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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

D.A. NO. 1844/90

Date of Decision: 20th Dec. 1995

Hon'ble Smt. Lakshmi Swaminathan, Member (J)  
Hon'ble Shri R.K. Ahuja, Member (A)

Shri Chandan Singh  
s/o Sube Singh,  
r/o V & P.J. Sahibabad Daulatpur,  
Delhi.  
Ex.ASI(Driver)No.3144/DAP/  
Delhi Police.

... Applicant

By Advocate: Shri A.K. Bhardwaj

Vs.

1. Union of India  
through  
Secretary,  
Ministry of Home Affairs,  
New Delhi.

2. Deputy Commissioner of Police,  
4th Bn. DAP New Police Lines,  
Kingsway Camp, Delhi.

3. Additional Commissioner of Police,  
Delhi Armed Police,  
Police Headquarter, ITO,  
New Delhi.

... Respondents

By Advocate: Shri A.K. Gupta

ORDER

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

The applicant is aggrieved by the order dated  
10.4.90 passed by <sup>the</sup> Deputy Commissioner of Police dismissing  
him from service (Annex. A-1) and the order dated 23.7.90

passed by Additional Commissioner of Police rejecting his appeal against the dismissal order. (Annexure A-2)

2. The brief facts of the case are that the applicant was appointed in Delhi Police as Constable(Driver) on 23.12.67. He was promoted as Head Constable(Driver) on 21.10.87 and again promoted as ASI(Driver) w.e.f. 1.1.84.

3. The respondents had made allegations against the applicant that while posted in the 4th Bn.DnP, he was carrying out illegal checking of vehicles on 24.4.89 near village Gopal Pur. He was apprehended by the local police of P.S. Timpur, Delhi, while checking Truck No.DEG-364 unauthorisedly, on the information of Asst Mahabir Singh incharge PCR Van R-76 (Annexure A-7). On the above mentioned facts, he was dealt with departmentally under section 21 of the Delhi Police Act. A regular departmental enquiry was conducted. The Inquiry Officer came to the conclusion that from the evidence on record which he has discussed in detail in his report that the charge against the applicant was proved beyond doubt. Subsequently, the impugned orders have been passed.

4. The applicant has assailed the impugned orders on the grounds mainly that -

- (i) the driver and the cleaner of the truck who are key witnesses were not examined;
- (ii) that ~~approval~~ <sup>of</sup> the Additional Commissioner of Police was not taken in this case under Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980;
- (iii) that the applicant was not allowed to cross-examine the witnesses; and
- (iv) that there was no finding of grave misconduct or that the applicant was completely unfit for service by the respondents and
- (v) the finding is perverse and the punishment is disproportionate.

In this regard, it is mentioned that the applicant has completed 20 years of service, so lesser punishment ought to have been imposed and further that the punishment himself is not only on the charge but also on the extortion of money from the truck driver which did not form part of the charge.

The learned counsel for the applicant Shri A.K. Bhardwaj relies on *Harigiri Vs. UOI & Ors.* (1992(19) ATC 659, Para 11), *Ram Chander Gupta Vs. State of Rajasthan* (1979 SLR(21) 199), *Dalip Singh Vs. Delhi Administration* (CAT decided on 23.3.94),



Trilok Nath Vs. UOI & Ors. (1967 SLR(1) 759), State of Assam  
Vs. Mohan Chandra Kalita & Ors. (AIR 1972 (59) SC 2535),  
Sukhbir Singh Vs. Deputy Commissioner of Police (1984 SLR(36)  
149) and Ram Kishan Vs. UOI (JT 1995(7) 43).

5. The respondents have filed a reply in which they have stated that the above averments are not correct. According to them an enquiry against the applicant has been conducted according to rules and he has been given an opportunity to defend his case. They have stated that the approval of the Additional Commissioner of Police had been obtained under Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980. The impugned orders have been passed after ~~issuing~~ the applicant a show cause notice and after giving him a hearing. They have not denied the fact that the applicant has more than 22 years of service but state that his record is not clean throughout and censure has been awarded three times. They admit that the statements of the driver and the cleaner of the truck were not recorded as prosecution witness in the departmental enquiry as it was not considered necessary. They submit that the findings of the Inquiry Officer are based on evidence and there is no violation of Rule 16(iii) of the Delhi Police (Punishment and Appeal) Rules 1980. According to them the misconduct of the applicant was so severe that it was considered that he had acted in a

