

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 202/1991

New Delhi this the 10th Day of March 1995

Hon'ble Mr. Justice B.C. Saksena, Vice Chairman  
Hon'ble Mr. S.R. Adige, Member (A)

Shri Brij Pal Singh,  
Head Constable,  
No. 189/DAP, New Police Lines,  
Kingsway Camp,  
Delhi. ... Applicant  
(By Advocate: Mrs. Avnish Ahlawat)

VERSUS

1. Delhi Administration,  
through Commissioner of Police,  
Police Headquarter,  
I.P. Estate,  
New Delhi.
2. Additional Commissioner of Police  
(North Range),  
Delhi Police,  
Delhi.
3. Additional Deputy Commissioner of Police,  
Central District,  
Delhi.
4. Inspector, Bhagwant Singh,  
Enquiry Officer D.E. Cell(Vigilance),  
Delhi. ... Respondents

(By Advocate: Shri Arun Bharadwaj)

O R D E R

Hon'ble Mr. Justice B.C. Saksena, Vice Chairman

The applicant who is a constable of  
Delhi Police has filed this Original Application  
and challenged the order dated 2.2.1989 and

Bc....2.

- : 2 :-

(S)

22.1.1990 passed by the Additional Deputy Commissioner, Central District, Delhi Police, Delhi by which a punishment of forfeiture of two years approved service of the applicant permanently entailing proportionate reduction in his pay and also an order passed by the Additional Commissioner of Police (Northern Range) Delhi dated 14.8.1989 by which the appeal against the order of punishment was rejected. The facts, in brief, are that a departmental enquiry was instituted against the applicant under Rule 15(1) of Delhi Police Punishment and Appeal Rules, 1980. The applicant was served by a Memorandum dated 22.2.1988 by the Respondent No. 4 alongwith summary of allegations with list of witnesses and documents. Thereafter the Prosecution witnesses were examined by the Enquiry Officer. The Enquiry Officer held the charges against the applicant has proved. It would be relevant to indicate that common disciplinary proceedings were held against the applicant and under Section 21 of the Delhi Police Act, the applicant and two other Constables namely S/Shri Kuldip Singh and Daya Nand were punished. Against the applicant the charge was that he had been detailed for night picket duty at Faiz Bazar, Nukkar Subhash Marg, Delhi on the night of 24/25.7.1987.

Bd  
....3.

-: 3 :-

A checking party from Vigilance Unit led by Shri Kali Raman Verma, ACP reached at his. picket at about 0030 hours. The head lights of the official car were switched off and Driver Kishorilal posed himself as a driver of some business man having road side passengers in the car. The car was stopped and Constable Kuldip Singh and Daya Nand asked the driver for documents. The driver pretended not to have the documents and constable Daya Nand threatened him to impound the car. The allegation against the applicant was that he was incharge of the said picket and he was also present just near the two constables. It was alleged that constable Kuldip Singh demanded some money and let him go. Head constable Jagjit Singh gave it to constable Daya Nand but he returned Rs. 10/- and demanded more money. The driver again went to the Vigilance staff and again took Rs. 10/- and gave to Constable Daya Nand and having smell of the Vigilance staff, Daya Nand threw Rs. 20/- on the ground. The substance of the allegation against the applicant is that in his presence, connivance and knowledge Daya Nand and Kuldip Singh indulged in corrupt practices. There is no allegation against the applicant of either having demanded the money or

having stopped the car or having acted in any manner in the said transaction. A counter-affidavit has been filed to which a reply filed by the applicant. We have heard the learned counsel for the parties. The principal submission made by the learned counsel for the applicant against the order of punishment is that the finding of connivance and knowledge on his part of the corrupt practices indulged in by the other two constables is based on no evidence. The learned counsel for the applicant has taken us to the deposition of the various witnesses. On the basis of the evidence of the witnesses it is proved that the applicant was standing at a distance of 15 paces from the other two constables namely Kuldip Singh and Daya Nand. The applicant was having tea alongwith the regular picket posted at the place, in question. After everything had taken place the applicant appears to have come over to where the other two constables were standing. On the basis of this evidence the allegation of connivance in his presence to the corrupt practice indulges by the two other constables is sought to be supported. The learned counsel for the applicant drew our attention to the specific reply of the prosecution witness Jagjit Singh Head Constable — in reply to questions in the cross examination on behalf of the applicant. The witness

Raj

admitted that the said witness did not talk to the applicant. He also in reply to another question whether the applicant had played any part had positively deposed in the negative and stated that the applicant was at a distance.

