhi.
District New Delhi.

..Respondents.

(By Shri Vijay Pandita proxy
for Shri Rajinder Pandita, counsel).

ORDER (ORAL)

Hon'ble Mr. Justice S.C. Mathur, Chairman.

The applicant who was Head Constable in Delhi Police has directed this original application against the punishment of dismissal from service imposed upon him after disciplinary proceedings.

2. The material charge against the applicant was that a stolen scooter came in his custody which he should have deposited in the "Malkhana" but he did not do it and instead gave it to Head Constable Lal Singh. The scooter met with an accident and was thereafter taken to a workshop for repairs from where it was subsequently recovered.

3. In the inquiry the applicant denied the charge. On behalf of the administration applicant's own statement recorded during investigation by the investigating officer was placed on record

and relied upon as admission of guilt by the applicant. This statement according to the learned counsel was recorded either under section 161 of the Cr.P.C or under section 172 of the said code. The applicant has stated that his counsel was not present at the time the document was filed before the Enquiry Officer. Obviously the applicant did not cross-examine the prosecution witness who filed the document before the Enquiry Officer and did not make any suggestions regarding its non-reliability. The applicant does not claim to have examined himself before the Enquiry Officer. Accordingly there was no explanation from the side of the applicant in respect of the admission contained in the said document. The Enquiry Officer relied upon the applicant's own admission and recorded the finding that the applicant was guilty of the charge levelled against him. It is on the basis of this finding that the order of punishment was passed.

4. The learned counsel for the applicant has assailed the punishment on two grounds: (1) There was no evidence in support of the allegation of misconduct; and (2) the alleged admission of the applicant could not be relied upon.

5. Neither of the two grounds has any substance. As indicated above, the submission of the learned counsel is that the statement recorded by the Investigating Officer was not in accordance with the provisions of sections 161 and 172 of the Code Criminal Procedure and therefore the said statement could not be relied upon as applicant's admission. It is also the submission of the learned counsel that the said statement at the most could amount to confession but this confession cannot be read in evidence in view of the provision contained in section 25 of the Indian Evidence Act.

6. We may assume that the statement relied upon was not recorded in accordance with the provision contained in sections 161 and 172 of the Code of Criminal Procedure. The only consequence of this would be that the said statement would not be admissible in criminal trial. Our attention has not been drawn by the ld. counsel to any law or authority under which such statement which is in the nature of admission cannot be relied upon in disciplinary proceedings which are not governed by the Code of Criminal Procedure.

7. Section 25 of the Indian Evidence Act lays down that no confession made to police officer shall be proved as against a person accused of any offence. This provision relates to criminal trial and not to disciplinary proceedings.

8. Admission of a person is the best evidence. In the present case it is applicant's own statement which has been relied upon for recording finding of the guilt against the applicant. We are unable to accept the submission of the learned counsel that the finding of guilt is based on no evidence. We have already observed here and above that the admission could be relied upon in the domestic enquiry. Accordingly the D.A. is without any merit. It is therefore dismissed with costs to the respondents. The interim order if any operating, shall stand discharged.

P. J. *Thiruvengadam*

(P.T. THIRUVENGADAM)
Member(A)

'M'

S. C. Mathur
12-12-94.

(S.C. MATHUR)
Chairman.