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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./~~Ex~~. No. 1981 of /19⁹¹ Decided on: 10.7.96

Ex. Head Constable Ram Chander

No.1768/C & another

..... APPLICANT(S)

(By ~~xxxx~~ Mrs. Aynish Ahlawat. Advocate)

VERSUS

Delhi Administration & others RESPONDENTS

(By Shri Ajesh Luthra, proxy for Advocate)

Ms. Jyotsna Kaushik.

OD RAM

THE HON'BLE SHRI S.R.ADIGE, MEMBER (A).

THE HON'BLE ~~SHRI/SRI~~/DR. A.Vedavalli, MEMBER (J).

1. To be referred to the Reporter or not? Yes.

2. Whether to be circulated to other Benches
of the Tribunal ?

S.R. Adige
(S.R.ADIGE)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1981/91

New Delhi: this the 10th day of July, 1996.

HON'BLE MR.S.R.ADIGE, MEMBER(A).

HON'BLE DR.A.VEDAVALLI, MEMBER(J).

1. Ex. Head Constable Ram Chander (No.1768/c)
2. Ex. Constable Roshan Lal (No.1508/c)

.....Applicants.

(By Advocate: Mrs. Avnish Ah lawat)

Versus

1. Delhi Administration, through
Commissioner of Police,
Delhi Police,
Police Headquarters,
MSO Building, IP Estate,
New Delhi.
2. The Addl. Commissioner of Police,
(Northern Range),
Delhi Police,
Police Headquarters,
MSO Building, I.P.Estate,
New Delhi.
3. The Deputy Commissioner of Police,
(Central District)
Delhi Police,
Police Headquarters,
MSO Building, I.P.Estate,
New Delhi.
4. Inspector S.K.Ahuja,
SHO., Rajendra Nagar,
Service to be effected through
Police Headquarters,
I.P.Estate,
New Delhi.

.....Respondents

By Advocate: Shri Ajesh Luthra, proxy for Ms. Jyotsna
Kaushik,

JUDGMENT

BY HON'BLE Mr.S.R.ADIGE, MEMBER(A).

In this application, Ex. Head Constable Ram
Chander and Ex. Constable Roshan Lal have impugned

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the order dated 14.12.89 initiating departmental proceedings against them (Annexure-B), the enquiry report dated 29.5.90 (Annexure-J); the dismissal order dated 3.8.90 (Annexure-L); the appellate order dated 30.11.90 (Annexure-N) and the revisional order dated 21.5.91 (Annexure-O). They have prayed for reinstatement with all consequential benefits of pay, allowances and promotion.

2. The material averments are that both the applicants while posted at P.S. Rajender Nagar were detailed to perform picket duty from 8 p.m. to 8 a.m. at Upper Ridge Road on the night between 17/18.11.89 vide D.D. entry No. 52-A dated 17.11.89. At about 10 p.m. they stopped one Shri Vinod Kumar who was coming on his Scooter NO. DHF 4209, and checked his papers. They allegedly demanded Rs. 150/- from him on the pretext that his scooter-light was defective. Since Shri Vinod Kumar told them that he had only Rs. 20/- with him, they accepted Rs. 20/- (Two Rs. 10/- currency notes No. E/8- 179801 and 15-B/ 664612) and directed him to bring the remaining amount from his house. Shri Vinod Kumar narrated the facts to his father who accompanied by others, came to the police station and apprised SHO Rajender Nagar with the facts, who after recording the complaint on the dictation of Shri Vinod Kumar, recovered two currency notes of rupee ten^{each} from the possession of Ex. Ram Chander in the presence of S.I. Jai Ram and ASI Mahender Singh

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of P.S. Rajender Nagar and complainant's father Shri Kishan Lal.

3. The Enquiry Officer in his detailed report dated 29.5.90 (Annexure-J) held the charges against the applicants proved. Tentatively accepting the Enquiry Officer's findings, the Disciplinary Authority asked the applicants to show cause vide notice dated 22.6.90 (Annexure-I) why they should not be dismissed from service. Upon receipt of their reply the Disciplinary Authority considered the same; heard the two applicants in the orderly room on 26.7.90 and by his order dated 3.8.90 (Annexure-L) dismissed them from service, which penalty was upheld vide appellate order dated 30.11.90 (Annexure-N) and revisional order dated 21.5.91 (Annexure-O), against which this OA has been filed.

