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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.2084/90

New Delhi, this the 23rd day of December, 1994.

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

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

Avtar Singh (403/D),
son of Shri Jagir Singh
C-53/3, Mohanpuri Mauz Pur
Delhi-110053.
presently working as Sub Inspector
in the Communication Unit of
Delhi Police.

..Applicant

(By Shri Shyam Babu, Advocate)

Vs.

1. Delhi Administration, Delhi
through: Chief Secretary,
5, Shyam Nath Marg, Delhi.

2. Addl. Commissioner of Police
(Operations) Delhi,
Police H.Qrs., IP Estate,
New Delhi.

3. Dy. Commissioner of Police
(Communication), Delhi,
Old Police Line, Delhi.

..Respondents

(By Advocate Shri Vijay Pandita)

ORDER

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

The applicant was functioning as S.I./
(Goreman) in the office of the Deputy Commissioner
of Police/Communications, Delhi. A charge sheet
dated 12-9-89 was issued to him containing the
following charges:-

- i) That as per duties assigned to
you, it was also included the overall
supervision of all routine physical
transactions taking place in Radio
Store No.1; to put up purchase cases
under S.O.No.229; verification of
articles on charge in Radio Store/
Records etc. etc. On 6-7-84 you
got moved an indent for purchase of
valves YL 1020-35 numbers (quantity)
on the plea that the said item was
on the verge of exhaust in the
stores whereas actual qty. of 155
numbers of valves YL-1020 had earlier
been purchased in Oct 1983 and as
such 74 such valves were available
on stock in the stores. This was
clear to you when the store checking
was carried out in the month of June
1984. This lapse you got committed

with mala fide intention in connivance with SI Ved Singh.

- (ii) That the Stores items to the tune of Rs.2338.80 (list enclosed Appendix 'A') were revealed to be short as per the submitted Report of Board of Officers who conducted store checking on order of DCP/Comm. dated 25-7-84. Many items were found missing initially at the first stage of checking started on 25-7-84 some of which were produced later on by you during the checking (as per the list enclosed Appendix 'B') by acts of deceitful substitutions, replacement and by managing from private sources and also from NPL Stores wireless sets. Many items were traced by you from NPL Stores which clearly shows that you had got shifted items from OPL to NPL in an haphazard manner without listing the items being transferred. This also shows your mala fide intention.
- (iii) That you were also in custody of a set of stores keys (other set was with SI Supvr. Babu Ram) which provided you with ample opportunity to manipulate and substitute the items falling short, quite in connivance with SI Ved Singh having hands in glove with you.
- (iv) That you visited NPL stores on 25-7-84 and took four valves of MF-833 against issuing your clear receipt (Ex.3) to HC Ramesh Kumar, Store Clerk, NPL Stores. These valves you produced before the Board of Officers as having been traced which were found short earlier at the first checking instance. This is manipulations by deceitful substitution of this item on your part.
- (v) That on 18-9-84 you submitted an application through ISP to ACP R.K. Mittal (the then Officer of Checking Board) stating that Diodes BY-126, BY-127 which were found short on the first checking, were produced by you may be returned to you as the same items BY-126 & BY-127 i.e. 141 & 415 respectively had also later on been traced during the course of checking from NPL store. You also stated that in case this excessive quantity is not returned to you, you would be put to financial loss of Rs.2000/-. Yours this letter clearly speaks that you had purchased this item from the market spending money from your own pocket and thus had produced it before the Board of Officers as having been actually traced by you. This is manipulation by deceitful substitution with connivance of SI Ved Singh.

The Enquiry Officer nominated for conducting the enquiry submitted his enquiry report on 5-10-89. Based on this the disciplinary authority passed an order of punishment as under:

"In view of above, I, the undersigned DCP/Comn., as per power vested in me u/s 21 Delhi Police Act '78 hereby pass an order of forfeiture of three years' approved service permanently having cumulative effect of SI Avtar Singh, No.403/D, thereby entailing reduction in his pay from Rs.1600/- p.m. to Rs.1480/- p.m. (in the pay scale of Rs.1400-40-1800-EB-50-2300). Moreover, a sum of Rs.780/- (Rupees seven Hundred & Eighty) only will also be recovered from the future salary of defaulter SI Avtar Singh, No.403/D towards the loss to the Govt. to the tune of Rs.2338.80 paise, as his share, subsequently."

