

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

9

Original Application No. 1869 of 1991

New Delhi, this the 3rd day of January 1996

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. K. Muthukumar, Member (A)

Shri Bharam Pal Singh S/o Shri Ganga Ram,
R/o Village and Post Office Luckhsara Distt.
Ghaziabad.

APPLICANT

(Through Mr. Shanker Raju for the applicant)

Vs.

1. Delhi Administration, through the Chief Secretary, Old Secretariat, Delhi.
2. The Commissioner of Police, Delhi Police, Head Quarter, near I.T.O., New Delhi.
3. The Additional Commissioner of Police(Range), Delhi Police Head Quarter, near I.T.O., New Delhi.
4. The Additional Deputy Commissioner, Central Distt, New Delhi.

RESPONDENTS

(Through Mr Surat Singh, Advocate)

O R D E R

(Delivered by Hon'ble Dr. R.K. Saxena, Member 'J')

To challenge the order of punishment (Annexure A-1), the appellate order (Annexure A-3), the order passed in revision(Annexure A-5) and order on petition to the Lt. Governor, is filed this O.A.

D

9A

:: 2 ::

2. Briefly stated the facts of the case are that the applicant Bharam Pal Singh was serving as a Constable in Delhi Police. In the year 1987, he was posted at Anand Prabhat Police Station. On the night of 16/17th October, 1987, this applicant alongwith Head Constable Raj Singh, Constable Miranjan Singh and Constable Nohtash Singh were on picket duty from 12'0 clock in the night to 8.00 a.m. on the New Rohtak Road. It is said that Sh. Ajay Chadha, Dy. Commissioner of Police (D.C.P.) West District, Delhi was also on patrol duty. The Driver of the Truck No. HJV 6921 stopped the truck on Nazafgarh-Mangloji Road seeing the vehicle of the D.C.P. On enquiry, the driver of the aforesaid truck informed that the vehicles are often stopped by the Police Personnels on picket duty in the night and the trucks are allowed to go only after accepting illegal gratification, which is also called 'entry fee'. On receiving this information, Shri Ajay Chadha boarded the truck and got himself seated behind the driver of the truck. He signed one currency note of Rs.10/- and handed over the same to the truck-driver with the instruction that the truck should be stopped only when signalled by the police men. He was further directed that on demand by the police-men, he (the truck driver) should give the currency note of Rs.10/-, which was signed by him. After having received these instructions, the truck-driver started towards Rohtak Road. When the said truck reached near New Rohtak Road, where the Picket party

.....pg.3/-

D
2

10

of Anand Parbat Police Station was on duty, one constable, whose name was subsequently came to the notice of Shri Ajay Chadha, DCP as Braham Pal Singh, signalled the truck driver to stop the truck and demanded entry fee. Consequently, the truck-driver stopped the truck and handed over the signed currency note of Rs.10/- to the said Braham Pal Singh - the applicant. The driver of the truck demanded balance of the money back and thereupon the applicant reluctantly returned the ^{currency} note of Rs.5/-. Another truck which was already standing near the picket party, started after this Truck No.RJV 6921 reached. It is said that the police constable also tried to ascertain as to who were other persons on the seat behind the driver of the truck. Shri Ajay Chadha, however, came down of the truck and searched the person of Constable Braham Pal Singh-the applicant; and two name plates one of Sunder Singh and the other of Braham Pal Singh were recovered. Some currency notes, which amounted about Rs.122/- including signed currency note, were found lying on the ground where Constable Braham Pal Singh was standing. The DCP Shri Ajay Chadha then went to the Police Station, Anand Parbat and got an entry made about the occurrence. The currency notes were also handed over and got them sealed in one envelope.

3. Thereupon The constable Braham Pal Singh was put under suspension and he was departmentally proceeded after a few formalities in the matter. Shri Bhagwant Singh, Inspector was made the Inquiry Officer. He proceeded with the inquiry because the

D

11

:: 4 ::

charges were denied by the applicant. Four witnesses, namely, Constable Dinesh Kumar, Inspector Lal Singh, S.I. Shyam Lal and Shri Ajay Chadha, DCP were examined. The written defence statement was furnished by the applicant. On consideration of the material available on record, the Inquiry Officer held the charge levelled against the applicant and others, proved. Thereupon, the Addl DCP served show-cause notice on the applicant, who again submitted his written reply. The Addl DCP considering all the points, passed the impugned order Annexure A-1 on 23.1.1989 whereby the applicant was dismissed from service.

4. The applicant preferred an appeal Annexure A-2 against the order of punishment which was disposed of on 05.7.1989 by Addl. Commissioner of Police by rejecting the same. It appears that the applicant thereupon preferred revision petition to the Commissioner of Delhi Police. Since it was preferred beyond the period of limitation, the same was rejected on 29.9.1989. The applicant then submitted representation to Hon'ble Lt. Governor, which was also rejected. Hence, this O.A. was filed. It has been contended on behalf of the applicant that there was suppression of material evidence in the case by not producing the two drivers. Also, no recovery memo of the currency note^e which was allegedly given or taken by the applicant was prepared and the order of punishment was passed by an authority, which was lower in rank than the appointing authority. It is further contended that the order in appeal is not a speaking and reasoned

.....pg.5/-

(12)

:: 5 ::

order as is required under law. Therefore, the quashment of them is sought.

