

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1328/90 & 1328A/90
M.P. N.A. No. 1530/90 199

DATE OF DECISION 18.10.1994.

Shri Jai Parkash	Petitioner
Ms. Avnish Ahlawat	Advocate for the Petitioner(s)
Versus	
Union of India & Ors.	Respondent
Shri Raj Singh	Advocate for the Respondent(s)

CORAM

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

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

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 ?

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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

(P)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1328/90 & 1328A/90
M.P.No. 1530/90.

Date of decision. 18-10-94.

Hon'ble Shri S.R. Adige, Member (A)

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

1. Shri Jai Parkash,
Head Constable No. 83/E,
in Delhi Police, Delhi.

2. Shri Jagbir Singh,
Constable No. 732/E,
in Delhi Police, Delhi. .. Applicants

(By Advocate Ms. Avnish Ahlawat)

versus:

1. Lt.Governor,
Through
Commissioner of Police,
Delhi,
Police Head Quarters,
I.P. Estate,
New Delhi.

2. Dy. Commissioner of Police,
(East District), Delhi Police,
Through: P.H.Q., I.P. Estate,
New Delhi.

3. Addl. Commissioner of Police (Range),
Through: P.H.Q., I.P. Estate,
New Delhi.

4. Inspector Balwant Singh,
Enquiry Officer, D.E. Cell,
Vigilance,
Through P.H.Q.,
I.P. Estate,
New Delhi.

.. Respondents

Sh.
(By Advocate/Raj Singh)

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Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial) 7

The applicant No. 1, who was working as Head

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Constable and applicant No. 2, who was working as Constable in Delhi Police are aggrieved with the order dated 27.4.1987 (Annexure 'E') whereby a disciplinary enquiry was initiated against them, and the subsequent punishment order passed by Respondent No. 2 dated 24.2.1989 (Annexure 'L') by which their five years approved service were forfeited permanently entailing proportionate reduction in their pay, which was upheld in the Appellate Order passed by Respondent No. 3 dated 15.6.1989 (Annexure 'N').

2. The brief facts of the case are that the applicants, while posted at P.S. Seemapuri were detailed for duty at G.T. Checkpost on the night of 25/26.2.87. They were checked by Inspector R.P. Tyagi, R.I., East District Lines, while on patroling with his staff, who spotted applicant No. 1 talking to one Shri Jamuna Parshad, driver of truck No. URE-1812 inside the check-post and on seeing the police party, the Head Constable unsuccessfully tried to prevent the R.I. from entering the check post. On questioning the driver, he disclosed that the applicant No. 1, in connivance with applicant No. 2, had extorted

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Rs. 40/- from him under the threat of prosecution as left side head-light of the truck was not working. This amount was recovered from applicant No.2. It was also alleged that Rs. 100/- had also been removed from the pocket of the driver by applicant No.2 during his search. On the request of Inspector Tyagi, Shri Jagdish Singh, ACP, Gandhi Nagar, who was night C.O. reached the spot. The applicants were placed under suspension vide order dated 26.2.1987. A departmental enquiry was ordered against four officials, including the two applicants, by order dated 27.4.1987 and the enquiry was conducted by Respondent No.4.

The Enquiry Officer had submitted a report of his findings on 2.8.1988 holding the applicants guilty of the charge levelled against them but he exonerated the other two constables.

3. A show-cause notice was issued to the applicants wherein it was proposed to dismiss them from their posts and also to treat their suspension period as not spent on duty. After considering their replies, and hearing them, the impugned punishment order was imposed forfeiting five years of approved service permanently entailing proportionate reduction in their pay. Their suspension period was also treated as not spent on duty.

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Their appeals had been duly considered by the

Additional Commissioner of Police, which was

also rejected vide order dated 12.6.1989.

4. We have heard the learned counsel for both the parties at length, who took us through the evidence, brought before the disciplinary enquiry.

5. The first ground taken by the learned counsel for the applicants is that the order passed by the Additional Commissioner of Police dated 27-4-1987 under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 is illegal as no preliminary enquiry had been conducted in this case.

6. The second ground is that in the joint enquiry held against four persons, two persons have been let off and only the two applicants have been punished.