In appeal the appellate authority modified the punishment with regard to forfeiture of service and ordered that three years approved service be forfeited temporarily thereby entailing reduction in pay from Rs.1640/- to Rs.1520/- for a period of three years. Against appellate order dated 5-6-90 this D.A. has been filed with a prayer for quashing the enquiry report, the orders of the disciplinary authority and the appellate order.

2. The background to the issue has been brought out by the respondents. It is stated that the purchase case of 35 numbers YL-1020 tubes was submitted to DCP/Communication on 24-7-94. Since the DCP had an impression that there was already a sufficient stock of this item, surprise check of all major store components was ordered. This check was done by a Board of Officers. The Board found a number of items missing. Some items were produced subsequent to the date of checking. Other items were found to be short. The cost of these missing items was estimated at Rs.2338.80 and the three persons responsible for the stores out of whom the applicant was one

such person, were made to share the cost of the items equally and thus each one of them was made to pay an amount of Rs.780/- to make up for the loss of the items which were not produced even on a later date.

3. At the outset the learned counsel for the applicant argued that the punishment awarded was a multiple one in that the disciplinary authority had imposed the combination of the following punishments:-

1. Reduction in pay;
2. Permanent stoppage of increments; and
3. Fine of Rs.780/-.

It was argued that under section 21 of the Delhi Police Act they constitute three different elements of punishment and the action in imposing these punishments simultaneously amounts to double jeopardy. This punishment is liable to be set aside being in violation of statutory provisions.

4. We note that the punishment awarded by the disciplinary authority has been modified by the appellate authority and hence the order of the appellate authority is the one to be considered. The appellate authority has inflicted the penalty of forfeiture of three years approved service temporarily entailing reduction in pay from Rs.1640/- to Rs.1520/- for a period of 3 years. Under section 21 of the Delhi Police Act 1978 one of the punishments which can be awarded is forfeiture of approved service. Rule 8(d) of Delhi Police (Punishment & Appeal) Rules 1980 spells out the consequences of such forfeiture. Rule 8(d) reads as under:-

" Forfeiture of approved service.-

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Approved service may be forfeited permanently or temporarily for a specified period as under:-

(i) For purposes of promotion or seniority
(Permanent only).

(ii) Entailing reduction in pay or
deferment of an increment or increments
(permanently or temporarily).

The rules thus provide for reduction in pay permanently or temporarily. The applicant has been imposed only the punishment of reduction in pay from Rs.1640/- to Rs.1520/- temporarily for a period of 3 years. We do not see any multiplicity of punishment.

5. It was argued that in addition to the above punishment a sum of Rs.780/- has been ordered to be recovered towards the loss to the government as per the applicant's share. This recovery was sought to be made out as 'fine' and accordingly ^{argued} as a further separate recognised punishment as per relevant section/relevant rule. We are not convinced by this argument and we accept the explanation of the respondents in para 4.15 of their reply that the sum of Rs.780/- was ordered to be recovered from the applicant as his share as loss to the government and this recovery is not to be treated as a fine, as envisaged in the Punishment & Appeal Rules. We also note that the rules provide for a fine not exceeding one month's pay and it could not be the intention that recoveries which could be legitimately be more than one month's pay cannot be made if there is no distinction between recovery and fine. In the circumstances we do not propose to discuss the various citations relied by both sides to emphasise the legality or otherwise of multiple punishments.

6. It was then argued that the Enquiry Officer or for that matter the disciplinary/appellate authorities have not recorded any finding on the various charges.

7. The charge sheet has already been reproduced. Charge (i) contains three components, viz (a) the applicant moved an indent for purchase of 35 numbers of valves YL 1020. (b) This was done despite the availability of stock of 74 valves and (c) the moving of the indent was committed with a mala fide intention in connivance with SI Ved Singh. It was correctly argued that there is absolutely no discussion with regard to all the three components of this charge in the findings of the Enquiry Officer. There is also no finding to this effect in the enquiry report. Equally the disciplinary and appellate authorities have not discussed this charge. The ^{basic} charge is that the applicant had moved the indent for purchase of the valves. But the findings in enquiry do not anywhere bring out that the applicant moved the indent; rather it has been held that SI Babu Ram had moved the indent.

