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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO. 2264/91

Hon'ble Shri A.V. Haridasan, Vice-Chairman(J)

Hon'ble Shri R.K. Aahooja, Member(A)

New Delhi, this 22nd day of ~~October~~^{March 1996}, 1995

Ex. Constable Surender Singh (No. 417/DAP)
through Mrs. Avnish Ahlawat, Advocate
243, Lawyers Chambers
Delhi High Court
New Delhi - 3.
(By Mrs. Avnish Ahlawat, Advocate) ... Applicant

Versus

1. Delhi Administration through
Commissioner of Police
Delhi Police
Police Headquarters
M.S.O. Building, I.P.Estate
New Delhi - 2.
2. The Additional Commissioner of Police (Armed Police)
Delhi Police
Police Headquarters
M.S.O. Building, I.P.Estate
New Delhi - 2.
3. The Deputy Commissioner of Police
1st Battalion, Delhi Armed Police
Police Headquarters
M.S.O. Building, I.P.Estate
New Delhi - 2.
4. Inspector Balbir Singh (Enquiry Officer)
to be served through
Police Headquarters, Delhi Police
M.S.O. Building, I.P.Estate
New Delhi - 2. ... Respondents

(By Shri Surat Singh, Advocate)

ORDER

Hon'ble Shri R.K. Aahooja, Member(A)

The applicant, Constable Surender Singh (No. 417 DAP) has filed this application against the order dated 27.2.1991 passed by the Deputy Commissioner of Police whereby the penalty of dismissal from service was imposed on the applicant, and the order dated 23.5.1991 passed by the Additional Commissioner of Police whereby the appeal against the penalty imposed was rejected.

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2. The applicant was posted during the year 1980/89 as a Driver of one Inspector Peter Tirkey. On the basis of certain complaints by TSR Drivers an enquiry was ordered against the Inspector as well as the applicant for removing the spare wheels of the TSRs. As a result of that enquiry, both the applicant as well as Inspector Tirkey were awarded penalty of censure. In September, 1990, the applicant was served with a summary of allegation stated that he had approached Inspector Tirkey at his residence on 12th and 13th March, 1990 for upgrading his adverse ACR which had been recorded by Inspector Tirkey. The allegation was that the Constable had on visiting the Inspector at his residence produced a blank ACR form and pressurised him so that the same could be substituted in place of the old one with the help of the office staff. A departmental enquiry was conducted under Section 21 of the Delhi Police Act, and after recording the evidence of the prosecution witnesses, the applicant was charged. The charge was denied by the applicant and he also produced evidence in his defence. The enquiry officer on conclusion of the departmental came to the conclusion that the charge had been proved. On this, the impugned order was issued whereby he was awarded the penalty of dismissal from service and subsequently the appeal against the award of this penalty was also rejected.

3. We have heard the learned counsel on either side and have also gone through the file of the departmental enquiry. The learned counsel for the applicant has sought to establish malafides on the part of Inspector Tirkey on account of the animus due to the evidence rendered by the applicant in respect of the TSR Drivers and secondly on account of the demand made by the applicant for payment on account of the 'Desi-ghjee' which he had supplied to the Inspector. It was pointed out that in the enquiry against Inspector Tirkey, the applicant had stated that he had picked up the scooter tyres at the instance of Inspector

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5. The learned counsel for the applicant argued that there was no basis for the Enquiry Officer to conclude that the applicant had tried to get another ACR form filled in by the Inspector, since the original ACR had been reviewed by the ACP Inspector, and what is more it had already been communicated to the applicant. It was argued that since the applicant had already been down graded in the test for promotion, on the basis of this ACR, a duplicate ACR form would have served no purpose. Secondly, no witness was produced by the prosecution to show that the applicant had approached any office staff to get the ACR substituted. He also pointed out that the case was one of no evidence since the only one who had spoken of the alleged attempt at pressurisation was Inspector Tirkey, the complainant himself. On the other hand as per the Counsel it had been clearly brought out in the enquiry by the Enquiry Officer himself, that the Inspector had taken 'Desi ghee' from the applicant. He also pointed out that the complaint made by Inspector Tirkey was dated 20.3.1990 i.e. seven days after the alleged event and this clearly showed that it was an after thought and a fabrication.