2. The learned counsel for the respondents on the other hand stated that no doubt the applicant was standing at a distance of 10 to 15 paces when the alleged occurrence took place but everything happened with his hearing and thus the charge of connivance is proved. The learned counsel submitted that connivance can be inferred by reasons of the circumstances that the applicant did not lodge any report against the two other constables in his picket for having indulged in the corrupt practice for demanding bribe. He submitted the absence of such <sup>action on the</sup> part of the applicant proves his connivance. After having given our anxious consideration to the rival contentions, we are of the opinion that connivance can only be a state of mind. It can be inferred only if there has been over act on the part of the applicant. On the basis of the material on record we are led to the conclusion that there is force in the submission of the learned counsel for the applicant. There is not an iota of evidence to prove connivance on the part of the applicant and the alleged corrupt practice

indulged in by the other two constables. As noted hereinabove, in face, one of the prosecution witness clearly and categorically stated that the applicant played no role in the matter as he was standing at a distance from the place where the other two constables were standing. An allegation of misconduct cannot be held to be proved on the basis of mere surmises and conjectures. Some overtact on the part of the applicant was necessary to have been pointed out to reach the conclusion of connivance on his part in the alleged corrupt practice indulged by the other two constables.

3. The learned counsel for the applicant also on the basis of the material on record submitted that there is no basis for the assumption that the applicant was incharge of the said pickets. The applicant was detailed for out during the day and was sent to join this picket alongwith the other two constables. The submission was that the applicant was not a regular personnel of the picket. He was detailed for the night duty also and being not a regular member of the picket party, he did not have any reason to know the conduct of the other two constables. We are satisfied that the charge of connivance cannot be said to have been proved against the applicant on the slender basis that the occurrence took place when the applicant was standing nearby, may be at a distance of 10 - 15 paces.

Brk

-: 7 :-

4. The learned counsel for the applicant had made many other submissions to challenged the initiation of the proceedings against the applicant. He submitted that since there was no complaint from the public, no preliminary enquiry was warranted. She also submitted that the applicant was not associated with the preliminary enquiry which was held at his back. It is not necessary for us to deal with these submissions. In view of the fact that in our opinion, the O.A. deserves to be allowed on the ground that the charge against the applicant has been held to be proved when there was no material evidence to support the same. The learned counsel for the respondents made a few submissions on the basis of the evidence to show that illegal gratification was demanded by the other two constables. His submission was that on the basis of the evidence on record since the allegation against the two constables of having demanded illegal gratification is proved, the charge of connivance of the applicant in the said act of the other two constables should also be held to be proved. The learned counsel for the applicant in reply submitted that she is not holding brief for the other two constables and has therefore refrained from making any submissions on the basis of the evidence on

1  
Recd

-: 78 :-

record that the charge of illegal gratification against the other two constables is not proved. She rightly urged that she is not holding brief for the other two constables. For the purposes of decision in this O.A. we are not required to go into the correctness of the allegations made against the other two constables. Be that as it may, as against the applicant the only question that was canvassed and rightly so was that there was no evidence to support the charge against him of connivance.

5. The learned counsel for the applicant invited our attention to two decisions:

1) Khazan Singh Vs. Delhi Administration & ors.

OA No. 1391/89 decided on 10th May 1994.

2) Rajinder Prasad Vs. Union of India & Ors.

O.A. No. 591/1990 decided on 30.8.1993.

We have carefully perused the aforesaid two decisions but we find that the said decisions were given on the basis of the particular facts of the said O.A.s and no binding principle or proposition of law can be discerned from the said decisions. The said decisions, therefore, do not advance the pleas raised by the respondents any manner. These two decisions were cited to support the plea of infirmity in the enquiry proceedings in as much as neither the number of currency note was noted by the vigilance party nor any

1  
Bod

-: 9 :-

ceisure memo was prepared. There is evidence on record also to show that admittedly the vigilance party made no entry about departure or report back to the concerned Police Station or office.

Since we are basing our conclusion on the Principal that ~~are~~ are submission of the findings ~~vitiated~~ and are based on no evidence we do not feel called upon to adjudicate on the merits of these infirmities in the conduct of the disciplinary proceedings.

6. In view of the discussion hereinabove, the O.A. deserves to be allowed and is allowed. The order of punishment dated 2.2.1989 and also the appellate order dated 14.8.1989 in so far as it concerns the present applicant are quashed. No order as to costs.

*Arif Ali*  
(S.R. Adige)  
Member(A)

*B.C.*  
(B.C. Saksena)  
Vice Chairman