

23

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

D.A. NO. 248/91

&

D.A. NO. 527/91

Date of Decision: 9-4-1996

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

D.A. NO. 248/91

Constable Dinesh Kumar No. 7213/DAP,
s/o Shri Tirlok Chand
r/o Barrack of Police Training School,
VIIth Bn. D.A.P. Melviya Nagar,
New Delhi.

... Applicant

By Advocate: Shri Shankar Raju

Vs.

1. The Commissioner of Police,
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.

2. The Additional Commissioner of Police,
(Northern Range) Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.

3. The Additional Deputy Commissioner of Police,
North District, Civil Lines,
Delhi.

... Respondents

By Advocate: Shri D.N. Trishal

... 2.

DA.No.527/91

Shri Rakesh Kumar,
s/o Shri Bishamber Tyagi,
r/o Village Lahore Garh Post Office Meerpur,
Distt. Meerut.

... Applicant

By Advocate: Mrs. Avnish Ahlawat

Vs.

1. Delhi Administration,
Delhi, through its
Chief Secretary,
5, Sham Nath Marg, Delhi.
2. Addl. Commissioner of Police,
(Northern Range),
Delhi Police Headquarters,
Indraprastha Estate,
New Delhi.
3. Addl. Deputy Commissioner
of Police,
North District,
Delhi.
4. Shri B.S. Tyagi,
Asstt. Commissioner of Police,
North District,
Delhi.

... Respondents

By Advocate: Shri Vijay Pandita)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicants in both these original applications
are aggrieved by the order No.4116-96/HAP-N dated 7.7.89
issued by the Additional Deputy Commissioner of Police
(North), who agreeing with the findings of the Enquiry Officer
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imposed a penalty on Constable Dinesh Kumar (OA No.248/91) of permanent forfeiture of five years approved service entailing reduction in his pay and on Constable Rakesh Kumar (OA No.527/91) removal from service. The appeals filed by the applicants have been rejected by the appellate authority by orders dated 8.6.90 and 2.2.90 as also their revision petitions by the orders dated 7.12.90 and 27.7.90, respectively.

2. The applicants in both the OAs referred to above have been heard together. have been proceeded against in a common proceeding and they/ These two persons alongwith one Head Constable Ram Kishan were chargesheeted by order dated 19.7.88 under section 21 of the Delhi Police Act, 1978 for an incident occurring on the night of 24/25.5.88. The charge reads as follows-

"I, S.B.S. Tyagi, ACP/HG/North Charge you HC Ram Kishan No.303/N, Const.Rakesh Kumar No.1551/N and Const. Dinesh Kumar No.638/N that on the night intervening 24/25.5.88 while posted at P.S. Lahori Gate were performing Picket duty at Farash Khana you checked Naresh Chand Aggarwal. On enquiries by you Shri Naresh Chand stated that he was carrying Rs.2 lacs and clothes in the baggage with him. You told him that he was in possession of Black money and as such he would be taken to the police station. Shri Naresh Chand got scared and asked you all to release him. You asked him to pay Rs.20,000/- for his release. The complainant was taken aside by Const.Rakesh Kumar No.1551/N and he paid Rs.20,000/- to the Constable. Thus you extorted Rs.20,000/- from him. Thereafter he went to his friend and consulted him who directed him to report the matter to SHO/Lahori Gate. The complainant acted accordingly and narrated the facts to

28

Shri Dya L-1 Sawhney, SHO/Lahori Gate who along with Sub-Inspector Kanwar Singh and the complainant went to the picket at Farash Khana where the complainant identified you. From personal search Rs.10,000/- are recovered from Head Constable Ram Kishan No.303/N and Rs.5000/- each from Const. Rakesh Kumar No.1551/N and Dinesh Kumar No.636/N. The recovered money was returned to Naresh Chaudhary, complainant, against a proper receipt.

Your above acts amount to grave misconduct and unbecoming of a Police Officer which render you liable for punishment under section 21 of Delhi Police Act, 1978."

