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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

D.A.22/90

New Delhi, This the Day of 01 June 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri Arvind Kumar
S/o Shri Ram Niwas Tyagi
R/o A-16, Sarawati Vihar Police Station,
Delhi.

...Applicant

By Shri B.S. Charya, Advocate

Versus

1. The Commissioner of Police,
Delhi Police
Police Headquarters
MSD Building I.P Estate,
New Delhi - 2
2. Union of India
Ministry of Home Affairs
Government of India
New Delhi, through its
Secretary.

..Respondents

By Smt Avnish Ahlawat, Advocate

O R D E R (Oral)

Hon'ble Shri J.P. SHARMA, Member (A)

1. The applicant joined the Delhi Police as Constable in the year 1977. The applicant along with Head Constable Kedar Nath and one Constable Puran Singh were served with a summary of allegations. Before that they were suspended on 24-2-88 on the allegations that while they were posted in a Police Picket on 20-2-88 accepted illegal gratification from the truck driver. A Joint enquiry was held against the applicant and Head constable Kedar Nath and Constable Puran Singh and the

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and the Enquiry Officer vide his report dated 13 -1-89 found them guilty and the Disciplinary Authority acting on this report by order dated 12 -4-89 exonerated Constable Puran Singh , inflicted punishment of forfeiture of 5 years approved service permanently with proportionate reduction and his suspension period is to be treated not spent on duty in his pay for a period of 5 years/upon Head Constable Kedar Nath and the applicant was issued a show cause notice for which he made a representation. Regarding the applicant Shri Arvind Kumar punishment of dismissal from service was imposed. The above said order was upheld by the Appellate Authority, i.e. by the Additional Commissioner of Police, vide order dated 22.11.89. The present application has been filed in Jan 90 praying for the grant of relief that the impugned order of punishment as well as finding of the Enquiry Officer be quashed and the provision of Rule 16 of the Delhi Police (Punishment & Appeal) Rules 1980 be declared as ultra vires of the article 14 of the Constitution of India and to direct the respondent to reinstate the applicant with all consequential benefits like pay and allowances for the intervening period.

2. The respondents contested the application and stated that the applicant accepted the illegal gratification of Rs.10 from the Decoy witness Shri Virender Kumar who was Sub Inspector at Anand Parbat Police Station at 12.55 a.m. while travelling in Truck No. RSC-5595 loaded with

cattle heads. Inspector Lal Singh SHO/Anand Parbat was also travelling in the same Truck. Inspector Suchinder Singh of Departmental Enquiry Cell conducted the enquiry and framed the charge against the applicant as well as the other two delinquents that on 20.2.88 all the three were on a picket duty at New Rohtak Road, near Kamal Restaurant, New Delhi and accepted illegal gratification of Rs.10 from the Decoy witness Shri Virender Kumar, SI of Anand Parbat Police Station who was also travelling in the said truck at 12.55 a.m. The above act amounts to gross misconduct and un-becoming of a police officer which renders them liable for punishment under section 21 of the Delhi Police Act, 1978.

The applicant has also examined the defence witness Shri Swaran Singh who is said to be present in the Truck as Driver while this incident occurred between the night of 19/20 Feb 1988. The other witness who was cited was Shri Sita Ram but he was not cross examined and the applicant has filed the Defence Statement.

3. The applicant has already filed the rejoinder reiterating the facts stated in the application. We heard counsels of both parties and perused the records. The learned counsel for the applicant argued that this is a case where certain important piece of evidence was not taken by the enquiry officer nor it was adduced by the Administration regarding the illegal gratification alleged to have been

accepted by the applicant. The contention is that the eye witness Shri Swaran Singh, Truck Driver was not examined though examined as D.W and did not support the charge and further the formalities of search of the applicant or for preparing memos were not done on the spot. They have believed the uncorroborated oral testimony of SI Virender Kumar and SHO Lal Singh as the only witnesses in the Departmental Enquiry. In our opinion this is not a case where the strict rule of evidence are to be observed. The Departmental Enquiry should not be mis-understood as a criminal trial and the standard of reliance on evidence of witness examined, the manner of appreciation of the evidence and the consequences to be drawn by the Enquiry Officer are totally based on relevant rules governing the conduct of the enquiry. In the criminal trial the proof beyond doubt lies on the prosecution while in a departmental enquiry it is the preponderance of evidence and that inference are to be drawn from such established piece of evidence to establish the charge. In this case though SI Virender Kumar is a witness, who is an employee in Police Force his testimony cannot be discarded because the applicant also belongs to the same force. It is not a matter of police witness against a private individual. It is a matter where on a complaint gathered orally by SHO Anand Parbat that truck owners are harrassed by the .

