

2 copies
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 632/91

Date of decision: 22.01.93

Sh. Ram Mehar

Applicant

Versus

Commissioner of Police, Delhi

Respondents

Sh. S.P. Sharma

Counsel for the applicant

Sh. Mukul Dhawan

Counsel for the respondents

CORAM

Hon'ble Sh. P.K. Kartha, Vice Chairman (J)

Hon'ble Sh. B.N. Dhoundiyal, Member (A)

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?

JUDGEMENT

(Of the Bench delivered by Hon'ble Sh. B.N.

Dhoundiyal, Member (A)

In this OA filed under Section 19 of the Administrative Tribunal Act, 1985, the applicant Shri Ram Mehar has challenged the disciplinary proceedings which culminated in the issue of the impugned order dated 24.1.91 by the Additional Commissioner of Police (Operations), Delhi, whereby, his appeal was rejected and the following penalties have been imposed on him :-

- i) penalties of forfeiture of 3 months approved service permanently;
- ii) reduction of pay from Rs. 1250/- per month to Rs. 1175/- for a period of 3 years;

- iii) denial of right to earn any increments of pay;
- iv) reduction having the effect of postponing increments; and
- v) treatment of period of suspension from 23.3.90 to 12.11.90 as not on duty.

2. The case against the applicant has been summed up in the impugned order dated 24.1.91 was as under :

1. The brief facts of the case are that HC Ram Mehar No. 960/PCR (now Ct. N. 2057/PCR) and Ct. Jai Singh, 2627/PCR were detailed for duty at PCR Van R-58 in 3rd shift in the night intervening 22/23-2-90. On a surprise checking conducted by Vigilance Branch staff on 23.2.90 in between 4 a.m. to 7 a.m. it was found that both the Police personnels were stopping incoming trucks from Punjab/Haryana near Alipur and extorting money from them as entry fee. At about 5.45 a.m. truck No. PBU -1111 was stopped by Ct. Jai Singh, 2627/PCR and asked Sh. Sewa Singh s/o Sh. Niranjan Singh (truck driver for entry fee. At this, Sh. Chand Singh s/o Sh. Kehar Singh (cleaner of the truck) got down and HC Ram Mehar demanded Rs. 20/- as entry fee. The cleaner paid Rs. 10/- to the Head Const. and Ct. Jai Singh issued entry fee slip. The truck was stopped about two furlong ahead. Sh. Chand Singh admitted to have paid of Rs. 10/- to the PCR staff. He was taken to the spot where he identified HC Ram Mehar to whom he had given an amount of Rs. 10/- and Ct. Jai Singh who gave him entry slip.

2. For the above gross misconduct both the Head Const. and Const. were placed under suspension w.e.f. 23.3.90 and a DE was initiated against them u/s 21 of Delhi Police Act, 1978 to be conducted by an officer be nominated by DCP/DE Cell, Vig. vide order No. 1878-95/HAP/PCR, dated 23.3.90. The DCP/DE Cell, nominated Sh. Sukhbir Singh, Inspector as E.O. and on his transfer it was handed over to Sh. Rattan Singh, Inspector who completed the DE proceedings and submitted his findings on 9.10.90 holding both the defaulters guilty of the charge.

b/w

3. After careful examining the findings of the E.O. evidence on DE file and tentatively agreeing with the findings it was provisionally proposed to dismiss them from the force and to treat their suspension period not spent on duty. Accordingly, a show cause notice vide No. 7047/HAP/PCR, dt. 22.10.90 was issued to both the police personnel. They received a copy of the notice alongwith a copy of the findings of the E.O. on 23.10.90 and submitted their reply in this regard on 5.11.90. The explanations submitted by them were considered in the light of facts, circumstances of the case and also heard them in O.R. on 9.11.90.

4. Heard Const. Ram Mehar No. 2057/PCR (now Const.) had served more than 34 years in police department and having unblemished service record. Ct. Jai Singh, 2627/PCR is a newcomer in the department and he has also maintained his clean service record during his 3 years service. Keeping in view their clean service records to offer them an opportunity to amend themselves in future, a lenient view was taken and forfeited three years approved service permanently of Ct. Ram Mehar, 2057/PCR & Ct. Jai Singh No. 2627/PCR by reducing their pay from Rs. 1250/- p.m. to Rs. 1175/- p.m. and Rs. 990/- p.m. to Rs. 950/- p.m. for a period of 3 years with immediate effect. They will not earn their increments of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing their future increments of pay. Both the police personnel were reinstated from suspension and their suspension period from 23.3.90 to 12.11.90 decided as period not spent on duty.