3. Departmental proceedings were held against all of them. The Enquiry Officer in his report dated 6.5.89 came to the conclusion that the charge against Head Constable Ram Kishan and Const. Dinesh Kumar could not be proved but lack of supervision and connivance cannot be ruled out, and as regards/allegations against ^{the} Const. Rakesh Kumar the charge had been proved beyond doubt.

4. In the case of Const. Dinesh Kumar, Shri Shanker Raju, learned counsel for the applicant has submitted that the charge against him had not been held to be proved by the Enquiry Officer although he has stated that connivance cannot be ruled out. He submits that there is no charge of connivance or supervision and hence this cannot be held proved against him by the Enquiry Officer or the disciplinary authority. He further submits that the disciplinary authority has also accepted the findings of the Enquiry Officer

18

21

mechanically without application of mind and has therefore awarded illegal and arbitrary punishment against Const. Dinesh Kumar. He, therefore, submits that this finding of the Enquiry Officer is based on no evidence but is based merely on suspicion that there was lack of supervision or connivance which cannot, therefore, be legally sustained.

5. Shri Shanker Raju, learned counsel for the applicant has also submitted that there has been no seizure memo. prepared of the money. (See S.K. Jain V. UOI AIR 1989 (4) SLJ(CAT) 953). He submits that even in a trap case mere recovery of money is not sufficient and, therefore, he submits that in this case there is no evidence against Const. Dinesh Kumar. He relies on Rajendra-Prasad V. UOI (1993 (3) SLJ (CAT) 564 and submits that this is a case of no evidence, as no evidence has been led to show the conclusion that there was either lack of supervision or connivance in this case.

6. The next ground taken is that the procedure laid down under Rule 16(ix) of the Delhi Police (Punishment and Appeal) Rules, 1980 has not been followed.

He has relied on Bhaywati v. UOI (1989 ATLT (CAT) Vol.2 646).

7. Relying on the judgement in Jagbir Vs. Lt. Governor (1991 (16) ATC 192) he submits that the disciplinary enquiry has been vitiated because the Enquiry Officer has cross examined the witnesses.

8. The respondents have filed a reply in which they have submitted that the above submissions of the applicant are misconceived and denied. They have submitted that the impugned punishment order does not suffer from any illegality and that the proper procedures have been followed under the Delhi Police Act, 1978 read with ^{the} rules made thereunder. Shri O.N. Trishal, learned counsel for the respondents was heard who submitted that it is not correct to say that the Enquiry Officer held the applicant "not guilty" of the charges. He submits that the charges levelled against the applicant were found to be established by the Enquiry Officer vide his findings in the Enquiry report. He submits that the further findings of the Enquiry Officer that the applicant was at picket duty at the time of the incident and had ^{from} refrained/informed the senior officers ~~about~~ the absence of Const. Rakesh Kumar showed that he had connived with ^{Ph} the extortion of money. He, therefore, submits that the

22

findings of the Enquiry Officer cannot be faulted that he was a partner in extorting the money from the complainant and he has been rightly punished. He further submits that this is not a case of no evidence and this Tribunal ought not to ~~reappraise~~ the evidence so as to substitute its decision for that of the competent authority.

9. We have carefully considered the arguments of the learned counsel, pleadings and record.

10. The applicant Const. Dinesh Kumar was admittedly on duty alongwith Head Constable Ram Kishan and Const. Rakesh Kumar on the day of the incident inquired into in the charges and summary of allegations. It is alleged that the complainant Shri Naresh Chand Aggarwal had stated that these three chargesheeted police officials had asked him to pay Rs.20,000/- for his release which he states he has paid to Const. Rakesh Kumar. The evidence on record shows that the complainant recognised Const. Rakesh Kumar from his name badge on his uniform. The Enquiry Officer has also discussed the evidence of several witnesses who were called before him. We have carefully gone through these statements and the findings of the Enquiry Officer and disciplinary authority.