7. It has next been argued by Ms Avnish Ahlawat, learned counsel for the applicant that this is a case of no evidence and the findings

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of the Enquiry Officer are perverse. The argument is that the whole case rests on suspicion only and there is no direct evidence to support the version of Inspector Tyagi. Relying on Union of India v.S.C. Goel [AIR 1964 SC 364] she submits that since the truck driver, on whose complaint further action had been taken against them, was not produced before the Enquiry Officer it was fatal to the enquiry. The amount of Rs 40/- was also not such for the applicant to have. a large amount. Relying on another judgment,

Central Bank of India v.P.C. Jain [AIR 1969 SC 983], the learned counsel contends that the findings of the Enquiry Officer and the disciplinary authority are perverse as it is not supported by any legal evidence, and the principles of natural justice have been ignored inasmuch as the statement of the truck driver, taken behind the back of the persons charged, has been treated as substantive evidence. Further she pointed out that the prosecution witnesses never saw the truck or whether the truck, in fact, had defective

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lights, neither was the truck driver's licence nor

address verified. It is also alleged that the

Enquiry Officer acted both as prosecutor as well

as Judge inasmuch as he had cross-examined the

prosecution witnesses as well as the defence

witnesses. (See Abdul Wajee v. State of Karnataka

& Ors. [SLR 1981 Vol. 26 (1) 454], and

Jagbir Singh v. Lt. Governor, Delhi & Ors.

[1991 (16) ATC (CAT) 192] and in a trap case,

(S.K.Jain v.UOI & Ors) [SLJ 1989 (4) CAT 953]

it was held that mere recovery of money was not

sufficient proof).

8. On the other hand, Shri Raj Singh, learned

for the Respondents contends that this was not a

case of no evidence and the cases relied upon by

the applicant's counsel are not relevant here.

According to him, Inspector Tyagi had conducted

the preliminary enquiry then and there and based

on his report, the Addl.Commissioner of Police, Range

acting under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 passed a valid order dated 27-4-1987 to conduct a departmental enquiry against the applicants. He further contends that the findings and decisions of the Enquiry Officer and Disciplinary Authority are based on proper evidence. The applicants have no where denied the fact that Jamuna Prasad had given Rs 40/- or that Inspector Tyagi had given this amount.

9. The Disciplinary authority had exonerated the other two constables ; but found that the explanations of the two applicants were not satisfactory after appraisal of the evidence and even then he had taken a lenient view and reduced the proposed punishment from dismissal to forfeiture of five years service.

10. The complainant could not be produced before the departmental enquiry despite the best efforts and, therefore, relying on the provisions of Rule 16(iii) of the Delhi Police (Punishment & Appeal) Rules, 1980 his statement had been brought on record. He also drew
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our attention to the complaint given by Shri Jamuna

Prasad whose signature at the top right hand ^{side 13} had been attested by Inspector Tyagi on 26-2-1987 to which Shri Jagdish Singh, ACP, Gandhi Nagar had also signed, after verification of his statement as being found correct (page 200-201 of paper book). He submits that no witness has stated that Jamuna Prasad was not there at the time of ^{the} incident and since the statement has been properly recorded and attested by two senior officers, namely, the A.C.P. Gandhi Nagar, and Inspector, Tyagi, the same can be taken into consideration under rule 16(iii) of the Delhi Police (Punishment & Appeal) Rules.

11. The evidence of D.W. 5, the owner of the truck, was also referred to, wherein he had stated that the driver, Jamuna Prasad, had informed him about the incident at the check-post. He states that applicant No. 1 Shri Jai Prakash, has himself recorded the address of the truck driver and there was no reason to doubt the correctness of the same. The allegation of mala fide against Inspector Tyagi has not been proved by the applicant. The questions

asked by the Enquiry Officer to the witnesses were clarificatory in nature and did not amount to him assuming the role of judge and prosecutor. In any case, the disciplinary authority has considered the evidence preferred before the Enquiry Officer in detail before passing the impugned order dated 24.2.1989.

In the facts and circumstances of the case, he submitted that since there is sufficient evidence and material on record for the competent authorities to arrive at the decision that the applicants are guilty of the charge, the Tribunal ought not to reappraise the evidence or sit in appeal against the decision of the competent authorities while exercising the power of judicial review.

12. He submitted that the judgment of the Supreme Court in UOI v. H.C. Goel [AIR 1964 SC p.364] has been over-ruled in the case of Rathor [1989 (3) SCC 7], but we do not find this is correct.

