

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2356/90

NEW DELHI THIS THE 9TH DAY OF DECEMBER, 1994.

MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR.B.N.DHOUNDIYAL, MEMBER(A)

Ex.Const.Uday Raj Singh
S/o Shri Pitam Singh
Vill& P.O.Halal Pur
P.S.Chhaprauli
Distt.Meerut(UP)

.....APPLICANT

BY ADVOCATE MRS.AVNISH AHLAWAT.

Vs.

1. Lt.Governor
through Commissioner of Police
PHQ, Delhi.
2. Addl.Commissioner of Police(North Range)
PHQ, Delhi.
3. Addl.Deputy Commissioner of Police
North District, Delhi.
4. Inspector Rattan Singh
Enquiry Officer,
D.E.Cell Vigilance
Delhi Police
Delhi.

.....RESPONDENTS

BY ADVOCATE SHRI JOG SINGH.

ORDER(ORAL)

JUSTICE S.K.DHAON:

The applicant, a Constable in the Delhi Police, was subjected to disciplinary proceedings. An inquiry officer was appointed, who found the applicant guilty. The disciplinary authority furnished the report of the inquiry officer to the applicant to give an explanation thereto. On 15.9.1989, the Additional Deputy Commissioner of Police, passed an order dismissing the applicant from service. On 8.2.1990, the appellate authority dismissed the appeal preferred by the applicant. On 5.6.1990, the revision application preferred by him was also dismissed. The three orders are being impugned in the present OA.

2. As provided in the relevant rules, a summary of allegations was served upon the applicant.

(SJK)

The allegations, as material, are these. While posted at Police Station Town Hall on 26.5.1988, the applicant at about 11.30 P.M. along with one Gopal unauthorisedly apprehended four persons, namely Jagat Narain, Devinder Kumar, Munna Lal and Ram Kumar who were found gambling there. The applicant along with Gopal snatched Rs.4600/- from those persons and then allowed them to go. The applicant took Rs.2200/- as his share from this amount. Inspector Mohan Singh, Addl. SHO recovered Rs.2200/- from the pocket of the applicant in the presence of SI Ganpat Singh of Police Station and prepared a seizure memo. After recording the evidence, the inquiry officer framed a charge, the contents of which were substantially the same as contained in the summary of allegations.

3. The list of witnesses supplied to the applicant along with the summary of allegations indicated that 7 persons were proposed to be examined. They were: S/Shri Devinder Kumar, Munna Lal Sharma, Ram Kumar, Jagat Narain, 4 alleged gamblers. They were to depose that certain amount was snatched from them by the applicant. The 5th witness cited was Inspector Mohan Singh. He was to depose that a sum of Rs.2200/- was recovered by him from the pocket of the applicant and the seizure memo was prepared by him. The 6th witness was SI Ganpat Singh who was to depose that Rs.2200/- were recovered from the applicant in his presence and he signed the seizure memo as a witness. The 7th witness was ASIP, North who was to prove his posting at Police Station, Town Hall on 26.5.1988. The list of documents which was given to the applicant along with the summary of allegations mentioned only two documents.

They were:-

(1) D.D.No.22-A dt.27.5.1988 P.S.Town Hall

(2) Seizure Memo regarding recovery of Rs.2200/- from the applicant.

4. We have scanned the evidence of the witnesses produced in the inquiry and we have also examined the seizure memo. For reasons to be stated hereafter, we come to the conclusion that this case falls under 'No Evidence Rule'.

5. PW.1 Munna Lal Sharma, one of the alleged gamblers, failed to identify the applicant. PW.2, Devender also could not recognise the applicant. It is to be noted that this witness is also one of the gamblers. The two witnesses have stated that the applicant had not gone on the spot where they were playing cards. PW.3, Ram Kumar, one of the alleged gamblers, also did not recognise the applicant. He also stated that Sh. Mohan Singh had got his signatures on a blank sheet of paper. PW.4, Surender Singh is a formal witness. PW.5, Jagat Narain, one of the alleged gamblers, also did not identify the applicant. Apart from the aforesaid witnesses, there is no other witness produced in the departmental proceedings who stated that the applicant had gone on the scene of occurrence along with one Gopal. It is, therefore, clear that one part of the prosecution case stands completely shattered.

