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Central Administrative Tribunal

Principal Bench

OA-1321/91

New Delhi, the 21st May, 1996.

Hon'ble Shri A.V. Haridasan, VC(J)  
Hon'ble Shri R.K. Ahooja, M(A)

Sh. Dharam Pal  
S/o Sh. Nop Ram  
R/o B-580, Avantika  
Rohini, Sector-I  
Delhi.110085

...

Applicant

(Advocate: Sh.H.B.Mishra)

versus

1. Chief Secretary,  
NCT of Delhi  
5 Sham Nath Marg,  
Delhi.110054.

2. Commissioner-cum-Secretary(Transport)  
(earlier known as Director of  
Transport)  
Delhi Administration,  
5/9 Under Hill Road  
Delhi.110054.

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Respondents

(Advocate: Sh.Rajinder Pandita)

ORDER

Hon'ble Shri R.K. Ahooja, M(A)

The applicant challenges the order dated 7.9.1988

whereby he was awarded the penalty of reduction in rank  
from the post of LDC to that of Peon until he is found  
fit after a period of five years from the date of the  
said order to be restored to his original post.

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The impugned order was passed as a result of departmental enquiry held against the applicant on allegation of mis-conduct. The order of the Appellate Authority rejecting the appeal against the order of reduction in rank is also challenged.

2. The facts of the case in brief are that the applicant was initially appointed as Farash-cum-Peon in July, 1968 and later was promoted as LDC in July, 1985 <sup>and</sup> deputed to work in the Transport Department in Delhi Administration. While working in this capacity he was served with a chargesheet vide memo dated 10.3.1987 containing <sup>two</sup> charges. The first article of charge stated that during a surprise check by Shri K.M. Lal, Asstt. Director of Transport Directorate at Learners Licence issue counter on 29.1.1987 wherein the applicant was posted as counter-clerk, a sum of Rs.237/- was found in excess of the actual fees of the Learners Licence issue and sale of manuals of instructions for safe driving on that day. This proved that the applicant charged money illegally from the persons in excess of the prescribed fee. The second article of charge alleged that at the time of surprise check 32 Learners Licence were also recovered from the applicant's cash box, the cost of which came to Rs.128/- at the rate of Rs.4/- per licence, which

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amount was to be recovered at the time of handing over the same to the concerned person after the close of the counter. It was alleged that issue of Learners Licence in advance and non-delivery of the same at the counter not only showed his malafide intention but also his connivance with touts.

3. The applicant denied both the charges vide his reply dated 20.3.1987. This led to the appointment of Shri S.V.S.Tyagi, Asstt. Director(T) as Enquiry Officer. After submission of the report of enquiry, the then Director vide his impugned order dated 7.9.1988 imposed the penalty of reduction in rank. The appeal was filed before the Chief Secretary, Delhi Administration on 12.12.1988 and the same was rejected vide Memo dated 4.6.1990. In the meantime a notice was issued to the applicant dated 16.11.88 proposing to treat the period of suspension of applicant from 29.1.87 to 7.9.88 as not spent on duty except for the purposes of pension and other terminal benefits and also not to allow him any arrears of pay and allowances during suspension period beyond the subsistence allowance already paid to him as per rules. A show cause notice was issued

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in September, 1988 but after the rejection of his appeal by the Chief Secretary, Delhi Admin. his representation in reply to show cause notice was also rejected by order dated 17.12.1990. The order imposing the penalty, the order rejecting the appeal and the order treating the suspension period as not having been spent on duty, have been challenged on the ground that the finding of the Enquiry Officer was perverse since the same was not based on any legal permissible evidence. Further more a copy of the Enquiry Report was not given to him before imposing the penalty.

The applicant alleges that the appellate order was bad in law since it contained no reasons for rejecting the appeal. Finally, the order relating to suspension period, it is alleged tantamounts to a second penalty for the same mis-conduct <sup>and</sup> is thus illegal and bad in the eyes of law.

4. We have heard, the 1d. counsel for the applicant Shri B.H. Mishra and Shri Rajendra Pandita for the respondents and considered the pleadings on record. Shri Mishra submitted that the whole case against the applicant was based on the excess amount of Rs.237/- found in the cash box, the presumption being that this was due to extra charges of the prescribed fee illegally obtained. However, it was ignored that out of

