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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.2314/90

NEW DELHI THIS THE 16th DAY OF JANUARY, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri Suresh Kumar
Ex-Constable No.254/C
in Delhi Police
V&P.O. Deepalpur
Distt. Sonapat
HARYANA

...Applicant

(By Advocate : Mrs Avnish Ahalawat)

VERSUS

1. Delhi Administration, through
The Commissioner of Police,
Delhi Police
Police Headquarter,
I.P. Estate,
New Delhi.
2. Addl. Commissioner of Police,
(Northern Range)
through Police Headquarter
I.P. Estate,
NEW DELHI.
3. Dy Commissioner of Police,
Central District,
Daryaganj,
New Delhi.
4. Enquiry Officer,
Inspector Shakti Singh,
through, P.H.O.
I.P. Estate,
NEW DELHI.

...Respondents

(By Advocate : Shri D.S. Obroi, Proxy Counsel
for Shri Anup Bagai, Counsel)

JUDGEMENT (ORAL)

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

The applicant, as Constable Suresh Kumar
No.254/C was proceeded in a Disciplinary Depart-
mental Enquiry with the Summary of Allegations,
that on 21.8.88 at Link Road Chambery at about

8.30 p.m. he was seen accepting Rs.5/- from a truck driver alleged to be a bribe which was seen by Shri A.A. Siddiqui, ACP/Connaught Place, who was in plain clothes and was going towards Faiz Road. On seeing ACP Siddiqui, the applicant said to have thrown that five rupee note but the Const.Tofa Ram driver of the ACP picked up the note and handed over to the applicant, who apologised. In view of this, it is said that the applicant failed to maintain absolute integrity and that he committed misconduct of extorting money under rule (i) (iii) of C.C.S. (Conduct) Rules which made him liable for departmental action under Section 21 of the Delhi Police Act, 1979. Shri Shakti Singh, Inspector (Vigilance) was appointed Inquiry Officer who conducted enquiry according to the Delhi Police (Punishment and Appeal) Rules, 1980, and as per Rule 16 (iii) and (v), examined Constable. Tofa Ram, Truck driver of the ACP Siddiqui, Const. Rajeshwar Singh, Home Guard, SHO Karol Bagh, Delhi, and Shri AA Siddiqui, ACP, Connought Place, New Delhi. He thereafter framed the charge to which the applicant pleaded not guilty and examined ^{in defence} ~~one~~ Shri Rajeshwar Singh and Harbir Singh. The Enquiry Officer submitted

the report to the Disciplinary Authority holding that the charge against the applicant is established of accepting Rs.5/- as bribe from the truck driver. A Show-cause Notice was given by the D.C.P. on 11.7.89 to show cause against the punishment ~~proposed~~ proposed against him of dismissal from service. The applicant submitted a representation. On consideration of the facts and circumstances, the Disciplinary Authority affirming the findings of the Enquiry Officer's report imposed punishment of dismissal from service by the Order dated 20th September, 1989 which was upheld by the Addl Commissioner of Police on appeal by the Order dt 21 January, 90 as well as by the Commissioner of Police on revision by the Order dt 4.6.90.

2. Aggrieved by the aforesaid Order, the present application was filed by the applicant on 6.11.90 praying for the grant of relief that the impugned order of Punishment dt 20.9.89, the Appellate Order dated 21.5.90 & the revisional order dated 4.6.90 be quashed, and the applicant be reinstated in service with all consequential benefits. He has also prayed for the quashing of order dt 16.5.89 for expunging the remarks of ACR of 1989-90.

3. The respondents in their reply contested the application and opposed the grant of the relief on the ground that the applicant was caught red-handed by Shri A.A. Siddiqui A.C.P. of Connaught Place area, and the applicant confessed to have accepted Rs.5/- as bribe from a Truck-driver, and the applicant has no case.

4. Certain more points raised by the applicant in his application have also been explained regarding the question put by the Enquiry Officer, and witnesses which are justified under Rule 16 (III) (IV) Rule of 1980.

5. The applicant has also filed the rejoinder reiterating the ^{same} facts stated in the application.

6. We heard Mrs Avinish Ahalawat, counsel for the applicant and Shri D.S. Oberoi, Proxy Counsel for Shri Anup Bagai for the respondents.