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Police Picket on duty near Kamal Rastuarant at the New Rohtak Road. A trap was laid which resulted in apprehending the applicant and two other members of the police force. The testimony of these witnessess therefore cannot be said to be partial or interested or in any way incredible. The Enquiry Officer observed that the testimony of the witnessess is sufficient to draw the inferences of guilt against the applicant and two others who were there at that time. The contention of the learned counsel has no force that the enquiry officer has not discussed the material which came in the cross-exmination and only made certain factual observation about the statement of witnessess would not establish the charge against the applicant. In fact the Tribunal cannot appreciate evidence nor it can sit as Appellate Authority over the findings of the Enquiry Officer. The Tribunal can only look into the fact whether there is any evidence worth the name or that the findings arrived at totally is non-judicious i.e. the conclusion drawn cannot be drawn on the standard of understanding of a reasonable person. The evidence of SI Virender Kumar and SHO Lal Singh goes to show that the applicant has accepted Rs.10/- for giving some favour to the truck onwers besides this is also on record that he swallowed Rs.10 as suggested by HC Kedar Nath. Thus these evidences cannot be ignored. There is an assumption that a person who gives evidence is speaking truth unless

it is proved that the testimony given is false. That is not the case here. Here it is not the case of perverse finding. The learned counsel for the applicant argued that the provision of Rule 16 sub section(7) does not make any dent in the finding of the report of the enquiry officer. The applicant has submitted defence statement and in that statement he has admitted the whole of the allegations against him except that accepting his stand as illegal gratification. That matter has come to light by the testimony of two witnesses. The contention of the learned counsel for applicant that SHO Lal Singh and SI Virender Kumar has ulterior motive roped in the applicant as they were harbouring certain grudge against the applicant which is only an after thought and it does not fall from the common sense. Had the applicant apprehended any mischief on the part of a person of the rank of Inspector the moment he was asked to march to the Police Station along with Head Constable Puran Singh the sudden reaction should have been making a complaint or a letter written to the higher authorities against unwanted high handedness of senior police officials. He has not done so. This speaks volumes against him.

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4. In view of the facts the findings of the enquiry officer cannot be faulted. However the disciplinary authority order dated April 89

as well as the order of the Appellate Authority of Nov 89 needs a thorough scrutiny and it goes to show that both these orders has small of arbitrariness as well as discrimination atleast in the imposition of punishment on the applicant. Head Constable Kadar Nath who was given less severe punishment while the applicant has been imposed severemost punishment of dismissal from service. The act of HC Kadar Nath is no less than that of the applicant equally and he has also been held guilty by the enquiry officer. Thus the punishment imposed on the applicant needs reconsideration. On another ground also the Constable Puran Singh who was equally held liable for the charge of illegal gratification has been let of and that the period of suspension was also been treated as period spent on duty. This goes to show that the disciplinary authority has not been uniform and just in passing the order of punishment on the applicant.

5. The Hon'ble Supreme Court in a case where ultimate punishment appears to be severe did not interfere in the quantum of punishment and instead direction was given to the respondents to re-consider the same. The Hon'ble Supreme Court has larger powers. The Tribunal cannot also impose punishment commensurate with the established guilt against the delinquents. In view of these circumstances the application is to be partly

allowed with the following directions;

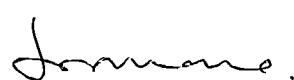
(a) While maintaining the findings of the enquiry authority the case is remitted to the Additional Commissioner of Police, ^{i.e.} the Appellate Authority to again consider the quantum of punishment imposed upon the applicant and pass such order and impose such punishment pertaining to the circumstances of the case considering the observations made in the body of this judgement. The Appellate Authority shall pass this order within three months of receipt of this order.

(b) The Appellate Authority shall pass a speaking order giving detailed reasons for passing the final order and also pass order regarding period of suspension that the applicant has undergone during the enquiry and also for the intervening period.

(c) The Applicant shall not be dispossessed from the allotted quarter till such time the final order is passed by the Appellate Authority subject to paying the licence fee according to rules.

6. No costs.


(B K Singh)
Member (A)


(J P Sharma)
Member (J)