4. We have heard Mrs. Avnish Ahlawat for the applicants and Shri A. Luthra for the respondents; and perused the materials on record and have also given the matter our careful consideration.

5. The first set of grounds taken (A to F) are that there has been a violation of mandatory Rule 15(2) Delhi Police (Punishment & Appeal) Rules, 1980 and the D.E. is therefore void ab initio. Rule 15(2) lays down that in cases in which a preliminary inquiry discloses the commission of a cognizable offence by a

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police officer of subordinate rank in his official relation with the public, the DE shall be ordered after obtaining the prior approval of the Addl. Commissioner of Police concerned, as to whether a criminal case should be registered or investigated or a DE should be held. It is important to note that Rule 15(2) follows Rule 15(1) which explains that a preliminary inquiry is a fact finding inquiry whose purpose is to establish the nature and quantum of default, the identity of the defaulter, to collect prosecution evidence; to bring relevant documents on record to facilitate a regular DE. It is specifically provided in Rule 15(1) that where specific information covering the above mentioned points already exists, a PE need not be held and the DE may be ordered by the competent authority straight away. In the present case, the applicants have not referred to any materials to indicate that a preliminary inquiry was held so as to attract Rule 15(2). In fact the D.D. entry No. 17A dated 17.11.89 recorded by SHO Rajendra Nagar as well as his note dated 18.11.89 (Annexure-A) and orders of Dy. Commissioner of Police (Disciplinary Authority) thereon, make it abundantly clear that on the basis of the information already available with him, the competent authority ordered the DE, straight away, without finding the need to hold a PE. As no PE was held, Rule 15(2) is not attracted and hence this set of grounds fails. It is important to mention here that the DE was

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initiated against the two applicants on the orders of the Dy. Commissioner of Police (Disciplinary Authority) who was competent to do so.

6. The next set of grounds taken is that the testimony of witnesses in the D.E. discloses that there was no identification of the applicants as the persons who demanded money from Shri Vinod Kumar complainant; no evidence to establish the charge against them and no recovery of money alleged to have been taken by them. The applicants have not denied that they were on picket duty on the night between 17/18.11.89 at Upper Ridge Road. Shri Vinod Kumar in his complaint petition dated 17.11.89 has categorically stated that at 10 p.m. while he was coming from Sarojini Nagar after closing his shop, he was stopped by two police personnel on Upper Ridge Road at the Police Chowki Booth under Rajender Nagar police station and his papers were checked. He stated that thereupon they demanded Rs.150/- from him on the pretext that the light of the scooter was defective. As he had only Rs.20/- with him, they accepted that sum of money and asked him to bring the balance from his house whereupon he went his home; informed his father and came to police station to get recorded his complaint-petition. In this connection it is relevant to refer to the Enquiry Officer's findings, who after narrating all that complainant Vinod Kumar had stated, has pointed out that though Vinod Kumar had denied submission of complaint petition (Ex. PW 1/A) to SHO Rajender Nagar Police Station, he had admitted his signature on

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the complaint petition but claimed that his signatures were obtained on some blank papers. The Enquiry Officer had rightly disbelieved this version of PW1 Vinod Kumar and his father Kishan Lal that SHO Rajender Nagar had obtained his signatures on blank papers. He has pointed out that both are educated persons, the latter being an active member of a political party and an Executive Member of his Pradesh Unit. They came to the police station along with 3 or 4 other persons but no convincing explanation is forthcoming why they chose to sign on blank papers which they could very well have objected/refused to do. The Enquiry Officer has also pointed that Kishan Lal had admitted in his cross-examination that complaint (Ex. PW-1/A) was written by a person who was sitting with SHO as the incident was narrated/dictated by his son. Hence the Enquiry Officer in our view had rightly concluded that the version of Vinod Kumar that his signatures were obtained on plain papers, was false and was an afterthought. This conclusion which had been upheld right up to revisional level, is fortified by a glance at the contents of complaint petition where Vinod Kumar, after specifically naming applicant Ram Chander HC had signed just below the text of his statement. It is highly unbelievable that an educated person like himself in the presence of his

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father and other persons would come to the police station(that they came to the P.S. that night is not denied) and signed a blank sheet of paper a little below half way down the middle, for no explainable reasons, and hand over the same to the SHO.