8. Regarding charge No. (ii) - this charge again contains three components viz., (a) there was a shortage of items to the tune of Rs. 2338.80; (b) some of the missing items initially at the time of checking on 25-7-84 were produced later on by substitutions/replacement and by managing from private sources; and (c) ^{applicant} The ~~shifted~~ items from CPL to NPL in an haphazard ^{way.} The learned counsel pointed out that there is absolutely no discussion on shortage of items to the tune of Rs. 2338.80 in the findings or by the disciplinary/appellate authorities. Similarly the charge of shifting the store from CPL to NPL in an haphazard manner

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has nowhere been discussed. On perusal of the relevant documents we agree with the learned counsel for the applicant. With regard to the remaining components of charge (ii) that some of the items which were missing initially at the first stage of checking were later on produced by substitution/replacement, we are not impressed by the argument that even this part of the charge has nowhere been discussed/established. The Enquiry Officer has recorded that the applicant removed four valves from NPL store against his clear receipt and he tried to substitute the missing items by purchasing from the market. This finding has been based on strong prosecution evidence which has been recorded in the findings. PW.4 & PW.5 have testified that four valves were removed from NPL Store by the applicant for which he had given the receipt. It is also not disputed that certain items were purchased from the market. Admittedly the applicant had himself given a letter at a later date requesting for the return of these items since such items were later on found in the NPL store.

9. Regarding charge No.(iii) that the applicant was in custody of the said store keys which provided him with opportunity to manipulate, the Enquiry Officer has not discussed this aspect in his conclusion. The ld. counsel for the applicant drew our attention to the evidence of PW.4 (Question No.4/Question No.5 at pages 35/36). In reply it has been stated that the keys had been kept with Shri Babu Ram/Shri Malkiat Singh. Similar at reply was given to Question No.9 referred to/page 33 of the D.A. It was argued that there was no the basis for the finding of the Enquiry Officer that the

keys were kept by the applicant which finding has been recorded not in the para of discussion relating to the applicant but in the para of discussion relating to the other accused SI Babu Ram. Even otherwise, the enquiry officer has not made any remarks on the replies of PW4 which were in favour of the applicant. The enquiry Officer could disbelieve PW4 and rely upon some other evidence on record. This he could do after giving reasons therefor. In the absence of any reasons and discussions, the finding can not be set sustained.

10. We are aware that it is not for the Tribunal to assess the evidence but if a finding is based on no discussion or against evidence, we find it difficult to accept such a finding.

11. Regarding charges No.(iv) and (v) we note that these are inter-linked with the charge No.(ii) which we have already discussed.

12. ~~Regarding charge~~ Thus we note that excepting for one component of charge No.(ii) namely that the applicant substituted/replaced certain missing items which were not initially found at the first stage of checking, all other charges have not been established by the enquiry officer or by the disciplinary/appellate authorities. It is the primary duty of the enquiry officer to discuss each and every charge and record a proper finding. This has not happened in this case excepting for one component of charge No.(ii) as pointed out earlier. Even here there is some force in the argument that replacement from market is not a malafide act and the four valves were brought from the NPL Store in the company-guidance of an officer superior to the applicant.

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13. In the circumstances, we set aside the appellate order dated 30.5.90. We do not deem it necessary to strike down the enquiry report or the order passed by the disciplinary authority since these two have merged with the appellate order.

14. The appellate authority is directed to reappraise the enquiry proceedings and record fresh findings on the charges levelled, keeping in view our observations. It is needless to add that the quantum of punishment will also require reconsideration. The appellate authority shall pass a fresh order within a period of 3 months from the date of receipt of this order. No costs.

P J Thiruvengadam
(P.T.Thiruvengadam)
Member (A)

S.C. Mathur
(S.C. Mathur)
Chairman

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