3. The applicant has challenged the impugned order on the ground that considering the unproved charge of his having taken Rs. 10/- as bribe, a departmental enquiry was not justified. He has contended that the incident is reported to have occurred at 5.45 a.m. on 23.2.91 and since the time for sunrise was 6.53 a.m. the vigilance team was not in a position to observe the applicant from a distance.

of nearly 2 furlongs. The key witness, i.e. cleaner of Truck, Sh. Chand Singh has denied having made any payment to him. The entry slips alleged to have been issued by him was not produced as evidence.

On No/ the spot search was made for finding money alleged to have been handed over to the applicant. There was a change in the enquiry officers, and the new enquiry officer was directed to complete the proceedings without being given freedom to apply his mind to the question whether continuance of the enquiry was justified or not? He has also contended that the enquiry is vitiated due to multipli-city of the punishments imposed and no preliminary enquiry having been held. He has prayed for the following reliefs:-

- (a) quash the findings of the enquiry report;
- (b) quash the resultant show-cause notice dated 22.10.90;
- (c) quash the order of punishment dated 13.11.1990;
- (d) quash the order dated 24.1.91 of the Appellate Authority;
- (e) Order restoration of all the 3 years forfeited past permanent service of the petitioner and in cancellation of the order of reduction of pay from Rs. 1250/- to Rs.1175/-, order restoration of the pay of the petitioner to the level of Rs. 1250/- and accrual of all subsequent increments as due in the normal course without having in any manner whatsoever any effect of postponing in the future increments;
- (f) order treatment of the suspension period from 23.3.90 to 12.11.90 as period spent on duty;

4. The applicant has also moved an MP 3383/91 for issue of directions for restoration of promotion to the post of Head Constable alleging that he had been so promoted on 27.1.89 on the basis of his seniority-cum-fitness and was reverted on 28.6.90 because of the departmental proceedings.

5. The respondents have stated that earlier Sh. Sukhbir Singh, Inspector was nominated as Enquiry Officer who conducted departmental enquiry proceedings upto recording the statement of 4 PWS. After his transfer, the Enquiry was entrusted to Shri Rattan Singh, Inspector D-Cell, who completed the proceedings and submitted his findings on 9.10.90. There was, thus, no infirmity in the proceedings. As stated by PW3 and PW4, the search and seizure memos were not prepared as the money was exchanged in their presence and as

at that time PW1 Shri Chand Singh had signed a statement supporting the allegations. According to them, PWs 2, 3 and 4 had fully supported the prosecution case and once the charges of taking bribe were proved, the amount of bribe did not matter. The punishing authority took into account, the long services of 34 years of the applicant and taking a very lenient view, reduced the quantum of punishment from proposed dismissal to forfeiture of 3 years service. They have also averred that the punishments given are not different ones but consequences of a single punishment of forfeiture of 3 years service. In reply to MP No. 3383/91, they have stated that the promotions given to the applicant and his other colleagues were purely adhoc and all of them were reverted by the same order to the post of Constable on 28.6.90. No juniors of the applicant are continuing as Head Constables.

6. We have gone through the records of the case and heard the learned counsel for both parties. Courts have held that in cases of bribery under the Prevention of Corruption Act, 1947, mere recovery of the money was not sufficient to prove the acceptance of bribe. In Suraj Mal Vs. State (Delhi Administration), 1977 (4) SCC 725 and 727, the Supreme Court has observed as follows :

"Thus mere recovery by itself cannot prove the charge of prosecution against the appellant, in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money". (See also Hazarilal Vs. State (Delhi Admn.) 1980 (2) SCC 390; Puranchand Meghaji Chikhaare Vs. Supdt. of Police, 1983 (1) SLJ 595).

7. The enquiry officer has himself admitted that the key witness PW1 Shri Chand Singh who was supposed to have given Rs. 10/- as entry fee, retracted his early statement during the enquiry and denied that any entry fee was demanded by the applicant. Being Av

a Punjabi speaking gentleman, he did not know what had been written in the Hindi statement which he was made to sign. No other witness claims to have seen the transaction and even the kacha slip alleged to have been issued by the defaulting officer was not produced during the entry. The guilt of an employee cannot be established by mere conjunctures or suspicion and cogent evidence must be established against him (AIR 1964 (SC) 364; Union of India Vs, H.C. Goel).

8. The applicant is entitled to succeed on the above mentioned ground. It is not, therefore, considered necessary to examine the various other contentions raised by him.

9. In the conspectus of the above facts and circumstances of the case, we set aside and quashed the impugned order dated 24.1.91. The respondents are directed to reinstate the applicant in service w.e.f. 23.3.90 i.e. the date of suspension. He would be entitled to full pay and allowances from 23.3.90 till the date of his reinstatement. He shall be considered for promotion from the date of his next junior was promoted as Head Constable. The respondents shall comply with the above directions expeditiously and preferably within a period of three months from the date of communication of this order.

There will be no order as to costs.

(B.N. Dhoundiyal)

Member (A)

(P.K. Kartha)

Vice Chairman (J)