5. The respondents have contested the case on several grounds including the point on limitation. It is averred that the order in appeal was passed on 05.7.89. Even the representation which was preferred to the Commissioner of Police, was decided on 27.9.89, yet the O.A. was not preferred within the prescribed period of limitation. It is also the case of the respondents that there is no provision for filing a representation to the Lt. Governor and the applicant cannot get the benefit of the time spent in the disposal of the representation by the Lt. Governor. Even if it is taken into consideration, then also the O.A. was preferred beyond the period of limitation of one year from the date when the order rejecting the representation was passed by the Lt. Governor.

6. It is also pleaded that the orders of punishment were passed legally and there was no illegality therein. The plea taken is that the appointing authority is the DCP and the Addl. DCP exercised the same powers and, therefore, contends[&] that there is no force in the O.A.

7. The applicant filed rejoinder re-iterating the facts, which were narrated in the O.A.

8. We have heard the learned counsel for the parties and have perused the record including the file of the Inquiry Officer.

.....pg.6/-

13

9. The first point, which is of primary importance is whether the O.A. has been filed within the period of limitation. It is an admitted fact that the order of punishment was passed on 23.1.1989, while the order in appeal was passed on 05.7.1989. It is also clear from the record, particularly, Annexure A-5 that the applicant had preferred a revision which was rejected on 29.9.1989 for two reasons. First, was that it was not filed within time, and second was that no cogent reasons were disclosed. It is also the admitted fact to both the parties that the applicant had preferred a representation to the Lt. Governor which was also rejected. The date of giving representation to the Lt. Governor has not been given by the applicant but the respondents disclosed in the counter-reply that the rejection of the representation made to the Lt. Governor, was informed to the applicant through registered letter no.20006-8/HAP/C dated 26.3.1990. The letter must have been served within a fortnight or so, of the date of issue. Thus, the limitation, according to the learned counsel for the applicant, should run thereafter. He further contends that the applicant is a poor person and could not arrange money for preparation of his case, through a lawyer and therefore the delay was caused. The argument on behalf of the learned counsel for the respondents is that there is no provision for revision to the Commissioner of Police and representation to the Hon'ble Lt. Governor, and, therefore, the time which was spent in these proceedings, cannot be excluded. We are not convinced with this argument. A person who is not conversant with

D

(1X)

:: 7 ::

the procedural provisions of law and particularly of limitation, shall act only on the advice of other i.e. a lawyer. If he was advised to file a revision and then to file representation to the Lt. Governor, his bonafides cannot be doubted. The learned counsel for the applicant pointed out that it was the common practice to have moved representation to the Lt. Governor and that practice was adopted by the applicant. In our opinion, the time which was spent in prosecuting the remedy by way of revision or representation should be excluded. The only point comes that by the end of March, 1990 the applicant must have been conveyed the rejection of representation by the Lt. Governor, and in that situation, this O.A. must have been filed within one year therefrom. It appears from the perusal of the record that this O.A. was filed on 07.8.1991. Thus, there is a delay of about four months. In view of the facts as are narrated by the applicant in the application for condonation of delay, we allow the same and the O.A. is taken for consideration.

10. The contention of the learned counsel for the applicant is that there is no independent evidence in the matter. He emphatically pointed out that the Driver of the Truck which was allegedly stopped by the applicant and illegal gratification in the name of entry fee, was demanded, and currency note of Rs.10/- was given, has not been examined. We have already considered this aspect during the narration of the facts of the case, and it was clear that ^{the} four

.....pg.8/-

witnesses including Shri Ajay Chadha, DCP were examined. Other witnesses are of formal character. They stated about the departure of the applicant alongwith others on picket-duty of about the recovery memo. having been prepared. Shri Ajay Chadha is the eye witness of the occurrence. It is not the case of the applicant that there was no evidence at all. What he contends is that the truck-driver was not examined and the statement of Shri Ajay Chadha should not be believed because he failed to make the recovery memo. of the currency notes including the currency note of Rs. 10/- which was allegedly given by the truck driver to the applicant; and was found on the ground. It is also contended that the recovery memo. was prepared at the Police Station. It is, therefore, argued that the provisions of Code of Criminal Procedure have been ignored. The learned counsel for the applicant is trying to make this case a case prosecuted in the Criminal Court. The procedure given in the Code of Criminal Procedure, is meant for the trials which are conducted in the criminal courts. The strict rule of proof and the benefit of doubt are the principles adopted in those cases. We are of the view that those strict principles of criminal liability are not applicable in the cases under disciplinary proceedings. Shri Ajay Chadha was a D.C.P.-a responsible officer-and what he had seen himself, cannot be brushed aside lightly. The statement of Shri Ajay Chadha cannot be discarded for the simple reason that the recovery memo. was not prepared. As the matter of appreciation of evidence is not permissible for the Tribunal or the High Court, we therefore, do not want to trespass into that field.Pg.9/-

16

:: 9 ::

Whatever we have mentioned earlier was by way of illustration because the argument for disbelieving Shri Ajay Chadha was advanced. It is also a cardinal principle that the disciplinary authorities are the best judges for the proper appreciation of evidence. Our jurisdiction lies in judicial review in which it is to be seen if any procedural defect was there or not. The learned counsel for the applicant could not point out any procedural defect in recording the evidence or in appreciation thereof. -- He is also not in a position to establish that it was a case of 'no evidence'. In view of these facts, the contention that the charges are not established against the applicant, does not hold good.

