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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A. No.1848/90

&
✓ OA No. 1850/90

New Delhi, dated the 14th September, 1994
Hon'ble Shri N.V. Krishnan, Vice Chairman (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

OA-No.1848/90

Sh. Nahar Singh
R/o Village & P.O. Nagla Mohoudinpur,
P.S. Khurja District Bulandshahar, U.P.

.. Applicant

(By Advocate Sh. Mukul Talwar)

V/s

1. Lt. Governor of Delhi, through Chief Secy.
Delhi Admn., Delhi.
2. Commissioner of Police, Delhi
Delhi Police Headquarters, MSO Bldg,
I.P. Estate, New Delhi.
3. Addl. Commissioner of Police (Operations)
Delhi Police Headquarters, MSO Bldg.
I.P. Estate, New Delhi.
4. Dy. Commissioner of Police/PCR
Delhi Police Headquarters, MSO Bldg.,
I.P. Estate, New Delhi.

.. Respondents

(By Advocate Mrs Avnish Ahlawat)

OA-No.1850/90

Shri Bijender Singh
R/o House No.96/3, Durga Puri Ext.
Shahdara, Delhi.

.. Applicant

(By Advocate Shri A.S. Grewal)

V/s

1. Lt. Governor of Delhi, through Chief Secy.
Delhi Admn., Delhi.
2. Commissioner of Police, Delhi.
3. Addl. Commissioner of Police (Operations)
Delhi Police Headquarters, MSO Bldg, New Delhi.
4. Deputy Commissioner of Police,
P.C.R. Delhi Police Headquarters,
M.S.O. Bldg. I.P. Estate, New Delhi.

.. Respondents

(By Advocate Mrs Avnish Ahlawat)

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Both these OAs are being disposed of by this common order as the impugned order is the same, being an order of dismissal from service. Both applicants had been proceeded against in a departmental enquiry. The applicant Nahar Singh was a Head Constable and applicant Bijender Singh was a constable in the Police Control Room. The summary of allegations against them reads as follows:-

" It has been alleged that H.C. Nahar Singh No. 433/PCR and Constable Bijender Singh No. 2593/PCR while posted in PCR, were detailed for duty on PCR Van R-47 on the night intervening 18/19-3-89 from 8PM to 8AM. At about 0005 hours, they intercepted car No. DLF-4923 belonging to Mr. D.R. Lakhani, Advocate in front of Shakuntala Nursing Home, Patparganj Road, which was being driven by his friend Shri R.G. Seth. They misbehaved and manhandled the occupants of the car i.e. Mr. D.R. Lakhani and R.G. Seth. HC Nahar Singh and Constable Bijender Singh also gave blows to Mr. D.R. Lakhani after having thrown him in PCR Van. Const. Bijender Singh also extorted Rs 300/- from Mr. R.G. Seth in connivance with the Hd. constable.

The above act on the part of H.C. Nahar Singh No. 433/PCR and Const. Bijender Singh No. 2593/PCR amounts to grave misconduct and unbecoming of a Govt. servant during the discharge of their official duties, which renders them liable to be dealt with departmentally u/s 21 of Delhi Police Act, 1978."

2. A regular enquiry was conducted and Shri D.R.

Lakhani, Shri R.G. Seth and others were examined witnesses. The Enquiry officer submitted his report finding them guilty. Agreeing with his findings, the applicants were dismissed^{ed} from service by the disciplinary authority. Appeals and Revisions were also dismissed. Hence these OAs have been filed.

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3. Shri Mukul Talwar appearing for applicant Nahar Singh in O.A. No.1848/90 stated that the facts are entirely different. The two advocates D.R. Lakhani and R.G. Seth did not stop their car for checking when signalled. Their car had to be brought to a stop by intercepting it with the police vehicle. They appeared to be drunk. There was an altercation. The applicant reported this on wireless to the Police Control Room. He was instructed to take them to Police Station, Geeta Colony. All these are corroborated by text of messages produced in the enquiry by constable Subhash Chand, P.W. 1. At the Police Station, the applicant narrated the story to Sunder Dev, S.I. in charge. The advocates did not make any complaint then in the Police Station. Indeed, they said they had no complaint. This is the information given in the enquiry by S.I. Sunder Dev (PW-2) Later on, the lawyers recorded a complaint on the next day about the illtreatment given to them. He contends that the complaint is a cooked up story. Besides, he submitted that the impugned orders have to be set aside on three grounds:-

- (i) The Enquiry officer was biased.
- (ii) He depended on the statement given by witnesses Shri R.G. Seth in the preliminary enquiry which was contrary to the statement made by him as a witness when he was examined. That earlier statement was recorded behind the back of the applicant.

(iii) The findings of the Enquiry Officer are perverse.

