

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(a)

O.A. No. 2935 of 1992.

New Delhi, this the 6th day of June, 1995.

Hon'ble Mr J.P. Sharma, Member (J)
Hon'ble Mr B.K. Singh, Member (A)

Shri Pushkar Dutt
ASI (MIN)
Delhi Police
R/O G-I, Police Station
Lajpat Nagar,
New Delhi.

... . . . Applicant.

(through Mr J.K. Das, Advocate).

vs.

1. The Delhi Administration
through Chief Secretary
Delhi Administration
Delhi.

2. Commissioner of Police
Delhi Police
I.P. Estate
New Delhi.

3. Addl. Commissioner of Police
(AP) Delhi
Police Hqrs.
I.P. Estate,
New Delhi. Respondents

(through Mr Rajinder Pd Pandita, Advocate)

ORDER (oral)

J.P. Sharma, Member (J)

The applicant was working as A.S.I. in the Delhi Police though he was initially recruited as Head Constable w.e.f. 1.9.1971. The applicant was posted in the Traffic Unit on the fateful day when a complaint was received by one Hoshia Singh S/O Shri Budha Singh, r/o Govind Puri Extension, Kalkaji, New Delhi at 9.00 A.M. on 25.10.90, who was running a taxi stand near Lajpat Nagar, New Delhi, regarding taking of illegal gratification by the applicant. The

D. C. P. vigilance was contacted and he placed the applicant under suspension on 23.11.1990 and a regular departmental enquiry was ordered against him and the same was entrusted to Inspector Tek Chand of DE Cell. The Inquiry Officer has returned the finding of guilt against the applicant holding that the charge against the applicant of receiving illegal gratification of Rs. 3000/- from Shri Hoshia Singh for doing a favour is established and submitted the same to the Disciplinary Authority. The Disciplinary Authority issued a show-cause notice to the applicant who made a representation and after hearing the applicant personally, the Disciplinary Authority imposed a penalty forfeiting of 5 years permanent approved service entailing proportionate reduction in his pay and suspension period was treated as period not spent on duty vide office order dated 25.2.1992. The applicant filed a detailed appeal against the aforesaid order of the disciplinary authority and the Appellate Authority rejected the same on 5.8.1992.

Being aggrieved by this order, the applicant has preferred this O.A. for quashing these orders and for grant of the wages and consequential benefits.

MP No. 221/95 has also been moved, in which it is prayed that his name, if entered in the secret list be removed in case of success of this O.A.

The respondents filed a reply to the aforesaid application and contested the same stating that the applicant has committed misconduct in accepting illegal gratification and since

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the case was not found fit for criminal prosecution so departmental proceedings were initiated against the applicant. The Inquiry Officer examined five witnesses of the department and eight witnesses of the defence and thereafter appreciated the rival contention narrated by the witnesses and gave the finding of guilt against the applicant. The disciplinary authority has also given a patient hearing and the Appellate Authority has also considered the appeal by a detailed order. The impugned order therefore does not call for interference and the application is liable to be dismissed.

When we were hearing the matter earlier none was present on behalf of the applicant. Counsel for the respondents was present but there was no departmental file. Thus we adjourned the hearing and directed the file to be brought in the Court.

Today, the file has been received, brought in a sealed cover by the departmental representative. We heard Shri A.K.Das counsel for the applicant and Shri Rajinder Pd Pandita, counsel for the respondents. The counsel for the respondents was given a time of about two hours to study the record, which was received in a sealed cover and was opened in the Court itself.

The contention raised by the applicant's counsel and rightly so that in a case where there is passing of money as a bribe there should be a definite, convincing, cogent and admissible evidence to show that the money ^{was} passed for doing a favour by the applicant (delinquent). He also pointed out that the principle of appreciation of evidence in a criminal trial and departmental

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proceeding are though different, in the former it is preponderance of probabilities and in the latter it is that the guilt must be proved beyond all reasonable doubt, yet the quantum of evidence required should be such as the ingredients of the illegal misconduct which amounts to acceptance of remuneration should be established. The learned counsel has pointed out that this is a case of 'no evidence' because the key witness, namely, Hoshiar Singh, who moved the prosecution machinery and the raid was conducted by the Vigilance Branch did not support the contentions raised in the summary of allegations. Though the said witness has been cross-examined by the Inquiry Officer by way of putting certain questions to him and the witness remained firm that he did not pass any money to the delinquent nor he is speaking untruth and is a soldier and he never speaks untruth.

The Inquiry Officer entered into a fallacy when he framed the charge. Under Rule 16 of the Delhi Police Punishment and Appeal Rules, 1980, the evidence of the Department is recorded on the alleged summary of allegations and after the evidence of the department is recorded, the charge is framed by the Inquiry Officer which he puts to the applicant whether he pleads guilty or not claims to be entered into defence.