11. It is argued that the DCP is the appointing authority of the applicant, and therefore, the punishment can be awarded only by the appointing authority. In this connection our attention has been drawn to Section 12 of the Delhi Police Act, 1978 which deals with the appointment of certain ranks. According to this Section, Sub-Inspectors of Police other than the officers of subordinate ranks, may be appointed by the DCPs of Police, Addl.DCPs, Principal of Police Training College or of the Police Training School or any other police officer of equivalent rank. According to the argument advanced by the learned counsel for the applicant, Dy. Commissioner of Police is the appointing authority of the applicant, who was a constable. It has not been shown on behalf of the respondents that Addl.DCP has been treated or shown equivalent in the rank of DCP. He further contends

.....pg. 10-

that even if it is assumed that he was equivalent in rank of DCP, he was not competent to pass the order of punishment of major penalty. In this connection, our attention has been drawn to Rule 6 of Delhi Police(Punishment and Appeal) Rules, 1980.. It is mentioned here that the punishment mentioned in Sr.No.(i) to (vii) of Rule 5 shall be deemed to be major penalty and may be awarded by an officer of the rank of the appointing authority or above after a regular departmental inquiry. In part-II of Rule 6, DCP and above are made competent to inflict punishment upon a Inspector and below whereas Addl. DCP can impart punishment against a Constable and Sub-Inspector in the cases of minor penalty. Dismissal from service is a major penalty and according to Rule 6 it can be passed only by a DCP and above. In the present case, the penalty has been imposed by Addl. Deputy Commissioner of Police. In this way, it has been contended on behalf of the applicant that the order of punishment which was passed by the Addl. Deputy Commissioner of Police, is illegal and non-sustainable in law. Learned counsel for the respondents simply argued without showing any law on the point that Additional Deputy Commissioner of Police, Delhi could exercise all the powers of Deputy Commissioner of Police. However, the law laid down in the case Ram Kishan Vs. Union of India J.T. 1995(7) S.C. 43' came to our notice during dictation of Judgment. In this case, the same question whether Additional Deputy Commissioner of Police, Delhi was competent to exercise powers of of DCP, was involved. Their Lordships of Supreme Court

in this case held that the order of dismissal from service for gross misconduct, was passed By Addl. Deputy Commissioner of Police who was competent to pass the said order. In this connection, their Lordships considered the provisions of Delhi Police (Punishment and Appeal) Rules, 1980, Delhi Police Act, 1978 and General Clauses Act, 1887. The view taken by their Lordships is that where a superior officer has been authorised to perform some duties under an Act or a regulation, a subordinate or deputy officer lawfully performing those duties in the place of his superior, is equally empowered to perform the duties of the office of the superior. It is further made clear that Rule 4 of the Delhi Police (appointment and recruitment) Rules 1980 states that not only the Deputy Commissioner but, Addl. Deputy Commissioner also has been delegated the power of appointing Sub-Inspectors, Assistant Sub-Inspectors, Head Constables and Constables. An Addl. Deputy Commissioner is, thus, competent to pass an order of dismissal. In view of law so laid down in Ram Kishan's case, the facts of which are ~~with~~ ^{equally} similar to that of the case of the present applicant, is ~~however~~ ^{equally} applicable in this case. The result, therefore, is that the order of punishment passed by the Addl. Deputy Commissioner of Police, cannot be said to be illegal.


12. It is also contended that the order in appeal has not been passed by a reasoned order. The main ground is that the reply which was submitted in pursuance of the show-cause notice, was not discussed and therefore, the order passed in appeal was also not

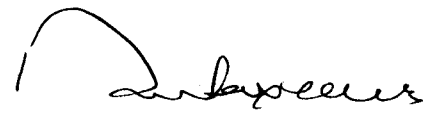
19

:: 12 ::

legal. We have given careful thought to this situation and find that the order in appeal was no doubt cryptic but, this fact alone will not be sufficient to hold the order of punishment illegal. The reasoned order had been passed by the Punishing Authority and if, the Appellate Authority agrees with the view of the Punishing Authority, detailed order is not required to be passed. We have not seen any defect of that nature in the order of the Punishing Authority. Thus, this ground also does not hold good.

13. In view of the facts and circumstances of the case as are discussed above, we do not see any ground to take a different view than was taken by the departmental authorities. We do not see any merit in the case of the applicant and as such it stands dismissed. The O.A. is decided accordingly. No order as to costs.


Member (A)


Member (J)

/M.M./