4. Elaborating these points, he points out that the Enquiry officer was biased because he resorted to cross examination of witnesses, which is bad in law. The summary of the statements of witnesses is recorded in the Enquiry Officer's report for the purpose of discussion. Attention is drawn to the statements of defence witnesses Anil Kumar (DW-1) and Madan Lal (DW-2). In reply to a question put by the Enquiry Officer, Anil Kumar stated "it is incorrect that he is giving a false statement to save Police. He is telling the truth" Madan Lal said in reply to the Enquiry Officer's question. He is not telling a lie. He is speaking the truth". Obviously, these answers were given by the witnesses to leading questions put to them by the Enquiry Officer by way of cross examination. He relied on 1991(1) Vol.71 SLR 454 and 1991(16) ATC in support of his claim that this alone would vitiate the proceedings.

5. In regard to the second infirmity, he draws our attention to the conclusion drawn by Enquiry Officer wherein it is stated "As regards taking of money it took place in the van and no other eye witness could be available. Lawyer Shri R.G.Seth, PW-5 stated in his statement that he could not identify the man who took the money being darkness, but in his first statement during fact finding enquiry which is Ex. P.1-5/A, he openly said that money was taken by Constable Bijender Singh. Const. Bijender Singh No.2593/PCR, in his statement threw the responsibility on

Head Constable Nahar Singh No.433/PCR being the Senior Officer of the party." Copies of the statements recorded at the preliminary enquiry were not given to the applicant. Therefore, the applicant had no inkling about this allegation. He, therefore, could not exercise his right of cross examining witnesses R.G.Seth on this point. This vitiates the proceedings. Reliance is placed on 1991(1) Vol.71 SLR 454 and 1991(16) ATC for the proposition that reliance on documents taken behind the back of the delinquent officer amounts to denial of natural justice and voids the enquiry.

6. In regard to the last point, the learned counsel for the applicant points out that, surprisingly enough, the Enquiry Officer begins his conclusions by an astounding statement that all the four defence witnesses corroborated the prosecution story. He took us through the summary of the statements of the defence witnesses to establish that this finding is entirely false.

7. In addition, it is pointed out that though the applicants took D.R.Lakhani & R.G. Seth to the Police Station as directed by the control Room. When they reached the Police Station, Geeta Colony, these persons did not make any complaint to the Station House Officer. S.I. Sunder Dev of that Police Station

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(PW-2) has confirmed this. In these circumstances, he contends that is a case of no evidence. The finding of the contrary is perverse.

8. Shri A.S. Grewal, ld.counsel for the applicant Bijender Singh in OA 1850/90 adopts all these arguments in support of the contention raised in that OA.

9. Mrs Avnish Ahlawat, ld.counsel for the respondents took us through the statements of D.R. Lakhani and R.G. Seth from the original records. A summary thereof is available in the Enquiry Officers report. These statements clearly establish that the applicants misbehaved and manhandled the lawyers and also took Rs 300/-.

10. We have heard the rival contentions.

11. In the statement of D.R.Lakhani, he admits the fact that their car came to a stop only when intercepted by the P.C.R. vehicle used by the applicants. This confirms the case of the applicants and it is established that the lawyers had failed to stop their car when signalled and were thus in the wrong.

12. Certainly some altercation would have taken place then.

13. If, as is alleged in the summary of allegations, as well as in the statement of these lawyers, that they

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were really beaten and manhandled, there is no reason why these two responsible citizens failed to lodge any complaint in the Police Station, Geeta Colony where they were taken by the applicants. Moreso, when SI Sunder Dev is, admittedly, known to D.R. Lakhani. We are persuaded to believe that the reason could only be that, if these persons pressed the issue then a medical examination would have become inevitable at the instance of the applicants and it would have been discovered that they were drunk. In our view, this single lapse is fatal to the case ^{to} ~~and~~ set up against the applicants.

14. That apart, in so far as the infirmities pointed out by Shri Mukul Talwar are concerned we are satisfied that they do exist and it is not necessary to mention them again.

15. In the conspectus of these facts and circumstances, we are of the view that findings of the Enquiry Officer are not based on evidence and his report is liable to be quashed for the infirmities pointed out above. We do so. For that reason, the order by the disciplinary authority and the order of the Appellate Authority have to be quashed. We do so. The respondents

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are directed to reinstate the applicants with all consequential benefits within a period of three months from the date of receipt of a copy of this order.

16. The original order should be placed in OA 1848/90 and a copy be placed in OA 1850/90.

(Smt. Laxmi Swaminathan)
Member (J)

(N.V. Krishnan)
Vice Chairman (A)

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True Copy
Attended

M. S. S. S.

PRITAM SINGH
Court Officer
Central Administrative Tribunal
Principal Bench
Baridkot House, New Delhi

14/9/54