We have gone through the testimony of the witnesses also. The ingredients of passing of the money has to be established but that too is not available in the present case. Though the currency notes were signed by the ACP but they were not ~~exchanged~~ in the hands of the delinquent

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though denied by the complainant and Hosiarpur Singh (PW-1) but for the sake of arguments if the earlier version of summary of allegations is accepted the money was passed over in an envelop and no recovery memo. was prepared on the spot where the recovery was effected. There is a difference in the version of the witnesses as to presence of light on the spot. It is said that because there was no light so the raiding party alongwith the delinquent returned to the Police Station, Dajpat Nagar and where the S.H.O. written down the recovery memo. When we go through the evidence, we find that the applicant has also examined one A.C.P. who resides by the side of the residence of the delinquent, namely Shri Sahdev Singh. He talked on phone to A.C.P., P.S. Dajpat Nagar who informed him there was no money transactions and in return he informed the wife of the delinquent stating that there was an inquiry and there was no matter of 'Len Den' and the delinquent will be relieved soon. This is a message sent by an employee of Police holding a gazetted rank and this information was conveyed to the wife of the delinquent. The veracity of this witness has not been questioned in the inquiry. The inquiry officer has totally side-tracked this evidence though we are not appreciating evidence but we are only analysing evidence, the facts deposed to whether make out any case against the delinquent. We have persistently questioned the learned counsel for the respondents as to why the recovery memo. was not prepared on the spot and the learned counsel replied that the S.H.O. thought it fit to prepare the same at the Police Station, Credibility and credence goes side by side and if certain facts may be somewhat reasonable, if these do not inspire confidence then they cannot be taken to give credibility to the statement of the witnesses.

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Thus the vital evidence missing in this case is corroborating statement of the offence of passing over the money of Hoshiar Singh complainant and secondly non-preparation of the recovery memo. on the spot. We have further gone to find out whether there is any piece of evidence which could indicate passing of money to the delinquent though earlier it was found that the envelop which contained Rs.3000/- currency notes of Rs.100/- are not present in the departmental inquiry file. The departmental representative says that the money has been taken out and it is deposited with the Line Officer. In fact it is not for this Tribunal to find out whether the currency notes alleged to have been signed by ACP Vigilance are on the file or not. The basic question to be seen is that these currency notes should have been recovered on the spot in the presence of some reliable independent person. The Inquiry Officer has given undue weight to the witness examined by the administration while the defence witnesses, including the evidence of Inspector of Police, who has been examined by the delinquent has not been given the same reliability in coming to a finding of guilt against the applicant.

There is a catena of decision that the Tribunal cannot appreciate the evidence and the finding given by the Inquiry Officer should not be disturbed but when the finding is totally perverse that no reasonable person can reach the finding and when it is ^{not} based on evidence consisting of facts than such a finding should be disturbed. The learned counsel for the applicant has placed reliance on the

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decision in Sarla Devi (Smt.) vs. Commissioner of Police, New Delhi, (1992) 21 ATC 326. In that case also, there was a misconduct of illegal gratification where the Tribunal relying on Suraj Mal vs. State of Delhi Administration (1979) 4 SCC 725, 727 and that of Haari Lal vs. State (Delhi Administration (198) 2 SCC 390 held that mere receipt of money is not sufficient to prove the acceptance of bribe. Though the facts of this case are not analogous to the present one as it was a raid by a vigilance party in the present case but there is a observation in para 6 that when the main witness has deposed denying not giving the money, the inference drawn by the Inquiry Officer that the witness has been won over cannot be believed. Reliance has also been placed in 1989 Vol. I, CAT 29 of the Administrative Tribunal Reporter. In that case also, the key witness was not examined. The finding was therefore held to be based on surmises and conjectures and mere recovery of the money was not held sufficient to establish the guilt against the delinquent. We have considered the law and the facts and we find that in the present case the Disciplinary Authority and also the appellate authority did not consider the facts in the right perspective. The Additional Commissioner of Police has ignored the grounds taken in the memorandum of appeal. All these points taken by the applicant have been summarily rejected without looking to the weakness in the statements of the prosecution witnesses. The Addl. Commissioner of Police has only discarded the plea because a DCP Vigilance has forwarded the complaint to ACP preferred by Hoshiar Singh. The complainant has also

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denied the writing of the complaint himself and that fact has rightly been ignored.

When charges are established what were the compassionate grounds in reaching a conclusion that a person of weak integrity or doubtful integrity can continue in service.

Considering all these facts we find that the order of punishment cannot be sustained. The O.A. as well as the MP is allowed. The impugned order is set aside. The applicant shall be reinstated forthwith in service and all consequential benefits would be paid to him and if due to the impugned order, his name has been entered in the secret list, then the same shall be removed from such list.

Parties are left to bear their own costs.

/sds/

(B.K.Singh)
Member (A)

J.P.Sharma
(J.P.Sharma)
Member (J)