

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

Q.A. No. 1164/92
T.A. No.

1A

DATE OF DECISION 21.11.97

Subhash Chand Sharma Applicant(s)

(By Advocate: Shri Shankar Raju)

Versus

Union of India & Ors. Respondent(s)

(By Advocate: Shri Vijay Pandita)

(For Instructions)

1. Whether it be referred to the Reporter or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

AV
(Dr. A. Vedavalli)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1164/92

New Delhi this the 21st day of November, 1997.

(18)

Hon'ble Mr. N. Sahu, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Subhash Chand Sharma,
S/o Shri Charan Singh Sharma,
R/o D/175, Ganga Vihar,
Delhi. ...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

1. Delhi Administration,
through Chief Secretary,
Delhi Administration,
5, Sham Nath Marg,
Delhi.
2. Commissioner of Police, Delhi,
M.S.O. Building, I.P. Estate,
New Delhi.
3. Additional Commissioner of Police (New Delhi),
M.S.O. Building, I.P. Estate,
New Delhi.
4. Deputy Commissioner of Police (East Distt.)
Vishwash Nagar, Shahdara,
Delhi. ...Respondents

(By Advocate Shri Vijay Pandita)

O R D E R

HON'BLE DR. A. VEDAVALLI, MEMBER (J):-

The applicant, Subhash Chand Sharma, a Constable in the Delhi Police is aggrieved by the penalty imposed upon him by the respondents as a result of a disciplinary proceedings taken against him for alleged grave misconduct, negligence and dereliction of his official duties.

2. The applicant has impugned in this OA the orders passed by (i) the disciplinary authority on 31.10.89 (Annexure C); (ii) the appellate authority on 2.3.90 (Annexure B) and (iii) the revisionary authority on 8.9.92 (Annexure A). He seeks quashing of the aforesaid orders.

AV

3. The facts of this case, briefly stated, are as under:

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3.1 While the applicant was posted as a Constable under the S.H.O. P.S. Vivek Vihar, Delhi, disciplinary proceedings were instituted against him under Section 21 of the Delhi Police Act, 1978. It was alleged in the chargesheet that he was found mixed up with Suresh Chand, a notorious drug peddler of Jawala Nagar, and was using his two wheeler scooter. On 21.1.88, Inspector K.P. Singh, the then SHO, Vivek Vihar found a scooter parked within the compound of Police Station. On enquiry, the applicant is alleged to have admitted before him that the scooter belongs to Suresh Chand and presented its keys to him. The scooter together with its keys was stated to have been impounded by the Duty Officer under the provisions of the Delhi Police Act, as ordered by the SHO. The scooter was later on got released by its registered owner Suresh Chand.

3.2 Disciplinary proceedings were initiated against the applicant and the enquiry officer on completion of the enquiry submitted his report. The conclusion reached by the enquiry officer, is quoted below in extenso.

"CONCLUSION"

I have carefully gone through the statements of the PWs, DWS and the defaulter, perused the records on the file. There is no trace anywhere, of the alleged keys of the scooter, any evidence to support the fact that any keys were given to SHO/Vivek Vihar Insp. K.P. Singh by the defaulter or by the SHO/VV to the duty officer alongwith the scooter. The Insp/SHO did not himself, write anything in the Daily diary about it. Moreover, the Insp/SHO or any one else have never seen the defaulter using the scooter or mixing unnecessary with Suresh the defence version are that the defaulter was always seen using his bicycle when visiting his beat area and never on the scooter. The contention of the defaulter is that:-



The allegations in the charge are baseless and not based on seen evidence on record. Insp K.P. Singh himself never saw him using the scooter nor did he produced any one who might have seen him using the scooter. The scooter was seized under 66 D.P. Act as unclaimed not from him or at his instance or disclosure, without keys. As such contentions of Insp K.P. Singh are not supported by any evidence or facts. He did not give any keys of the scooter to the Insp. nor admitted before him that the vehicle belonged to Suresh Sanshi. The scooter was seen parked there since morning of the day while he was on duty of Republic Day Arrangements from dawn till afternoon and as such he would not be supposed or could not have brought the scooter to the PS. Suresh is not on police records since 1985, as drug peddler and that there is no proof, except the baseless presumption of Insp. K.P. Singh that he was mixed up with Suresh.

There are no evident facts making clear that the defaulter was ever seen or known to be using scooter of Suresh Sanshi who is silent as drug peddler since 1985. There is no solid proof to prove the contents of the charge except the observation of Insp. K.P. Singh. If taken his presumption as dependable it may be presumed that there is some truth in the charge in respect of the observation of the Insp.

