

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.NO.746/1993

Wednesday, this the 28th day of March, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman  
Hon'ble Shri S.A.T. Rizvi, Member (A)

Ex-Head Constable Chander Kant,  
S/O Late Shri Ramesh Dutt Sharma,  
R/O House No.1/7059,  
Gali No.5, Vishnu Marg,  
Shivaji Park, Shahdara,  
Delhi-32.

...Applicant.

(By Advocate: Shri Ravi Verma)

VERSUS

1. The Commissioner of Police,  
Police Headquarters, ITO,  
New Delhi.
2. The Deputy Commissioner of Police  
(Crime & Railways), Police Headquarters,  
ITO, New Delhi.
3. The Additional Commissioner of Police  
(Vig. & Crime), ITO, Police Headquarters,  
ITO, New Delhi.

..Respondents

(By Advocate: Shri Rajinder Pandita)

O R D E R (ORAL)

By Hon'ble Shri Justice Ashok Agarwal:

In disciplinary proceedings initiated against the applicant who was at the relevant time Head Constable in Delhi Police, a penalty of dismissal from service has been imposed upon him by the disciplinary authority by his order of 2.4.1992. Aforesaid order has been issued under Article 311 (2)(b) of the Constitution. The same has been issued without holding a regular departmental enquiry by observing as follows:-

"The circumstances of the case are such that holding of an enquiry against HC Chander Kant No.1/Crime is not reasonably practicable because it is not uncommon in such cases to find the witnesses turning hostile due to fear of reprisal. It requires a lot of courage to depose against an ordinary criminal and much more

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courage has to be shown to depose against a criminal in the role of a policeman. It will be too much to expect ordinary citizens to show such courage."

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2. Aforesaid order has been affirmed by the appellate authority by his order of 29.6.1992. Both the said orders are impugned in the present OA.

3. The disciplinary proceedings had been initiated on the following set of allegations:-

"Head Constable Chander Kant No.1/Crime (under suspension) while posted in D.R.P. Lines, Delhi was arrested in case FIR No.286 dated 28.3.92 u/s 379/411 IPC, PS Kotwali, Delhi. The brief facts of the case are that Sh. Govind Singh S/O Late Shri Samey Singh, r/o Qtr. No.173/32/II Ordinance Factory, Murad Nagar, Ghaziabad (UP) who is working as clerk cum cashier in Syndicate Bank, Super Bazar, Cannaught Place, New Delhi had left his office to go to Chandni Chowk as he had to purchase some cloth for his children. He boarded a private bus under D.T.C. route No.403 from I.T.O. to go to Red Fort and then to Chandni Chowk. When he was travelling in the said bus Constable Manoj Kumar No. 7195/DHG was present. One person was standing just behind him in the bus. Before leaving the bus he (complainant) checked the front pocket of his shirt and found Rs.400/-, Identity card and Railway pass missing from his pocket. Const. Manoj Kumar No.7195/DHG caught a person who was standing in the bus behind the complainant and was running from the back door of the bus whose identity was later-on verified as HC Chander Kant No.1/Crime. Const. Manoj Kumar No.7195/DHG informed the complainant that the accused Chander Kant had taken away the money and some papers from the pocket of the complainant which he had seen personally. Rs.400/-, Railway pass and Identity card all were recovered from HC Chander Kant No.1/Crime. He was taken to PS Kotwali where the above mentioned case was registered."

4. As already stated, aforesaid order of penalty has been imposed without holding an enquiry on the aforesaid ground that witnesses would either be won over or not forthcoming or would turn hostile.

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5. Present proceedings have a chequered history. Present OA was initially filed in April, 1993. The same came to be dismissed for default by an order passed on 9.7.1998. Applicant has thereafter filed MA-2893/2000 & MA-2894/2000 for restoration of the OA and for condonation of delay in filing the same. By an order passed on 19.12.2000, aforesaid MAs have been allowed and the present OA has been restored. The same is accordingly taken up for hearing and final disposal.

6. We have heard Shri Ravi Verma, learned Advocate appearing in support of the OA as also Shri Rajinder Pandita, learned counsel appearing on behalf of the respondents. Shri Ravi Verma, learned counsel has strenuously urged that the aforesaid reason contained in the impugned orders passed by the disciplinary authorities that it is not reasonably practicable to hold a regular departmental enquiry as witnesses would either be won over or not forthcoming or would turn hostile. <sup>cannot be sustained.</sup> Shri Ravi Verma, learned counsel has with equal vehemence countered the aforesaid submission by contending that the aforesaid finding is fully justified and no interference is called for.

7. Present OA was initially taken up for hearing on 26.3.2001 when on the request of applicant's counsel, it was stood over in order to enable him to produce the criminal proceedings launched against the applicant for our perusal. Today, he has produced the same. We have perused the said proceedings and we find that as many as six prosecution witnesses have been examined in support

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of the prosecution. Amongst them, we find are the witnesses Shri Govind Singh S/O Late Shri Samey Singh who is the victim of the theft alleged to have committed by the applicant as also Constable Manoj Kumar of Home Guards who had apprehended the applicant in the act of committing theft.

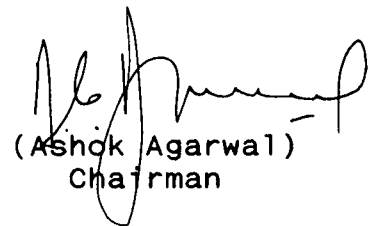
8. If one has regard to the aforesaid state of affairs emerging in the aforesaid criminal prosecution, an inference is irresistible with the finding of the disciplinary authority that it was not reasonably practicable to hold a regular departmental enquiry, cannot be sustained. Aforesaid order of 2.4.1992 issued by the disciplinary authority as also the order of 29.6.1992 issued by the appellate authority are, in the circumstances, quashed and set aside with liberty to the respondents to institute a fresh and a regular disciplinary proceedings against the applicant. This be done <sup>expeditiously</sup> if they are so advised. It is, however, clarified that in case aforesaid disciplinary proceedings are not initiated within a period of three months from the date service of this order, applicant will be entitled to be reinstated back in service but without backwages.

9. Present OA is allowed in the aforestated terms.  
No order as to costs.



(S.A.T. Rizvi)  
Member (A)

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(Ashok Agarwal)  
Chairman