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manner unbecoming of a police officer by carrying out illegal checking of the truck which was not within his duty. They submit that the findings of the Enquiry Officer are based on the evidence on record and the applicant has cross examined the witnesses. They have referred to the statement of ASI Mahavir Singh, PW 5 incharge of PCR van-76 which has been recorded in the departmental proceedings in which he has stated that the papers of the truck were in the hand of the applicant which he was checking unauthorisedly. The ASI Mahavir Singh has also stated that he got the information about the checking of the truck by the applicant through Constable Surash Chand and that they also submit that SHO Timarpur, D.N. Kaushik, PW 7 has corroborated these facts. The respondents' counsel has also relied on the judgement of the Supreme Court in State of J&K Vs. Krishna Lal 1994 (27)ATC 590 that the applicant cannot now allege that the documents relating to the truck were not given to him as he had not asked for the same.

6. We have carefully considered the arguments of both the learned counsel and perused the record of the case.

(NA)

7. From the perusal of the impugned order dated dated 10.4.90 it shows that the disciplinary proceedings against the applicant have been taken under section 21 of the Delhi Police Act after obtaining the approval of the Additional Commissioner of Police, A.P. under rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980. The allegation made to the contrary by the appellant is rejected.

8. The list of witnesses who are to prove the charge against the applicant (Annexure A-10) does not contain the names of the truck driver or the cleaner. The applicant has himself enclosed the statements of PWs as Annexures to the D.A. As many as seven PWs were examined. The Enquiry Officer has himself recorded his reasoning that there was no need for the statements of the truck driver Birbal and cleaner Hira Lal. In this case merely because the truck driver and the cleaner were not called as witnesses in the disciplinary proceedings does not vitiate the same in case the charge is proved by other witnesses as done here. We note that not only A SI Mahabir Singh, PW 5 had deposed before the Enquiry Officer that when he checked the truck he found the applicant present in the truck and he took possession of the documents relating to the truck i.e. R-6 insurance and fitness etc. papers from the



applicant after he called the local police to whom he handed over the papers recovered from the applicant.

this witness had been cross examined by the  
applicant and he has stated that these documents of the truck were in his possession at the time of checking.

In the statement of Shri D.N. Kaushik, Inspector, North District Vigilance, PW 7, has stated that on receipt of the information that one ASI was checking the truck unauthorisedly at a distance of 500 yards from Wazirabad, P.S. Timarpur, Delhi PCR Van had caught the truck and the ASI at the spot. He has also mentioned that when he went to the spot ASI Mahabir Singh with his staff were also found present there together with the truck driver and the cleaner. He has confirmed that ASI Chandan Singh, defaulter driver of DAP 4th BN was also at the spot. The applicant has not cross-examined this witness although it is noticed that he had examined other witnesses including the ASI Mahabir Singh.

In the above circumstances, we find no merit in the applicant's allegation that the proceedings are vitiated because the driver and cleaner of the truck were not examined. These people were not included in the list

of prosecution witnesses and the charge has been proved by other witnesses who have also been cross examined by the defaulter. We are also unable to agree with the applicant's contention that the finding of the Enquiry Officer and the competent authority is either arbitrary or perverse which calls for any interference in this matter. It is well settled law that this Tribunal cannot interfere with the disciplinary matters or punishment as if it is exercising appellate jurisdiction. The findings of the Enquiry Officer are based on evidence adduced during the disciplinary proceeding and that the applicant was at the spot, in fact inside the truck. The Enquiry Officer and the competent authority who passed the dismissal order have discussed the evidence, including the plea taken by the defaulter that he had got into the truck in order to go to his village which has not been believed by them. It is not for this Tribunal to interfere with the findings of the competent authority unless it is arbitrary or utterly perverse or based on no evidence ( see UOI Vs. Parmanand (AIR 1989 SC 1185), Govt. of Tamilnadu Vs. A.Rajapandian (AIR 1995 SC 561) and B.C. Chaturvedi Vs. UOI and ors. (1995(6) SCALE 188). In the departmental enquiry ample opportunity had been given to the defaulter to putforward his case and we find that the principles of natural justice have been fully complied with. and he has been given reasonable opportunity to defend his case in accordance with rules.