19

There was sufficient evidence before the competent authority to come to the conclusion that the 3 charged police officials had extorted Rs 20,000/- from the complainant which was later returned to him. There is also sufficient evidence on record to show that the applicant Const. Dinesh Kumar was on picket duty at that time at Farash Khana. The arguments advanced by Shri Shanker Raju, learned counsel on the ground of difference of time of a few minutes between the time the accused left the police station and the time when the offence was stated to have been committed has been discussed by the competent authority in his order. We do not find any flaw in the reasoning which warrants any interference on this ground, based on the evidence placed before the competent authorities.

11. Having considered the record in the disciplinary proceedings, therefore, we are of the view that this is not a case of no evidence or where an arbitrary or perverse order has been passed by the disciplinary authority based on irrelevant material which justifies the quashing of the penalty order.

12. We have also considered the other arguments



of the learned counsel for the applicant and the case law referred to by him. The judgments do not assist the applicant in the facts of this case. The questions put by the Enquiry Officer were clarificatory in nature. We do not also see much force in the other arguments that the rules have not been complied with nor any prejudice has been shown which warrants any interference with the penalty imposed. They are rejected. Accordingly we find no merit in this application and it is dismissed. No costs.

(OA No.527/91- Rakesh Kumar v. Delhi Administration and Ors.)

13. Smt. Avnish Ahlawat, learned counsel appearing on behalf of the applicant Const. Rakesh Kumar had also argued that this is a case of no evidence, that the statements made by the complainant and the witnesses during the departmental enquiry are contrary to each other and therefore, the punishment order should be quashed and set aside. Her point was that in the charge it is stated that after the complainant narrated the facts to Shri Jiya Lal Sehwney, SHO/Lahori Gate, he alongwith Sub-Inspector Kanwar Singh and the complainant ^{he is} went to the picket at Farash Khana where, identified the charged police constable. From his personal search Rs 10,000/- were recovered, from Head Constable Ram Kishan, Rs 5,000/- each from Constables Rakesh Kumar (Applicant) and Dinesh Kumar. The recovered was returned to/complainant

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Shri Naresh Chand Aggarwal against a proper receipt. The learned counsel submits that in the statement of Shri Naresh Chand in the departmental enquiry he has mentioned that on reaching the police station he and his relative Sanjay Kumar made a complaint to SHO and he called Const. Rakesh Kumar and made enquiry from him. The complainant then accepted the money which the SHO called for and returned to him for which he had given the signatures on the statement which he had already written. The learned counsel submits that there is apparent discrepancy in the facts stated in the charge and that given by PW1 Shri Naresh Chand which shows that the whole story is concocted and fabricated. She, therefore, submits that this case should be viewed as a case of no evidence against the applicant and, therefore, the penalty order should be quashed and set aside. The respondents have filed their reply disputing the above averments and we have also heard Shri Vijaya Pandita, Learned counsel.

14. As mentioned above in O.A.No.248/91, there is sufficient evidence on record which has been discussed in the Enquiry Officer's report as well as in the impugned penalty order, for example the statements of PW1 to PW7

33

to show that the charge has been established against the applicant as well as other / ^{two} persons who were charged, namely, Head Constable Ram Kishen and Constable Dinesh Kumar. It is well settled law that this Tribunal does not act as a court of appeal while exercising the power of judicial review. In State of Tamil Nadu & Another Vs. S. Subramaniam (JT 1995(2) SC 114), the Supreme Court has held as under-

"It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence has no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the court or tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is consistent view of this Court vide B.C. Chaturvedi Vs. UOI (JT 1995(8) SC 65), State of Tamil Nadu Vs. T.V. Venugopalan (1994) 6 SCC 302 para 7), UOI Vs. Upendra Singh (1994) 3 SCC 357 at para 6), Govt. of Tamil Nadu and Anr. Vs. A. Rajapandien (1995 1 SCC 216 para 4) and UOI Vs. B.S. Chaturvedi (1995 6 SCC 749 at 759-60)." (Emphasis added)

The above decisions of the Supreme Court, have clearly settled the law that normally this Tribunal cannot sit as an appellate authority to come to its conclusion on the evidence which was placed before the competent authority or supersedes the decision of that authority by reappreciating the evidence. We are unable to agree with the arguments of the learned counsel for the applicant that this is a case of no evidence, as admittedly there was evidence to show that the three officials who had been charged were on duty on the day when the incident occurred at Farash Khana.