6. Mrs. Ahlawat, the learned counsel for the applicant mainly confined her arguments to two points. The first point taken by her is that the disciplinary proceedings is vitiated by bias as it was founded on a report by Inspector Tirkey who was on enmical terms with him and for denial of reasonable opportunity to defend as the Inquiry Officer did not pass any order in his application requesting for a copy of the enquiry report submitted by enquiry officer Nita Malhotra in the enquiry against the applicant and Inspector Peter Tirckey pursuant to which both were awarded censure, to enable him to cross examine Inspector Peter Tirckey who was the only witness who deposed

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Tirkey and this had gone against the Inspector who was ultimately awarded the penalty of censure. The learned counsel for the applicant also pointed out that the defence evidence had shown that the applicant had on two occasions supplied 5 Kgs. 'Desi-ghee' but despite the reminder the Inspector had not been made the payment. According to the counsel ^{if} the applicant this had annoyed the Inspector resulting in the complaint regarding that the applicant pressurising him for change of the ACR.

4. The averments of the parties and the record of the departmental proceedings show that there is no dispute that the applicant had visited the house of Inspector Tirkey on 12.3.1990. It is also admitted that on the first day i.e. 12.3.1990, the Inspector was not at home. The difference is in the versions of the applicant and the respondent is about what happened on 13.3.1990. The version of the Inspector is that the applicant came to his house again on 13.3.1990 while the applicant states in his reply to the show-cause notice that he visited the house of Inspector on 12.3.1990 but he was not found present instead as the applicant on 13.3.1990, the Inspector met him in the President Body Gaurd at Rashtrapathi Bhawan, when the applicant asked him that since he had not completed a period of 90 days in service under him, therefore, how he could write his ACR. On this the Inspector promised him that he would accompany the petitioner to the office of the DCP to get the entries corrected in the ACR. For this he also demanded 5 Kgs ghee which the petitioner supplied him on 14.5.1990. The applicant also alleges that since the reviewing officer had since retired, it would be difficult to correct the ACR, the applicant would have to pay Rs.2000/- if he was interested in getting the ACR corrected. Since the applicant could not afford to make the payment, the Inspector being of guilty conscious made the complaint to the DCP regarding the pressure to fill up another ACR form.

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against him. The next point raised by Mrs. Ahlawat is that even if the summary of allegations and the contents of the report of Inspector Trikey are accepted as correct in full, it does not amount to any misconduct much less grave misconduct and therefore, the impugned orders are unsustainable.

7. A careful scrutiny of the facts and circumstances emerging from the pleadings and material on record, would show that these arguments have considerable force - It is evident that only Inspector Tirkey had given evidence against the applicant at the departmental enquiry. The allegations in sub-paragraphs 3 to 5 of para 4 in the Original Application that while the applicant was working under Inspector Peter Tirkey a departmental enquiry was held against the applicant and Peter Tirkey, alleging that at the instruction of Shri Tirkey the applicant removed spare wheels of scooters of some T.S.R.Drivers and that the applicant could prove that he picked up the spare wheels at the instructions of Shri Tirkey and that ultimately he as well as Tirkey were awarded censure have not been disputed in reply statement. In reply to these allegations it was stated in the reply that these allegations are factual but they have no relevance to the case. In the enquiry against the applicant Shri Peter Tirkey has deposed that the applicant had supplied 10 Kgs. of Ghee to him and that he demanded the price. The enquiry officer in his report has stated that the case of the applicant that Inspector Peter Tirkey did not make payment for the Ghee supplied by the applicant had same weight. In the report submitted by Shri Peter Tirkey to the Deputy Commissioner of Police informing of the fact that the applicant went to his home requesting him to upgrade his ACR it was not stated that he was in possession of a photocopy of the ACR in which adverse remark was made by Inspector Tirkey, but when he was examined at the enquiry he said so. This an improvement to what is stated

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in his report. In the report, Inspector Trikey had added that the Constable may be strictly dealt with and an enquiry may be held. All these facts and circumstances would suggest that Inspector Peter Tirkey was prompted to make the report not as much by sense of duty as by reason of ill feeling. The enquiry officer should have allowed the applicant's request for making available a copy of the report relating to the enquiry against him and Peter Tirkey as Shri Tirkey was the most material witness at the enquiry - while the request was made by the applicant, in writing no order was passed. The Enquiry Officer in the report has stated that the applicant was orally told that the report was not relevant but this is not borne out from the proceedings of the enquiry. Further, it is not correct to say that the report was not relevant as the applicant might have wanted to cross examine Shri Tirkey on the basis of the report. Therefore, there is force in the argument that the applicant was not given reasonable opportunity to defend himself.

