

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 2388 of 1990

New Delhi this the 07th day of December, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member

Shri Mahabir Singh
R/o F-220, Katawaria Sarai,
Near Qutab Hotel,
New Delhi.Applicant.

By Advocate Shri A.S. Grewal

Versus

1. Commissioner of Police Delhi,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. Additional Commissioner of Police,
(Southern Range),
New Delhi,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
3. Additional Deputy Commissioner of
Police,
South District,
Hauz Khas,
New Delhi.Respondents

By Advocate Shri Rajinder Pandita

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The applicant, a constable in the Delhi Police, was subjected to disciplinary proceedings. After accepting the Enquiry Officer's report, the disciplinary authority (Additional Deputy Commissioner of Police) punished the applicant by reducing his pay by five stage from Rs.1050/- to Rs.950/- in the time scale of pay for a period of one year with effect from the date of issue of the order. The direction further was that the applicant will not earn increment of pay during the period of reduction on the expiry of the period.

of one year. Furthermore, the reduction will have the effect of postponement of future increments of pay. The Additional Commissioner of Police acting as the appellate authority by his order dated 24.07.1990, dismissed the appeal preferred by the applicant. The two orders are being impugned in the present application.

2. A counter-affidavit has been filed on behalf of the respondents. The record of the departmental enquiry has been produced for our perusal and we have seen the same.

3. The contents of the summary of the allegations given to the applicant and the charges framed against him by the Enquiry Officer are substantially the same. We are, therefore, adverting to the contents of the summary of allegations. The allegations can be broken up in two parts. The first is that the applicant failed to take any legal action when a report of accident between vehicle No. DBV 1809, a two wheeler scooter and a Maruti Car No. DBG 6826 was brought to his notice by one Sucha Singh and the applicant helped Ashok Kumar, the driver of the Maruti Car to slip away from the spot on 12.12.1988. The second is that the applicant misbehaved with Sucha Singh on 14.12.88 and tried to take him to Police Station Ambedkar Nagar without any legal notice.

4. Indisputably on 12.12.1988, the applicant was not deputed as a traffic constable. It appears that he was on some sort of duty in plain clothes. The Enquiry Officer has relied upon the testimony of Sucha Singh and also upon the testimony of his son Ranjit Singh with respect to both the charges. In fact, in the departmental enquiry, the aforesaid two witnesses were the only

eyewitnesses of the incident.

5. From the record, we have found an extract from D.D. No.23 dated 12.12.1988 of P.P. Govind Puri, New Delhi. This document has been exhibited as P-W-I/A in the departmental proceedings. This is a report lodged by Sucha Singh on 12.12.88 at 8.30P.M. According to this report, Sucha Singh was seated on his Scooter No.DBV 1809 and proceeding towards Pocket 14-A when a Maruti Car No.DBG 6826, coming on a high speed and driven recklessly came from behind and struck his scooter on the right side.

6. Sucha Singh did not receive any injury. However, the scooter was damaged on the right side. He, therefore, prayed that the legal action may be taken against the driver of the car and his report may be entertained.

7. The aforesaid document has been considered by the Enquiry Officer. Sucha Singh entered the witness box. He was cross-examined by the Enquiry Officer also. However, the said officer did not put any question to him nor he did mention in the report that the applicant failed to take any legal action of the accident and let off the driver of the Maruti Car. The report is the primary evidence of the incident. Possibility of Shri Sucha Singh and his son Ranjit Singh later on improving their version so as to fit in with the summary of allegations, is not ruled out. In fact, in the circumstances of the present case, it is absolutely probable that they have done so.

8. On 12.04.1989, Sucha Singh addressed an application to the then Home Minister and also forwarded a copy of the same to the Deputy Commissioner of Police. This document is on record of the Enquiry Officer and has been exhibited

as P-W-I/B. It is stated in the said application that the incident took place on 12.01.1989 at about 8.30 P.M. In the application an allegation has been made for the first time that the constable on duty failed to take any legal action and let off Ashok Kumar, the driver of the aforesaid Maruti Car after taking some illegal gratification. It is also alleged therein that the said constable threatened Sucha Singh with dire consequences, if he reported the matter at the Police Station. It is further stated that he went to the Police Station Ambedkar Nagar but nobody noted his report. Out of fear, he lodged a First Information Report (FIR) at Police Station Govind Puri at about 10.00 P.M. on 12.1.1989. This document, if the contents thereof are correct, knocks off the bottom of the prosecution case set up against the applicant. It is to be noted that the Enquiry Officer has made a reference to this document in his report. However, it is interesting to note that even though the Enquiry Officer cross-examined Sucha Singh, he did not confront him with the said application dated 12.04.1989.