The occurrence of facts relating to extorting the money which was later admittedly returned to the complainant Shri Naresh Chand has also been referred to in the ~~The~~ complainant has given receipt of the money. evidence produced before the Enquiry Officer. Therefore, it cannot be stated that there was no evidence at all which was produced against the applicant which could justify the conclusion arrived at by the disciplinary authority nor can it be stated that the conclusion is either arbitrary or utterly perverse. We do not also find any other procedural infirmity, as already stated in the other case of Constable Dinesh Kumar (DA-248/91) which justifies quashing the penalty order, subject to what is stated below.

15. The other main argument advanced by the learned counsel, Mrs Avnish Ahlawat for the applicant in this case is that the competent authority has awarded a much lesser punishment of permanent forfeiture of

5 years approved service to the other two accused persons, namely, Head Constable Ram Kishan from whom Rs.10,000/- were alleged to have been recovered and to Constable Dinesh Kumar from whom Rs.5,000/- were alleged to have been recovered, whereas the applicant has been removed from service which is a much more severe punishment. She, therefore, alleges that this is discriminatory, arbitrary and wholly illegal and violative of Articles 14 and 16 of the Constitution.

She relies /Dalbir Singh V. Director General, CRPF, New Delhi (JT 1987(4) SC 152).

16. Shri Vijya Pandita, learned counsel for the respondents has submitted that the penalty order is valid. He relies in the judgement of State Bank of India Vs. Samarendra Kishore and Another (1994 (2) SCC 537). He submits that the imposition of appropriate punishment is within discretion and judgement of the disciplinary authority as held in Endow's case and the Tribunal ought not to interfere in the matter under the power of judicial review.

17. We have given our anxious consideration on the question of discriminatory treatment in awarding the punishment to the three accused. Admittedly the applicant in this case, Const. Rakesh Kumar has received a more severe punishment than the / other/co-accused who are given a lesser punishment of forfeiture of two years approved service of 5 years. The other / persons are, therefore, admittedly continuing in service whereas the applicant has been removed from service by the impugned penalty order dated 7.7.89.

18. The charge as framed of extorting money from the complainant has been held to be proved against the applicant Const. Rakesh Kumar. In the case of other two persons, the disciplinary authority has found that the charge of extorting money could not be established but they were at the spot on picket duty when the applicant took away the complainant to Mother Dairy Booth and extorted Rs.20,000/-. Therefore, the disciplinary authority found that it was the duty of Const. Ram Kishan to take care of his men at picket duty and there was lack of supervision on his part. In the case of other co-accused, Const. Dinesh Kumar, the disciplinary authority found that he had failed to

inform the senior officers about the absence of the applicant and hence connivance of the Head Constable and Const. Dinesh Kumar was not ruled out for which they were given the lesser punishment of forfeiture of 5 years approved service. Considering the nature of the charge against the police officials, we are of the view that such an act of misconduct should have been dealt with severely and that the penalty of removal from service is not un-warranted. However, in the facts and the circumstances of the case, the authorities have awarded a much lesser punishment of forfeiture of 5 years approved service on two of them, including the Head Constable who was supposed to be supervising the other two persons, whereas in the case of the applicant he has been removed from service on the same charge. Therefore, on the same facts, different treatment has been meted out to the applicant for which there appears to be no justification. We are fortified in our view on the measure of penalty by the following judgment of the Supreme Court in Dalbir Singh's case (supra).

" We however feel that for the solitary lapse on the part of the appellant the punishment of dismissal from service is rather severe although the appellant was also found guilty of an additional charge, namely, act of remissness of his duty as a member of the Force under s.ii(1) of the Central Reserve Police Force Act, 1949 in that he did not uncharge the magazine of his rifle after completion of sentry duty and thus violated the Jail Post Standing Order. In fact, he did not uncharge the magazine of the rifle due to his intoxicated (sic) state.