6. We may now come to the alleged recovery of Rs.2200/-from the applicant. It has come in evidence that at that time a number of people were at the Police Station. However, we find that the recovery memo bears the signature of only one witness, namely SI Ganpat Singh. We may ~~subsequently~~ examine the testimony of SI Ganpat Singh (PW.7). We have read and re-read the testimony of this witness and we find that he

has categorically stated that the recovery of a sum of Rs. 2200/-from the pocket of the applicant did not take place in his presence. He has also stated that he has signed the seizure memo at the instance of Sub Inspector Mohan Singh. This witness,however,has stated that SI Mohan Singh had informed him(the witness) that a sum of Rs.2200/-had been recovered from the pocket of the applicant. He also stated that the applicant accepted the fact that a sum of Rs.2200/-had been recovered from him but the applicant also stated in the same breath that the said amount belonged to him.

7. We may now examine the testimony of SI Mohan Singh(PW 6). His statement, as material is:

"In the daily diary, he mentioned the fact of his being told by someone that Gopal had come to the Police Station. He does not remember the name of the Constable who gave him this information. Although the report written by him in the daily diary No.22/A made out a case, yet,he did not take any action since he thought that the call was bogus and Gopal was the resident of that area and he was friendly with the complainant. Gopal could not be traced out in spite of an effort being made to that effect. A case of extortion or robbery could have been falsely alleged by his friend (Gopal's).Uday Raj Singh(the applicant) had confessed to him that he had gone on the scene along with Gopal. There a sum of Rs.2200/- came to his share. He did not record the said statement/admission of the applicant.

8. On the recovery memo,apart from the signatures of SI Mohan Singh and SI Ganpat Singh, we find some other signature. Shri Jog Singh, learned counsel for the respondents, states that that is the signature of the applicant. However, the signature made by the applicant at various places during the course of the departmental enquiry do not tally with his alleged signature on the seizure memo. We find that SI Mohan Singh in his statement did not say that the applicant has also signed on the seizure memo. We also find that in the departmental proceedings, the applicant was not confronted with the alleged signature on the seizure memo. It has come in evidence that SI Mohan Singh obtained the signatures of the witnesses on a blank sheet of paper.

say

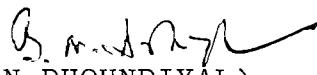
9. It is to be noted that the specific case set up by the applicant in his written statement, before the disciplinary authority as well as the appellate authority was that his cousin had come from the village with a specific amount to make purchases in connection with a wedding in the family. It has come in evidence that some goods were purchased by the cousin of the applicant and those goods were stored in a room attached to the Police Station. The applicant had examined a number of witnesses who were in the Police department and they categorically stated that SI Mohan Singh had broken open the lock of a box which was kept in the room wherein the goods of the cousin of the applicant were stored. He took a sum of Rs.3000/- from that box. Thereafter, he took away a sum of Rs.2200/- and left a sum of Rs.8000/- in the box. We note that neither the inquiry officer nor the disciplinary authority nor the appellate authority have referred to the testimonies of the defence witnesses. It is thus clear that the defence put up by the applicant has not been considered at all.

10. In view of the foregoing discussion, we have no hesitation in recording a finding that the charges as contained in the summary of allegations and the charges framed remain completely unproved. We have, therefore, no alternative but to set aside the impugned orders.

11. This OA succeeds and is allowed. The impugned orders are quashed. The applicant shall be reinstated in service. We do not consider it a fit case where we should grant back-wages to the applicant. The applicant shall be treated to be in continuous and uninterrupted service throughout

and his seniority etc. should be reckoned on that footing.

12. There shall be no order as to costs.


(B.N.DHOUNDIYAL)
MEMBER(A)


(S.K.DHAON)
VICE-CHAIRMAN(J)

SNS