13. We have carefully considered the arguments of the learned counsel for both sides, perused the record and case law.

14. The order dated 27-4-1987 has been passed

by the A.C.P. after considering the facts relating to the incident at the check post on the night of 25/26-2-1987 which had been brought to his notice.

He has given approval to hold the departmental enquiry against the two applicants and the other two

constables under Rule 15(2) of the Delhi Police

(Punishment & Appeal) Rules, 1980 and we find that

he has duly considered the facts brought to his notice

by Inspector Tyagi in his report. There is no infirmity in this order and we reject the applicant's contrary plea.

15. Regarding the allegation of the applicants

counsel that the statement of Shri Jamuna Prasad,

Truck Driver is not legal evidence and there was

no other evidence on which the charge could be held to be

proved, cannot be accepted. Even in the case of Central

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Bank of India v. P.C. Jain (Supra) relied upon by Mrs.

Avnish Ahlawat, the court observed that -

"The evidence should consist of statements made in the presence of the workman charged. An exception was envisaged where the previous statement could be used after giving copies of that statement, well in advance to the workman charged, but with the further qualification that the previous statement must be affirmed as truthful in a general way when the witness is actually examined in the presence of the workman." (emphasis added).

In the present case it is not denied that copies of the statement of complainant have been given to the applicants.

The fact of recording the statement has been corroborated by P.W. 7, Shri Mukesh Kumar, S.I. and Shri Jagdish Singh, ACP, Gandhi Nagar. The truck driver could not be procured inspite of best efforts made by the respondents. We are of the view that the statement has been correctly brought on record under Rule 16(iii) of the Delhi Police (Punishment and Appeal) Rules and supported by other evidence on record, and hence it is admissible and legally valid.

16. The next question for consideration is whether this is a case of no evidence and the conclusions arrived at by the competent authority are perverse.

17. The settled position is that where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it

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is not the function of the court to review the evidence and to arrive at an independent finding on the evidence. The court or Tribunal will undoubtedly interfere where the departmental authorities, have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some consideration extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at the conclusion or on similar grounds (see State of A.P. v.S.Sree Rama Rao) [AIR,1963 SC p. 1723],

UOI v.Parma Nanda AIR (1989) SC 1185]

18. In UOI v.Upendra Singh [ATC 1994 (Vol.27) 200] the Supreme Court held that judicial review is not an appeal from a decision but a review of the manner in which the decision was made, with a view to ensure that the individual receives a fair treatment in

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accordance with the principles of natural justice.

In another case H.B. Gandhi, Excise and Taxation

Officer-cum-Assessing Authority, Karnal v. Gopinath

& Son [1992 (Supp) 2 SCC 312] the Supreme Court held* that in the garb of judicial review it will be erroneous to think that the court sits in judgment not only on the correctness of decision making process but also on the correctness of the decision itself.*

19. It will also be relevant to note the

observations of the Supreme Court in Managing

Director, ECIL v. B. Karunakar [1993 (25) ATC 704]

which are as follows:-

"The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact prejudice has been caused to the employee or not... has to be considered on the facts and circumstances of each case. Where, therefore,.... no different consequences would have followed, it would be a perversion of justice to permit the employee to resume duty... It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperation limits. It amounts to an "unnatural expansion of natural justice" which itself is antithetical to justice."

20. On perusal of the order dated 24.2.1989

passed by the disciplinary authority, we are satisfied

that the decision arrived at by the authority is based on evidence which has been carefully analysed and the decision to impose the reduced penalty of forfeiture of five years approved service is supportable and is neither in any way perverse nor illegal. Both the disciplinary and appellate orders are speaking orders. Having regard to the decisions of the Supreme Court referred to above, we are also satisfied that the applicants have been afforded sufficient opportunity to put no prejudice forward their defence and has been caused to them by ¹⁸ some questions put in ~~by~~ cross examination by nesses, by way of clarification, the Enquiry Officer to the wit. In the facts and circumstances of this case, we do not find that the conduct of the departmental enquiry has been vitiated on account of violation of the principles of natural justice or any other infirmity as alleged by the applicants to warrant any interference by the Tribunal.

21. The application is accordingly dismissed. There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

Amalag
(S.P. Adige)
Member (A)