One cannot / put the question to Sucha Singh about the glaring discrepancy between the FIR lodged by him at the P.S. Govind Puri and the contents of the application sent to the Home Minister. One can imagine that a typographical error at one place could be committed and that may be with respect to the date of the incident, but surely it is unbelievable that there should be a typographical error even about the time of the incident. Furthermore, the Maruti Car is described as DBV 3692 and the scooter is identified as DBV 1869. It will be immediately seen that even the numbers of the car and the scooter, as mentioned in the charge and as mentioned in the

application under consideration differ.

5. As regards the second part of the charge that on 14.02.1988, the applicant tried to take Sucha Singh to the P.S. without any legal notice. The same too appears to be an absolutely baseless allegation as we shall presently show.

6. We have on record a document Exhibit P-W-3/B. This is an extract from D.D. No.5-A dated 14.12.1988 P.S. Ambedkar Nagar, New Delhi. This is a report of Chandan Singh, ASI. According to this report, the applicant (Mahabir Singh) met Chandan Singh at about 4.25 P.M. Mahabir Singh informed Chandan Singh that Sucha Singh was refusing to accept the notice under Section 160 Cr.P.C. from him (Mahabir Singh). Chandan Singh went to the spot alongwith Mahabir Singh (the applicant), and on seeing him Sucha Singh created a row and a large members of public congregated at that place. Sucha Singh also uttered bad words to the Police Force as a whole. Thereupon Sucha Singh was arrested under Sections 107/157 of the Cr.P.C.

7. Charan Singh has been produced as PW-3 in the departmental proceedings. He has proved the aforesaid report as Exhibit PW-3A. However, the Enquiry Officer did not consider it proper to cross-examine him so as to explain the discrepancy in the charge levelled against the applicant and the contents of the report of Chandan Singh.

8. In this case, it is our considered opinion that the documentary evidence referred to above, completely destroys the prosecution case. We, therefore, come to the conclusion that the oral

evidence relied upon by the Enquiry Officer is wholly unreliable. We are conscious of the fact that it is not within the domain of the Tribunal to reappraise the evidence. This, however, is not a case of re-appreciating the evidence because falsehood is at large. This case, therefore, falls within the rule of "no evidence". The result is that the order punishing the applicant is not sustainable.

9. - We have already referred one of the charges against the applicant that he failed to take any legal action when the accident was brought to his notice. We have already stated that at the time of the alleged accident, the applicant was not posted as a traffic constable. He was somewhere near the accident in plain clothes. The expression "legal action" on the face of it, is a vague term. The charge is absolutely silent on the precise action which the applicant could have taken. However, the applicant has taken the stand that he had taken the driver of the Maruti Car and Shri Sucha Singh to the P.S. and reported the matter to the duty officer. His defence has been negatived by the disciplinary authority as well as the appellate authority on the ground that he failed to produce the duty officer as a defence witness. The date and time of the accident, according to the department, was fixed. Therefore, there could have been no difficulty for the department to find out as to who was, at the relevant time and date, the duty officer at the P.S. It is not the case of the department that there was, in fact, no duty officer. No attempt has been made by the department to produce the duty officer in the departmental proceedings. Surely, the duty officer, if he had

accepted the version of the applicant, would have been in trouble because apparently no action was ever taken against Ashok Kumar, the driver of the Maruti Car. In these circumstances, we come to the conclusion that the disciplinary authority as well as the appellate authority rejected the defence of the applicant on this score on an extraneous consideration.

10. This application succeeds and is allowed. The orders passed by the disciplinary authority as well as the appellate authority are quashed.

11. There will be no order as to costs.

B.N. Dhundiayai
(B.N. DHUNDIYAI)

MEMBER (A)

S.K. Dhaon
(S.K. DHAON)
VICE CHAIRMAN

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