

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2569/90

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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).

Ved Singh (834/D)
s/o Shri Gheesu Ram
r/o 1/3595 Ram Nagar Ext.
Loni Road, Shahdara, Delhi
working as Sub Inspector
in Communications Branch
of Delhi Police.

..Applicant.

(By Shyam Babu Advocate)

Vs.

1. Delhi Administration, Delhi,
through: Chief Secretary,
5 Shyamnath Marg, Delhi.

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

3. Deputy Commissioner of Police
(Communications) Old Police Line,
Delhi.

..Respondents.

(By Advocate Shri Vijay Pandita)

ORDER

Shri P.T.Thiruvengadam, Member (A)

The applicant was functioning as SI (Storeman) 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 you SI Ved Singh got moved a case by SI (Supvr) Babu Ram for procurement of 35 numbers of tubes YL-1020 on the plea that only six such tubes were in balance in the stock, while actually the same tubes 74 (quantity) were available in balance in the stores. This fact has also been accepted by you in your reply given on 9-8-84 in response to the explanation called upon you vide No.1760/ST(P) DCP/Commn. dated 30-7-84. Your acceptance to this fact that you had told SI (Supvr) Babu Ram the wrong balance on which the said purchase case of valve YL 1020 was moved, not only speaks your malafide intention but also your connivance with SI Avtar Singh your immediate senior, to manipulate for the both of yours personal gains.

On further more stores checking carried out as per orders of DCP/ Comm., you alongwith SI Avtar Singh manipulated by deceitful substitutions/ replacement of other items, the list of such items is enclosed herewith (Appendix B) having required details.

(ii) That you SI Ved Singh failed to produce the missing stores items as mentioned in the final checking report submitted by the Board of Officers at the time of checking made on 25 & 27 etc July 1984 at the very first instance. You in connivance with SI Avtar Singh produced some items later on by managing the same by substitution, acquiring from private sources/NPL Stores. You could not convince the Board of Officers about the late production of these missing items, although you pretended that it had been traced within the stores itself. It shows your malafide intention for personal gains, with unreliable and irresponsible attitude towards performances of your Govt. duties.

(iii) That you failed to perform your lawful assigned duties which were assigned to you by the competent authority against your proper signature on the Duty Register maintained by the then ISP ^{to} to which the Govt. Store items to the tune of Rs.2338.80p have been revealed to be short due to wrong transactions with malafide intention to achieve personal gains. As per the submitted report of Board of Officers, you were fully responsible for the correctness and upto date maintenance of the account/records of all the store items maintained by you in the store ledgers as per nature of duty assigned to you, as you are the officer responsible for all transactions and accounting. This all amount to wilful carelessness, negligence, irresponsibility, dereliction of duties, coupled with unbecoming of a Police Officer on your part.

(iv) That it was stated by SI (Supvr.) Babu Ram that the stores keys were possessed by every personnel of the store, that is, you also. You were not given keys officially to keep with you. It means you had got prepared the keys bunch of Govt. Stores privately of your own to get access to the stores in the absence of seniors. This shows malafide intention to achieve personal gains on your part amounting to misconduct and unbecoming of a Police Officer.

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:-

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"In view of above, I, the undersigned DCP/Comm., hereby pass an order of forfeiture of three years' approved service permanently having cumulative effect of SI Ved Singh, No.834/D thereby entailing reduction in his pay from Rs.1640/- p.m. to Rs.1520/- 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 Ved Singh No. 834/D towards 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 30-5-90 this O.R. 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 24-7-84. 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.-

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 punishments.

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 4.19 of their reply that the sum of Rs.780/- was ordered to be recovered from the applicant as his share of 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. (a) The applicant got moved a case for procurement of 35 numbers of tubes YL-1020 on the plea that only six such tubes were in balance when actually 74 tubes were there; (b) the applicant had told SI(Supervisor

Babu Ram the wrong balance; and (c) the applicant alongwith SI Avtar Singh manipulated substitutions/replacement of number of missing items.

8. It was argued that the Enquiry Officer has summed up in his findings that plea of the defaulter that he did not move any case for purchase of the valves was untenable in view of the statement of SI Babu Ram putting the blame on the applicant. Such a finding relying on the statement of a codefaulter can not be sustained.

9. The finding on this component is not based entirely on the statement of the codefaulter Babu Ram but also on applicant's own admission said to be contained in his reply to DCP's communication dated 30.7.84. The applicant has not filed a copy of his reply. Admission is the best evidence against a person. Admission does not require any supporting evidence; of course, it can be explained. In the absence of a copy of the applicant's reply, we are unable to find fault with the finding on the component (a) of the charge.

10. Regarding components (b) and (c) of charge No.(i) namely the petitioner had told SI (Superior) the wrong balance and manipulated substitution/replacement of certain missing items, we do not find any discussion of the

evidence in the findings of the enquiry officer. The same is the position with regard to the orders of the disciplinary and appellate authorities who too have not discussed the evidence, if any, in support of the charge.

11. Charge (ii) is a repetition of component (c) of charge (i). Therefore, the flaw pointed out in respect of component (c) of charge No.(i) applies to the finding of this charge also.

12. Charge (iii) relates to shortage of items amounting to Rs.2338.80 which items were found short till the end. There again excepting for the statement of PW.1 that there was such a shortage, there is absolutely no discussion of the evidence in the findings of enquiry officer or in the orders passed by the disciplinary/appellate authorities. Hence the findings on this charge suffer from apparent error.
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13. Charge (iv) relates to the stores keys being in possession of the applicant. The Enquiry Officer has recorded that there is no substance in the assertion that the keys were not with the applicant and the prosecution

evidence brought out on file clearly speaks that all the defaulters were having the keys with them. The learned counsel for the applicant drew our attention to the evidence of PW-4 (Question No.4/Question No.5 at page 69 of the DAD). In reply, it has been stated that the keys had been kept with Shri Babu Ram/Malkiat Singh. Similar reply was given to question No.9 referred to at page 66 of the DA.

The replies of PW-4 were in favour of the applicant. The finding of the EO has not dealt with this part of the evidence. The EO could disbelieve PW-4 and rely upon some other evidence or record. This he could do after giving reasons therefor. The findings can not be sustained in the absence of any reasons and discussions.

13. Thus, we note that excepting for one component of charge No.(i) namely that the applicant had moved the case for procurement of 35 numbers of tubes, 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 which has not happened in this case excepting for the one component of charge No.

(i) as pointed out earlier. Even here, we are not able to give any comments since a copy of this explanation of the applicant dated 30.7.84 which has been relied upon has not been placed before us.

14. 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.

15. The appellate authority is directed to reapprise 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. Thiru

(P.T.Thiruvengadam)
Member (A)

S. C. Mathur

Chairman

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