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this a sum of Rs.225/- was the personal money of the applicant for which an entry was made in the personal cash register maintained in the transport authority while a sum of Rs.12/- was to be handed over to the defence witness PW1 Shri Suresh Kumar <sup>for</sup> the cost of two sets <sup>of</sup> manual which ~~not~~ <sup>were</sup> yet to be collected from the counter. In this context he drew our attention to the evidence of PW2 Shri Udai Singh who was also working at the said counter stated <sup>and who had</sup> that all the clerks dealing with cash enter their personal cash in the personal cash register everyday in the morning and the applicant had also made an entry of Rs.225/- in the register on the date of surprise check. Shri Saheb Singh Chauhan, JAO has stated that he had also seen the amount entered in the personal cash register on the following day when he came to office. As regards the second charge Shri H.B. Mishra submitted that in respect of 32 Learners Licences as per PW.1 <sup>not</sup> the receipt had/been issued by the applicant but by one Shri Ved Prakash, LOC. It was submitted on behalf of the applicant that since the Learners Licences in question were not issued by the applicant there was no question of keeping these to be handed over through ~~to~~uts after the close of the counter. Submissions made by the counsel for the applicant have been hotly contested

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by Shri Rajindra Pandita who pointed out that sufficient evidence is available to show that the personal cash with the applicant amounted to only Rs.25/- and was entered in the personal cash register but later on the entry was tampered with by adding another figure '2' ~~or~~ to make it Rs.225/-.

5. We have carefully considered the arguments advanced by both sides as well as pleadings on record. It is an admitted fact on both sides that surprise check resulted in excess of cash of Rs.237/-. It is also not contested that as mentioned in the second article of charge to prove that Learners Licence receipts were also found in the cash book. In the absence of a satisfactory explanation the presence of excess amount would show the malafide intention of the applicant. Thus, the whole thing hinges on whether the entry in the personal cash register was Rs.25/- or Rs.225/-. A perusal of Enquiry file shows that Shri A.L. Gupta, Accounts Officer who accompanied Shri K.M.Lal, Asstt. Director for the surprise checking stated during the cross-examination that the personal cash entry of Shri Dharam Pal showed ~~overwritten~~ and the ~~final~~ figure of '2' appeared to have been added afterwards. Shri Vijay Kumar, Head Clerk, PW3 also stated that the original entry which he saw himself was Rs.25/- and not Rs.225/-. A similar statement has come from Shri K.M. Lal, Asstt. Director who



conducted the surprise check. During the course of enquiry the applicant has signed one of the statement in which he had stated that he had a personal cash of only Rs.25/-. However, later he stated in his reply that when the surprise check was being made he was very much depressed as the Officer Sh. K.M. Lal, Asstt. Director was continuously shouting at him and he was at that time nervous, depressed and confused and without knowledge or understanding he had signed the statement under duress. The above facts point out that there was evidence in the shape of statements of two witnesses that the personal cash amounted to only Rs.25/- and that this was also accepted initially by the applicant even though the applicant later resiled from the statement and said that the same was obtained from him under duress. It cannot thus be said that there is no evidence whatsoever against the applicant. The judicial review by the Tribunal is confined only to the question of ~~there~~ being no evidence whatsoever; it does not extend to a reappreciation of the evidence. In the circumstances there is no ground to interfere with the conclusion of the Enquiry Officer. So far as the second article is concerned the discovery of the receipts which is not denied by the applicant, in the cash box by itself is sufficient evidence to come to the conclusion, which the Enquiry Officer reached, regarding the culpability

of the applicant.

6. The applicant has questioned the order of imposing the penalty on the ground that he had not been given a copy of the Enquiry Report before hand in order to enable him to put-forth his defence before the Disciplinary Authority. There was no such requirement for supply of copy of the Enquiry Report. The direction of the Hon'ble Supreme Court to that effect in the case of UOI and others vs. Mohd. Ramzan Khan - JT 1990 (4) SC 456 - had only prospective effect as ~~was~~ may be clarified by the Apex Court in SP Viswanathan (I) vs. UDI and others - 1991 Supp.(2) SCC 269.

7. The applicant has also questioned the order passed by the Appellate Authority for being non-speaking however this point was not pressed, nor a copy of the order of the Appellate Authority was brought on record.

8. The applicant has also contended that the order of the Disciplinary Authority as regards the treatment of the suspension period tantamounts to a second punishment for the same mis-conduct. This is being mentioned only to show that the allegation is frivolous and irrelevant. In case the disciplinary proceedings result in punishment then the Disciplinary Authority is required to determine as to how the suspension period would be treated. There is thus no question of imposition of a double penalty as alleged by the applicant.

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9. In the conspectus and circumstances of the case as discussed above, we find no merits in the application which is accordingly dismissed. There shall be no order as to costs.

*R.K. Ahooja*  
( R.K. Ahooja )  
Member(A)

*A.V. Haridasan*  
( A.V. Haridasan )  
Vice Chairman(J)

SCS