7. As the complainant categorically stated in his complaint petition that he was stopped by two police personnel who demanded his license and documents, and told him that the light of his scooter is defective, the respondents have rightly concluded that both the applicants acted in unison, and the contents of the complaint petition together with the evidence of the SHO Rajender Nagar against whom no bias and malafidies have been conclusively established, therefore, make it clear that this is neither a case where identification is lacking nor a case where there is no evidence against the applicants.

8. We also note that the illegal gratification of Rs.20/- accepted by the applicants, was recovered from Ex. H.C. Ram Chander through seizure memo which was prepared in the presence of SI Jai Ram and ASI Mahender Singh. No doubt, during the course of DE they stated that the recovery was not made in their presence and that they affixed their signatures on the seizure memo on the direction of the SHO, but the EO had observed, and in our opinion rightly too, that both the officers are educated, experienced and well knew the consequences of signing on false seizure memo. The fact that the applicants were not called upon

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to sign the seizure memo , does not allow us to conclude that the two notes of rupee ten each, whose very numbers E/8-179807 and 15-B/664612 were indicated in the seizure memo , were not in fact recovered from them.

9. In this connection, Mrs. Ahlawat has cited ruling in 1989(2) SIR (CAT) 319 on the point that the onus is on the prosecution to prove the charge. In our view this onus has been discharged by the prosecution and hence this ruling does not help the applicants. Similarly, she has cited the rulings in 1994(26) ATC 698; 1992(4) SIR 52; 1989(4) SLJ 953 and 1991(1) ATC 192 but these rulings do not help the applicants either because as stated above, this is not a case where there is no evidence against the applicants.

10. The next two grounds taken are that the EO was biased, and that in cross-examining the witnesses, he took on the mantle of both prosecutor and judge. We have to state here that no materials have been furnished to establish bias on the EO's part and hence this ground is dismissed straight away. It is true that the Enquiry Officer did put questions to the witnesses which he has categorised as cross-examination, but it is clear from the contents of the cross-questions put that it was either to clear ambiguities or to test the veracity of the witnesses which is specifically permitted under Rule 16(v) Delhi Police (Punishment & Appeal)

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Rules. These questions do not anywhere indicate that the EO was seeking to combine himself the role of both prosecutor and judge. This ground therefore fails and the judgment in 1991(1) ATC 192 cited by Mrs. Ahlawat does not help the applicants.

11. The next ground taken is that the findings of the Enquiry Officer are based on conjectures and surmises. A reading of the Enquiry Officer's report indicates that it is detailed, exhaustive, and closely reasoned one in which he has fully justified the basis of his conclusions. This argument therefore fails.

12. We notice that based on the EO's findings, the Disciplinary Authority by a reasoned order has imposed the penalty of dismissal, which has been upheld both in appeal and revision. In the light of the discussion above, it cannot be said that the orders are based on no evidence, or are malafide, arbitrary or perverse which warrant our judicial interference. In this connection, we must further remember that unlike in criminal prosecutions, where guilt must be proved beyond all reasonable doubt, in domestic enquiries, the preponderance of probability is sufficient to bring home the guilt of the delinquent, and on the basis of all the available materials on record, we have no doubt that the applicants were held to be guilty as charged in accordance with law. We are aware that the preponderance of probability is not to be confused with establishing guilt on mere conjectures and surmises but in the present case, as stated above, there is

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sufficient evidence to bring home the charges against the applicants and it cannot be said that their guilt is based on conjectures and surmises.

13. Before concluding, we would quote the Hon'ble Supreme Court ruling in UOI & others Vs. Upendra Singh 1994(24) ATC 200, wherein their Lordships have observed that the jurisdiction of the CAT is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. In that judgment, their Lordships have further quoted the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal Vs. Gopi Nath & sons - 1992 Supp (2) SCC 312 which reads as follows:

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

14. Applying the above ratio to the facts and circumstances of this case, we are satisfied that the manner in which the decision has been

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taken by the respondents is in accordance with law and the applicants cannot complain of having been treated unfairly. In this view of the matter the CAT Principal Bench Judgment dated 24.3.95 in OA No.2663/90 Ramesh Kumar Vs. L.G.Delhi & others, cited by Mrs. Ahlawat also does not help the applicant as the facts and circumstance in that case were entirely different and that case can be clearly distinguished from the one before us.

15. Under the circumstances this OA warrants no judicial interference. It fails and is dismissed. No costs.


(DR. AVEDAVALLI)
MEMBER (J)


(S.R. ADIGE)
MEMBER (A).

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