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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 236/2004

New Delhi this the 29th day of September, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)**

Amir Khan Constable in Delhi Police,
(PIS No.28940403)
R/O Vill: Bidgawa,
PO Thoon, Tehsil:- Nagar,
Distt:- Bharatpur, Rajasthan

..Applicant

(By Advocate Shri Anil Singal)

VERSUS

1. Govt. of NCT of Delhi,
Through Commissioner of Police
Police Head Quarters, I.P.Estate,
New Delhi.
2. Joint Commissioner of Police
(Southern Range),P.H.Q.
I.P.Estate, New Delhi.
3. Addl. DCP (South Distt),
Through Comm. Of Police,
Police Head Quarter,
I.P.Estate, New Delhi.

..Respondents

(By Advocate Shri Mymtaj Hussain for Shri S.Q.Kazim)

ORDER (ORAL)

Mr. Justice V.S.Agarwal,Chairman

The applicant is Constable in Delhi Police. He faced joint departmental proceedings along with Constable Gulab Singh and Constable Jawahar Singh. The summary of allegations contain the following assertions:

"It is alleged against you Constable Gulab Singh No.203/SD, Cont. Jawahar singh, No.8537/SD and Constable Amir Khan No.593/SD that while posted at PS Okhla on 27.6.99 an performing duty at M/Cycle No.DELSL-5037 SM-26 and picket duty near ESI Hospital Okhla respectively you constable Gulab Singh No.2031/SD and Const. Jawahar singh No.8537 SD stopped Tata 407 No.DLIL-B-1947 being driven by one Omvir singh and beat him. You both further took him to picket near ESI Hospital, Okhla where const. Amir Khan No.593/SD was already present. You const. Gulab singh No.2031/SD informed the owner of said Tata 407 on telephone and released it later to Prem and Mangat Ram without bringing the facts to the knowledge of any senior officer or recording about it in the daily diary. Thus, you Constable Gulab singh No.2031/SD, Const. Jawahar singh No.8537/SD, Const.Amir Khan No.593/SD illegally detained, harassed and beat driver Omvir

(Signature)

singh and released Tata 407 No.DLIL-B-1947 with malafide intention.

The above acts on your part, i.e. constable Gulab singh No.2031/SD, Const. Jawahar singh No.8537/SD and Cont. Amir Khan No. 593/SD amounts to malafides, dereliction in official duty, gross misconduct, carelessness and thus unbecoming of a police officer which renders all of you liable for departmental action under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980."

2. The departmental proceedings had been initiated on the basis of what we have quoted above and the disciplinary authority on 2.11.2001 imposed a penalty on the applicant, along with others, reducing his salary from Rs.3425/- to Rs.3200/-. It was further directed that he will not earn increments of pay during the period of reduction and after expiry of this period, reduction will not have the effect of postponing his future increments of pay. His period of suspension was directed to have been taken as 'not spent on duty'. He preferred an appeal, which was dismissed.

3. By virtue of the present application, the applicant seeks to assail the orders passed by the disciplinary as well as the appellate authority.

4. We have heard the parties' counsel.

5. During the course of submissions, learned counsel for the applicant did not press into service the decision rendered by *Delhi High Court in the case of Shakti Singh Vs. NCT of Delhi* contending that the matter may be decided on merits of the same and even if the decision is otherwise, he would not challenge the penalty order to be violative of Rule 8 (ii) (d) of the Delhi Police (Punishment and Appeal) Rules, 1980.

6. In face of the aforesaid contention, we proceed to decide the matter on merit. Learned counsel for the applicant stated that although the applicant had been served with a summary of allegations that he along with other two Constables illegally detained, harassed and beaten a driver and released Tata 407 No.DLIL-B1947 with mala fide intention and that this act amounts to mala fide, dereliction in official duty, gross misconduct, carelessness, but he has not been found guilty of the charges by the enquiry officer. The only finding recorded by the enquiry officer is that as the applicant did not make DD entry on arrival at the Police Station, he is negligent and is, therefore, liable for punishment to that extent. He proceeded to urge that this was not a part of the summary of allegations against him. With regard to this, respondents' counsel contended that

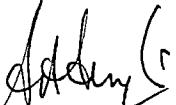
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the findings clearly show that the said DD entry was not deliberately made by the applicant and to that effect he had derelicted his duty.

7. We have carefully considered the said submission. The purpose of framing of ^{misconduct} charges against a person, alleged to have been committed, is that he should ~~not~~ know the nature of the allegations levelled against him so that he can properly reply the charges. When a particular allegation is not made against a person in a departmental proceeding, he should not be held guilty of the same. Identical is the position here.

8. In the summary of allegations, to which we have already referred to above, the allegations against the applicant were of having beaten, detained and harassed a driver of the vehicle. The enquiry officer has specifically found qua the applicant that this fact is not proved against the applicant. Only assertion proved against him is that he did not make DD entry on arrival at the Police Station. At the risk of repetition, we mention that this was not the allegation in the summary of allegations for which the applicant was facing disciplinary proceedings. Therefore, it is rightly contended that there is no charge proved against the applicant. At this stage, we deem it unnecessary to mention that there was no note of disagreement specifically conveyed to the applicant.

9. Resultantly, we allow the present application and quash the impugned order. We make it clear that nothing said herein is an expression of opinion pertaining to the acts of the misconduct of the co-delinquent, as their original applications are pending.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/kdr/