

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA/100/724/2013

Reserved on: 29.08.2018

Pronounced on: 05.09.2018

**Hon'ble Mr. K.N. Shrivastava Member (A)
Hon'ble Mr. Ashish Kalia, Member (J)**

HC (Min.) Shishu Pal, Age 38 years
PIS No.27970034
S/o Late Shri Sardar Singh
D-29, Amar Colony,
Nangloi, Delhi-41

... Applicant

(Through Shri Sachin Chauhan, Advocate)

Versus

1. Govt. of NCTD through
The Commissioner of Police
PHQ, I.P. Estate,
New Delhi.
2. The Joint Commissioner of Police,
Northern Range through
Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
3. The Addl. Dy. Commissioner of Police,
Outer District through
Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
4. Central Vigilance Commission
Through its Chief Vigilance Commissioner,
Satarkta Bhawan
GPO Complex,
Block-A, INA,
New Delhi-23

... Respondents

(Through Ms. Sumedha Sharma, Advocate)

ORDER

Mr. Ashish Kalia, Member (J)

The applicant was working as Head Constable (Ministerial) since 1997 with the respondents. He was dealt departmentally vide order dated 6.01.2010 on the allegation "that anonymous complaints were received in DCP/Outer District Office diarized vide No.14008/C-DCP/OD dated 7.10.2009, alleging therein that HC Shishu Pal, No.5/OD had purchased a new motorcycle bearing registration no. DL-4S BG-9260 and did not give any kind of intimation to the competent authority. Enquiry into the matter was conducted by the official of DIU/OD during which the facts were verified from Shri N.K. Singh, Manager Shiv Ganga Automobiles, A-1-2 Paschim Vihar, Near Peeragarhi Chowk, Delhi. It was established that HC (Min.) Shishu Pal had purchased a Motorcycle no. DL-4S BG-9260 in cash. The applicant, HC Shishu Pal claimed that the said Motorcycle was gifted to him by his brother-in-law Shri Pramod Kumar. However, during the course of enquiry, the applicant failed to prove the transaction of money for purchase of Motorcycle. He further took the plea that he was not aware of the provisions of rule that information was to be given to the department about receipt of such gifts and department's stand was he is working in ministerial staff and the provision in this regard was well known to him due to length of his service."

2. The charges were framed against the applicant. He submitted his defence statement along with defence witness

also. Ultimately after enquiry, a major penalty was imposed on 9.03.2011 withholding "next increment for a period of one year without cumulative effect" upon the applicant.

3. The applicant has taken several grounds in support of OA (i) the CVC guidelines dated 29.06.1999 to all the ministries not to pay attention to anonymous complaints, issued by the Central Vigilance Commissioner, and guidelines have been violated; (ii) the departmental enquiry is vitiated being in violation of CVC instructions adopted by the Vigilance Branch of Delhi Police; (iii) the punishment imposed upon the applicant is too severe and harsh in comparison to what has been proved against the applicant. The appellate authority did not consider the question of proportionality of punishment; (iv) the applicant produced Defence Witness and the said witness proved on record that the Motorcycle was gifted by him to the applicant. Defence Witness further proved the source of money from his personal bank account and his testimony has gone unchallenged. It is further stated on behalf of the applicant that the present case is a perfect example of not considering the defence of the applicant and further ignoring the evidence in favour of the applicant, thus vitiating the departmental enquiry. Another ground raised is that DE was initiated with a pre-determined mind that the allegations are proved in PE. It has also been submitted that the present case is of no misconduct as the Motorcycle was purchased in cash by the applicant's close relative and real brother-in-law. He placed reliance on **UOI Vs. G. Krishna,**

where the Hon'ble High Court held that:

“while appreciating the evidence, the entire legal defence has to be considered – if the evidence only supporting the case of the department is taken into consideration and the other evidence which is equally supporting the case of the employee is omitted to be considered, it would amount to non-application of the mind and biased attitude of the Enquiry Officer.”

5. Notices were issued. Respondents put in appearance and filed counter.

6. In the counter, the respondents have submitted that DE was conducted in proper and fair manner and the EO carefully went through the statements of PWs, defence statement of the applicant and other material brought on DE file. The applicant was also heard in Orderly Room by the Additional DCP on 11.01.2011 and Disciplinary Authority has dealt with each and every aspect of the case.

7. Rejoinder has also been filed reiterating the facts stated in OA.

8. Heard Shri Sachin Chauhan for the applicant and Ms. Sumedha Sharma for the respondents and also perused the record and legal position.

9. The scope for the Tribunal to go into enquiry report and appreciation of evidence etc. is very limited. The only prerogative of the Tribunal is to see whether the evidence led by the parties has been duly considered in unbiased and fair manner by the enquiring authorities.

10. During the course of arguments, learned counsel for the applicant drew our attention to the following portion of the enquiry report :

"The defaulter produced his defence witness as Sh. Parmod Kumar S/o Shri Ilam Singh R/o Village Rampuri Kheri, District Muzaffar Nagar, UP age 40 years who deposed that he is the brother in law of HC Shishu Pal No. 5/OD and he gifted a Motor Cycle to HC Shishu Pal in January 2009 for which he withdrew a sum Rs.15,000/- on 17/10/2008 and Rs. 50,000/- on dated 21/10/2008. He produced the photocopy of his pass Book showing withdrawal."

11. Learned counsel for the applicant submitted that the testimony of DW Shri Parmod Kumar has gone un rebutted and unchallenged during the course of the enquiry. He has proved the source of money for the purchase of Motorcycle by showing the Pass Book of his Savings Bank Account, who happens to be his brother-in-law.

12. It seems to this Tribunal that the enquiry report is silent on this, which is very crucial for coming to the conclusion against the delinquent official. In terms of the judgment passed by the Hon'ble High Court in **UOI Vs. G. Krishna** (supra), it was held that the EO should have applied his mind in unbiased and fair manner. His decision should not be perverse. The fact proved by the D.W. has gone unnoticed by the EO. It gives doubt in the mind of this Tribunal regarding fair trial during the enquiry by the EO. Unfortunately, the same has also gone unnoticed by the disciplinary authority and the appellate authority, who are supposed to apply their independent mind while discharging their

statutory duties. As regards the charge that the applicant did not intimate to the department for purchase of motorcycle, the applicant should have informed to the department well in advance or after purchase of the same. But this lapse on the part of the applicant does not warrant a major penalty.

13. Resultantly, in the facts and circumstances of the case and the legal position in the matter, the impugned orders are not sustainable in the eyes of law and liable to be set aside and hence set aside. The increment forfeited shall be restored to the applicant. No order as to costs.

(Ashish Kalia)
Member (J)

(K.N. Shrivastava)
Member (A)

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