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10. Shri A.K. Bhardwaj, learned counsel for the applicant had also pleaded that the punishment was disproportionate to the offence and the fact that he had completed 20 years of service should have ~~weighed~~ with the competent authority to impose if at all a reduced punishment. The competent authority while passing the impugned order dated 10.4.90 has fully discussed the evidence and passed a speaking order. He has ~~also~~ stated that the punishment of dismissal can be awarded for the gravest act of misconduct and not for any other lapse. He has also taken into account the service of the defaulter in the Delhi Police for more than 20 years. However, in the facts and circumstances of the case, the competent authority has stated that this has no weight as he had committed a very grave misconduct by carrying out illegal checking of vehicles and extorting money in an illegal manner, as he was only posted as Driver and this was not part of his duty in DMP 4th Bn. This order, therefore, shows that the competent authority was fully aware of the fact that the defaulter had put in more than 20 years <sup>he</sup> and / had come to the conclusion that this was not a case where <sup>a</sup> lesser punishment should be imposed. In the recent judgement of the Supreme Court in B.C. Chaturvedi case(supra), the Supreme Court has held that the High Court/Tribunal while exercising the power of judicial review cannot normally substitute its

own conclusion on penalty and impose some other penalty except in rare cases where it finds that no reasonable man would have reached such a finding or it is so shocking. In this case, the Supreme Court held that the substitution of the punishment of dismissal from service to one of compulsory retirement by the Tribunal, taking into account the fact that the appellant had put in 30 years of service and had a brilliant record was not warranted in view of the gravity of the misconduct and therefore, allowed the appeal filed by the Union of India. The competent authority has found the charges against the defaulter proved based on evidence and also that it is a grave misconduct for which he had imposed the penalty of dismissal from service and there are no good grounds to interfere with this conclusion.

11. We have also considered the other arguments of the applicant and the cases relied upon by him. This is not a case of no evidence or where the charge has been sustained merely on conjectures and without proof. As already mentioned above, the rules of procedure have been complied with and, therefore, we find that the cases cited would not assist him.

12. The learned counsel for the applicant had urged that in the impugned order of dismissal the competent authority had not only stated that the defaulter had committed grave misconduct by carrying out illegal checking of vehicles but also extorting money in an illegal manner which was not ~~the~~ part of the charge. We note that the competent authority has reproduced the charge in the order. No doubt the charge was only regarding illegal checking of vehicles on 24.4.89 near village Gopalpur for which admittedly the defaulter was not authorised. The Enquiry Officer had found that on the evidence on record the charge against the defaulter was proved. The disciplinary authority has agreed with the finding of the Enquiry Officer and had thereafter issued a show cause notice why proposed punishment of dismissal should not be imposed on him. As mentioned above, he has dealt with the defence taken by the defaulter and the evidence before imposing the punishment which he has termed as grave misconduct. In the circumstances, although the words extorting money has found reference in the impugned order, we are of the view that this will not vitiate the order. Admittedly, the competent authority has found that the charge of unauthorisedly checking the vehicles is proved for which he had passed the impugned punishment order. The appellate authority has in his order dated 23.7.90 also referred to the fact

of the applicant demanding the money of Rs 200/- from the truck driver wherein he has observed that the discrepancy in the amount is of minor nature and the subject of enquiry was not whether he has demanded Rs 200/- or not but the subject of the enquiry was that he was conducting unauthorised checking of the truck and which could only be for malafide reasons. In the circumstances the reference to extorting money in the dismissal order does not amount to that being a separate charge as alleged by the applicant and we do not find, therefore, any infirmity to justify quashing the impugned order which has been passed on the evidence proving the charge of unauthorised checking.

13. Keeping in view of the observations of the Supreme Court in the aforesaid cases and the facts in this case, we, therefore, find no good grounds to interfere with the impugned punishment orders. The O.A. is, therefore, dismissed. No costs.

R.K. Ahuja  
(R.K. Ahuja)

Member (A)

Lakshmi Swaminathan  
(Smt. Lakshmi Swaminathan)

Member (J)

'RK'