7. Appreciation of evidence by the Enquiry Officer is not a subject of judicial review. The allegations against the applicant which culminated in framing of charge are of accepting bribe from a truck driver to the tune of Rs.5/- The Tribunal, however, can go by the facts.

whether there is
of the case of any evidence against the applicant
on which the finding is passed and ultimately
confirmed by the disciplinary enquiry, and
appellate and disciplinary authority. The
Tribunal can also scrutinise facts of the case
to find out whether the findings given by the
Enquiry Officer can be arrived at on the analysis
done as a reasonable man i.e. whether finding
is totally perverse and that could not be arrived
at on the touch-stone of reasonableness. Now
the learned counsel for the applicant has argued
firstly that bribe as is defined under the Penal
Code is 'acceptance of something in cash or
kind which is not the legal remuneration of
the employee.' The fact of asking or accepting
and taking the bribe has to be established
against the delinquent. There must be a person
who offered the bribe and he is called the
key-witness. We are afraid that person who
is serving as A.C.P., allowed the truck driver,
who is giver of the bribe and did not check
him nor noted down the number of the Truck,
He could have been the material witness
against the applicant that he has accepted
on demand Rupees five, to do a favour which
he was not obliged to do under the law and
rules for which he was posted at the Chambry
link road. In fact, we find that the statement

of ACP is totally incredible as in the earlier part of the statement he corroborated the version that the applicant has accepted Rs.5 in his presence, but on cross-examination by applicant the ACP in reply to question No.8 said that he could say whether the paper that was picked up from the spot was a currency note or a simple piece of paper. It means that he has created doubt in placing reliance on his testimony that he has seen passing of Rs.5 note from the truck driver to the delinquent constable. In such a situation, where the key-witness has not been produced, the recovery of Rs.5 note has not been corroborated by the fact, there is no other witness to substitute this fact during the course of the enquiry and further ignoring to check or note the number of the Truck, whom any favour whatsoever has been given by the applicant, are such facts which totally dis-credit the evidence given by the A.C.P. Shri Siddiqui. He becomes another key-witness of this occurrence of acceptance ^{by the applicant of} the bribe. One key-witness has not been examined but other witness has totally changed his version, may be out of sympathetic consideration or truthfully as the applicant was implicated with some ulterior motive in the incident. Whatever may be the

13

reasons the evidence cannot be said to be of such a nature, and amount to arriving at a guilt against the delinquent. If it is not an evidence of that nature, the case is that the case is that of no evidence. If the evidence adduced can be accepted then the finding arrived at by the Enquiry Officer is perverse, as no reasonable man can arrive at a conclusion when the key witness, one not examined and the other examined, creates doubts whether a note which was picked up from the spot alleged to have been thrown by the applicant was a piece of paper or currency note of Rs.5/-. In both the cases the benefit has to go to the delinquent. The Enquiry Officer has not considered this aspect in the right spirit and the Appellate and the Disciplinary authority too did not apply their mind to this particular piece of evidence of acceptance of bribe tendered in the enquiry.

14

8. We know that it is very difficult to catch hold of a person who accepts bribe but there must be some circumstances of such a nature which may speak better than the human agency to give the finding. The circumstances in this case are ^{not} of such a nature to come to any such conclusion because the delinquent was only posted to check vehicle where normally he has to note the number of the vehicle. It is also his defence. In such a case, it cannot be said that the applicant has accepted any bribe or there is evidence regarding the acceptance of bribe by the applicant. Moreover, the ACP Shri Siddiqui was not on duty to check those who are accepting bribe, but in any case, he was a Police Officer who could apprehend any person who commits an act amounting to an offence in his presence. His testimony, however, as stated above is incredible.

9. We have considered the fact that the impugned order cannot be sustained but we also observe that the applicant has been out of service w.e.f. 20th September, 89 since the communication of this order of dismissal from service. In the particular circumstances of the case, the decision in favour of a person should be followed by award of consequential

12

(15)

benefits on his reinstatement. However, in the present case if the Enquiry Officer has committed certain irregularity in not examining key-witnesses or that the ACP who has apprehended applicant has resiled his version in cross-examination, should not in our opinion give the applicant the benefit of back-wages from the date of his dismissal from service to the date of his reinstatement by virtue of this Order. We, therefore, dispose of the present application with the following directions :-

- (i) Impugned order of punishment dated 20.9.89 as well as orders passed by the Appellate and Revisionary authority are quashed and set-aside.
- (ii) The applicant shall be reinstated in service within one month from the date of receipt of the copy of this Order and the applicant shall be treated in service for all purposes of seniority and promotion as if there has been no break in service, but he will not be entitled to any arrears of pay for the period he had been out of service by virtue of the order of dismissal.
- (iii) He shall be paid wages/salary on his reinstatement giving out due benefit of last pay withdrawn with ^{notional fixation of} increment


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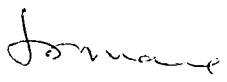
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10

as and when they fall due.

10. Under the circumstances, the application is disposed of leaving the parties to bear their own costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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