3.3 However, the disciplinary authority disagreed with the finding of the enquiry officer and believed the evidence of Inspector K.P. Singh, SHO and issued a show cause notice dated 29.8.89 to the defaulter proposing to forfeit his one year's approved service permanently with cumulative effect (Annexure A). The said notice is stated to have been received by the defaulter applicant on 13.9.89 and he submitted his reply on 9.10.89. The disciplinary authority made the proposed punishment absolute stating, inter alia, that the evidence of Inspector K.P. Singh, SHO is trust-worthy and is sufficient to prove the charge against the defaulter and that he does not see any reason to differ from the proposed punishment. As a result, the third impugned order dated 31.10.89 was passed imposing a penalty of reduction in pay by one stage in the time scale of pay for a period of one year from the date of issue of the said order. It was also ordered that he will not earn increment of pay during the period of reduction and on the expiry of the said period the reduction

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will have the effect of postponing his future increments of pay (Annexure C). Aggrieved by the said order an appeal was preferred by the applicant to the appellate authority. He was heard in person also by the appellate authority. The main contention of the applicant was that none of the PWs except Inspector K.P. Singh (PW1) has deposed any thing against him to prove the allegations made. The said contention was rejected by the appellate authority as having no force since it was proved on the basis of the record that Suresh Chand is a drug paddler, though silent since 1985 and that statement of Inspector K.P. Singh cannot be disbelieved. Stating, inter alia, that no convincing reasons were given by the defaulter to change the punishment, the appeal was rejected by the appellate authority by the second impugned order dated 2.3.90 (Annexure B).

3.4 It appears from a perusal of the first impugned order dated 8.9.91 by the revisionary authority, i.e., Commissioner of Police (Annexure A) that the applicant aggrieved by the said order of the appellate authority dated 2.3.90 preferred an revision petition to the then commissioner of Police, Delhi, Shri Vijay Karan, who felt that the charge against the applicant is very grave and a show cause notice dated 11.12.90, proposing to impose the penalty of dismissal from the force on review of the aforesaid appellate authority order was issued. A reply is stated to have been submitted by the applicant on 6.1.91 (neither the said show cause notice nor the reply have been filed with this OA).

3.5 The successor revisional authority on going through the said reply fond that the applicant had not given any convincing reasons but taking stock of all the attending



circumstances and taking a lenient view reduced the said punishment to the second show cause notice to that of forfeiture of one year's approved service permanently entailing reduction in his pay from Rs.1050/- p.m. to Rs.1030/- p.m. by the first impugned order dated 8.9.91 (Annexure A). (22)

4. The OA is contested by the respondents who have filed their reply, to which no rejoinder has been filed by the applicant.

5. The only ground pressed before us during the hearing by the learned counsel for the applicant is the one relating to 'no evidence'. He submitted that the identity of the only person who is alleged to have seen the applicant riding the scooter was not disclosed and he was not examined during the enquiry as a witness. He argued that in the circumstances there was no evidence to prove the charge against the applicant and on this ground alone the disciplinary proceedings stand vitiated and all the three impugned orders are liable to be quashed and set aside.

6. The above submissions and arguments of the learned counsel for the applicant were vehemently opposed by the learned counsel for the respondents. He submitted that this Tribunal has no power to appreciate the evidence or to consider the same on merits to reach its own finding as to the misconduct of a delinquent officer and that disciplinary authorities alone have such power. In support of the above submission he relied strongly on the decision of the Hon'ble Supreme Court in B.C. Chaturvedi vs. Union of India (1994 (6)SCC 749. *AB*

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7. We have heard the learned counsel Shri Shankar Raju for the applicant and Shri Vijay Pandita, for the respondents. We have perused the pleadings, material papers and documents placed on the record and have considered the matter carefully.

8. It is noticed from the finding of the enquiry officer, as extracted in extenso supra, that he has considered the statements of the PWs and DWs etc. and has come to the conclusion that there are no evident facts making clear that the defaulter was ever seen or known to be using scooter of Suresh, who is silent as drug paddler since 1985. There is no solid proof to prove the contents of the charge except the observations of Inspector K.P. Singh. If taken his presumption as dependable it may be presumed that there is some truth in the charge in respect of the observations of the Inspector.

9. While so, the disciplinary authority, the appellate authority and the revisionary authority, we notice, have given the respective impugned orders on the basis of their trust and belief based on the evidence given by PW1 Inspector KP Singh, the then SHO against the applicant and the fact stated to have been proved from the record that the registered owner of the impounded scooter Suresh Chand is a drug paddler though silent since 1985.

10. All the aforesaid three authorities, it is seen, have given their respective impugned orders mainly on the basis of the evidence given by Inspector K.P. Singh (PW1) which according to them is trust-worthy and is sufficient to