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4. Ordinarily, in a case of this nature, this Court would not under Art.136 of the Constitution interfere with the measure of punishment. It cannot also be doubted that the charge of being found in a State of intoxication while on duty for a member of the Force is serious enough to warrant dismissal from service as the authorities cannot permit indiscipline in the service. Such an act of misconduct must be dealt with severely. However, the authorities having awarded lesser punishment of reversion and withholding of increments to the two delinquent officers holding a higher rank to the appellant, namely, Rajpal Singh, Sub Inspector and Sheel Kumar, Head-Constable for the self-same charge, we find no justification for the differential treatment meted out to the appellant. It is true that he was also found guilty of the other act of remissness under s.II(I) of the Act in that he did not uncharge the magazine of the rifle after completion of the sentry duty, but that act or omission on his part was an act of negligence attributable to his being in an inebriated state."

(Emphasis added)

19. In State Bank of India v. Samarendra Kishore Endow (supra), the Supreme Court has no doubt laid down that the power of judicial review is "not to ensure that the authority after according a fair treatment reaches on a matter which it is authorised by law to decide for itself to a conclusion which is correct in the eyes of the court." However, the Supreme Court further held that in this case, the punishment of removal imposed on the respondent was harsh but the proper course was to send the matter either to the Disciplinary or the Appellate authority authority to consider whether a lesser punishment is not called for in the facts and circumstances of the case and not the High Court or the Administrative Tribunal to consider.

20. In B.S. Chaturvedi v. UOI & Ors (JT 1995 (8) Sc 65), the Supreme Court has again reiterated the principles of

Judicial review. The court has also held that the punishment/penalty awarded has to be reasonable and if it is unreasonable Article 14 of the Constitution would be violated. That Article 14 gets attracted in a case of dis-proportionate punishment was the view of the court in *Bhagat Ram v. State of Himachal Pradesh (1983(2) SCC 442)*. In

this case the Supreme Court has held -

"The High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and ~~ware~~ cases, impose appropriate punishment with cogent reasons in support thereof."

21. After considering carefully the facts in this case and the judgments of the Supreme Court in the aforesaid cases, we are of the view that the punishment of removal from service imposed on the applicant is rather severe especially when the punishment awarded to the other two co-accused, including the Head Constable Ram Kishan are considered. All these three persons were accused for the misconduct arising out of the same incident. Admittedly, Head Constable Ram Kishan should have supervised the applicant as well as the other constables

The Enquiry Officer had in his findings come to the conclusion against all the three accused persons that connivance cannot be ruled out. From the perusal of the impugned penalty order, no reference has been made to any earlier disciplinary proceedings or punishments awarded to the applicant which required that he be more severely dealt with than the other two. The only ground that seems to have weighed with the disciplinary authority was that the applicant had extorted Rs 20,000/- from the complainant Shri Naresh Chand which has been proved against him although in the charge itself it has been stated that from personal search Rs 10,000/- were recovered from the Head Constable and Rs 5,000/- each from the other two Constables. The latter evidence has not been discussed in the order of the disciplinary authority. If as stated by the disciplinary authority there was lack of supervision on the part of the Head Constable and also that he had not informed the senior officers about the absence of the applicant, a more severe punishment should have also been awarded to him for the misconduct which, however, has not been done in this case by the competent authority. Taking into account all the facts and circumstances, therefore, we find no justification for the differential treatment meted out to the applicant and the other two co-accused.

The appellate authority and the revisional authority have confirmed the penalty order dated 7.7.89.

22. In the result, this application is partly allowed. The penalty order dated 7.7.89, the appellate order dated 2.2.90 and the revisional order dated 27.7.89 so far as imposing penalty of removal from service on the applicant is concerned, is quashed and set aside. The case is remitted to the Appellate Authority with the observation to consider whether a lesser punishment is not called for in law in the facts and circumstances of the case. The Appellate authority shall pass the appropriate order within three months from the receipt of a copy of this order. No costs.

(Smt. Lakshmi Swaminathan)
Member (J)

(S.R. Adige)
Member (A)

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