8. The report submitted by Inspector Peter Tirkey to the Deputy Commissioner of Police which was appended to the summary of allegations reads as follows:

"Subject: Regarding ACR for the year 1988-89.

Sir,

This is to bring to your kind notice that the ACR of HC's and ets who were working under me at Punjabi Bagh where I worked as T.I., were given by me. I gave 'C' report to Ct. Surendra Singh No.1236/T. On the basis of the report sent to the then ACP/W Sh. Joginder Singh who has since retired from the service.

The said Ct. appeared in the B-I Test but was disqualified for getting less numbers than the specified minimum numbers.

Surprisingly he came to my house on 12.3.90 and told my wife that I have given him 'C' report though he was working as a driver to me and that he would come to my house the next day.

Next day, i.e. on 13.3.90, he comes to my house accompanied by his elder brother with some request. His elder brother then says, my brother Surender Singh was working under you but you have given him 'C1' report. Now we have come with a

blank ACR form and request you to kindly fill this form and give excellent report "I asked them as to how and from where they managed to get the blank form. On this the elder brother of Ct. Surender Singh replied that he got it printed from Rashtrapati Bhawan where computer facilities are available. I told them that it is not my business and that I cannot change the report once given at any Cost.

The Ct. then dared to say that he has talked to one H.C who is working as a dealing clerk in the 10th Bn. DAP and has agreed to change the original report since no entry has been made in the service record, in case I give another report in place of the original one I asked the Ct. to bring that daring H.C. who has agreed to do such an illegal work. The it. said to me." Sir, you are the only one and it depends upon you to give another report and save me and that there is no difficulty in doing this." I straight away refused to do this and told that if you are going to do this, you as well as the H.C. will be punished and I am not a child to do this. I further told him that he may appeal against the given report.

(P.Tirkey)
Inspector
IGI Airport Terminal-2
New Delhi.

The constable may be dealt with strictly and an enquiry be held.

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9. The above quoted report only states that the applicant along with his brother went to the residence of Inspector Peter Tirkey and requested him to change the ACR and that it would not be difficult if he so wished. At the most it can be said that such a request cannot be entertained. The applicant is only a Constable. If he had made such a request the Inspector as a better educated person occupying a responsible office is generally expected to tell him that such things were not done and it was not proper on his part to make such a request. Shri Tirkey did that also. Normally a superior officer should have left it at that, but Shri ~~Tirkey~~ did not only report the matter to DCP after 7 days but also stated that an enquiry should be held. It is on that basis that the enquiry was held. We are of the considered view that by making a request to Inspector Tirkey his superior officer to save him by giving him a good report instead of adverse report if possible the applicant cannot be

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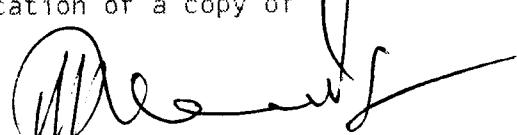
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said to have committed misconduct. The request does not amount to either lack of devotion to duty or lack of integrity. Hence initiation of disciplinary enquiry and award of the penalty of dismissal was not justified at all.

10. The appellate authority has the responsibility of seeing whether the enquiry was properly held and whether the penalty imposed is either adequate or excessive. We find that the appellate authority has not applied his mind to the above given facts of the case.

11. In the result, on the basis of what is stated in the foregoing paragraphs we find that the order dated 27.2.1991 issued by the Deputy Commissioner of Police dismissing the applicant from service and the order dated 23.5.1991 of the Additional Commissioner of Police dismissing the applicants appeal are unsustainable. We, therefore, set-aside the impugned orders and direct the respondents to reinstate the applicant in service forthwith with all consequential benefits and to pay him full back wages for the period he was kept out of service within a period of two months from the date of communication of a copy of this order. There is no order as to costs.

Rao
(R.K.AHOOJA)
MEMBER(A)


(A.V.HARIDASAN)
VICE-CHAIRMAN(J)

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