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prove the charge against the applicant. It is also noticed that though the authorities have mentioned in their order that they have gone through other evidence on record, there is no discussion about either the "other" oral evidence given by the DWs or the documentary evidence on record in support of the defaulter applicant. Neither is there any apparent comparative analysis, evaluation, appreciation and assessment of such "other" evidence vis-a-vis the oral and documentary evidence for the prosecution." There is no indication in the aforesaid impugned orders whatsoever as to how the charge against the applicant, namely, the "mix up" with an alleged notorious drug peddler Suresh Chand could have been considered to be proved when his 'admission' as to the ownership of the scooter was not taken in writing nor is supported by any oral evidence of the witnesses who have been examined during the disciplinary proceedings. Moreover, the alleged handing over of the scooter keys by the defaulter applicant as per the statement of Inspector K.P. Singh (PW1) was not proved by any other evidence. In fact the evidence given by ASI Om Prakash (PW2) the Duty Officer who had impounded the scooter in question under the Delhi Police Act, as directed by PW1, inter alia shows clearly that neither the keys of the scooter were given to him nor was he told any thing about it. Moreover the English translation of DD No.10-A dated 21.8.88/recovery memo dated 22.1.88 shows that in the presence of witnesses Viz. Constable Daya Ram and Head Constable/Duty Officer, the unclaimed scooter parked within the PS premises was taken in possession under Section 66 of the Delhi Police Act. There is no mention about the keys of the scooter or as to any direction given by the SHO (PW1) nor is there even a whisper about the link or connection or association of the applicant in the matter.

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11. We now come to the well settled legal position regarding the 'no evidence' ground in disciplinary proceedings as laid down by the apex court in a number of decisions.

12. In Union of India vs. H.C. Goel (AIR 1964 SC 364) at page 370, it was observed thus: -

"It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials to disciplinary enquiries held under the statutory rules."

13. It was also observed in the aforesaid case that "mere suspicion ^{not} should be allowed to take the place of proof even in domestic enquiries."

14. In the case of State of Assam vs. Mohan Chandra Kalita (AIR 1972 SC 2535) it was held by the Hon'ble court that when there was no evidence to connect the delinquent with the allegation concerned, the charge cannot be sustained by mere conjectures.

15. In State of Madras vs. A.R. Srinivasan (AIR 1966 SC 1827) at para 16, also the Apex court observed thus:-

"It may be that in disciplinary proceedings taken against public servants, the technicalities of criminal law cannot be invoked, and the strict mode of proof prescribed by the Evidence Act may not be applied with equal rigour; but even in disciplinary proceedings, the charge framed against the public servant must be held to be proved before any punishment can be imposed on him."

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16. Sufficiency of evidence in proof of the finding by a domestic Tribunal may be beyond judicial scrutiny as held in several decisions by the Hon'ble Supreme Court but it was held in the case of State of Haryana vs. Ratan Singh (AIR 1977 SC 1512) thus:- "Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record.", though the appeal was allowed on the facts of that case.

17. In the case of B.C. Chaturvedi vs. Union of India (1995 (6) SCC 750) on which strong reliance was placed by the learned counsel for the respondents during his arguments, no doubt, the scope of judicial review was elaborately discussed and several principles in that regard have been laid down by the Hon'ble Supreme Court. However, in the said decision itself it was held, *inter alia*, thus:-

12..... The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or whether the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding being such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case." (emphasis supplied)

18. The decision in H.C. Goel's case (supra) was also relied upon by the Hon'ble Supreme Court in the above case.

19. The crucial question is whether the three impugned orders are vitiated because there was 'no evidence' to support them.

20. We have examined the above question and the fact situation in the light of the well settled legal position as discussed supra. The evidence of PW1 (Inspector K.P. Singh) alone and that too on the basis of the trust and belief imposed on him by the aforesaid three authorities in the disciplinary proceedings, we find, was the sole foundation or the determining factor on which the three impugned orders were given by the said authorities and as already noted and discussed earlier the 'other' evidence, oral and documentary, on record, *prima facie* was not actually taken into consideration at all by them. The said evidence by PW1 apparently is not corroborated by any supporting material either oral or documentary and in fact was negated and denied by the evidence given by PW2 (Duty Officer Om Prakash) PW3 Daya Ram Constable) and several other PWs as well as DWs. The contents of the DD/Recovery memo dated 22.1.88 supra apparently were also not considered. It is not known as to why the evidence of other witnesses could not be considered before arriving at a finding and conclusion by similar trust and belief by the disciplinary authorities or why they were considered to be less trust worthy than PW1.

21. In the facts and circumstances of this case and in view of the foregoing discussion we are of the considered opinion that the three impugned orders are vitiated by an error of law apparent on their face namely 'no evidence' since the evidence of PW1 which formed the sole basis or foundation for the said orders was based on mere trust and belief and by

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no stretch of imagination would have been considered by any reasonable or prudent person as having established or proved the charge against the defaulter applicant in the face of what all has been discussed supra from the factual and legal angle. Moreover, ignoring or not specifically considering relevant evidence, oral or documentary, is highly arbitrary, perverse and is violative of the basic principles of natural justice, fairness and reasonableness.

22. In the result, all the three impugned orders are quashed and set aside, as being unsustainable in law for the reasons mentioned supra. The respondents are directed to restore to the applicant his forfeited service with all consequential benefits in accordance with law in the light of the relevant rules and instructions within a period of three months from the date of receipt of a copy of this order.

23. The C.A. is allowed accordingly. No costs.

A. Vedavalli
21/11/97
(Dr. A. Vedavalli)
Member (J)

'Sanju'

Transcribed by
(N. Sahu)
Member (A)