

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.4297/2011

Reserved on 24.07.2018
Pronounced on 27.07.2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr.S.N.Terdal, Member (J)

Sh. Harbhagwan,
S/o Late Sh. Siya Ram,
r/o 597-B/6 Govind Puri, Kalkaji,
New Delhi-19

... Applicant

(By Advocate Shri Ajesh Luthra)

VERSUS

1. Commissioner of Police,
PHQ, MSO Building,
IP Estate, New Delhi.
2. The Joint Commissioner of Police
(Southern Range),
PHQ, MSO Building, IP Estate,
New Delhi.
3. The Deputy Commissioner of Police,
South,
P.S. Hauz Khas, New Delhi.

... Respondents

(By Advocate: Mr. Amit Anand)

ORDER

Mr.S.N. Terdal, Member (J)

Heard Shri Ajesh Luthra, counsel for the applicant and Shri Amit Anand, counsel for the respondents, perused the pleadings and all the documents produced by both the parties.

2. In the OA, the applicant has sought the following reliefs:
 - “(a) Quash and set aside the impugned orders dated 27.5.2011 and 17.3.2011 passed by the Appellate Authority and Disciplinary Authority of the respondents.
 - (b) Quash and set aside the finding given by the Enquiry Officer.

- (c) Direct the respondents to give the salary for the period when the applicant was remained under suspension from 12.6.2009 to date of passing the order i.e. 17.3.2011.
- (d) If deemed appropriate an enquiry be ordered against such officers who have falsely implicated the applicant.
- (e) Award costs of the proceedings and
- (f) Pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

However, at the time of hearing, the counsel for the applicant confined his submission with respect to relief prayed for in para (a) and (b), out of the above prayed relief in the OA.

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant for his alleged involvement in corrupt practice by way of theft of petrol/diesel of the govt. and selling it to some outsiders at lower rate. On the allegation that he was involved in such practice for a long time on 11.06.2009 when the department got a definite information, they organized a raiding party and said raiding party took their position near the place of incident, namely, the petrol pump and when the applicant started unloading the petrol two persons got their plastic canes of 20 liters filled and came out from the petrol pump. The said persons were enquired. Subsequently, after noting all the formalities as per rules, charge sheet was issued, all the documents and list of witnesses were supplied to the applicant, witnesses were examined, allowed to be cross-examined, the concerned documents were taken on record. Thus following all the relevant rules, enquiry was held. After thoroughly

examining the evidence available on record, written defence statement of the applicant, the Enquiry Officer discussing the evidence of 10 witnesses arrived at a finding to the effect that the applicant was found indulged in theft of petrol/diesel belonging to the Government. The discussion of evidence and the conclusion of the Enquiry officer are extracted below:-

"The main allegations/charge against delinquent ASI Har Bhagwan are that while posted as I/C petrol pump Def.Colony he was found indulging in theft of petrol from Govt. petrol pump and then selling the same at lower rate to some known persons. During the course of DE proceedings 10 prosecution witnesses were examined, but the delinquent ASI did not produce any witness in his defence. On the basis of allegations, charge, depositions of witnesses and defence statement the discussions of evidence is as under:

PW 1 an employee at Prem Service Station has clarified that they never give 20 ltr petrol in can PW 2 & PW3 who were caught carrying 40 ltr and 20 ltr petrol in plastic can have denied for carrying petrol purchased from delinquent ASI Har Bhagwan the then I/C govt. petrol pump Def.Colony. PW4 Ct. Jai Bhagwan who was on duty at Def. Colony petrol pump has supported the prosecution by deposing that he told I/C petrol pump that he was doing wrong by removing petrol unauthorizedly. He also supported recovery of petrol by the R1/SD. PW5 Insp. O.P.Dalal, R1/SD, has testified that the raid was conducted on the basis of information received by him and also that recovery of petrol was effected. The recovered petrol was seized and he signed the seizure memo. PW6, the MHC / Malkahana P.S. Def. Colony, has confirmed the entry of seizure memo of petrol in the register and pouring of petrol in govt. petrol pump. PW7 ASI Muktiar Singh who was part of raiding party has fully supported the prosecution story. He seized the recovered petrol through seizure memo and deposited the same in Malkana. PW8 has proved posting of delinquent ASI as I/C petrol pump of Def. Colony. PW9 HC Ajit Singh was also part of raiding team and he has fully supported the prosecution version. He had also signed the seizure memo. PW 10 has clarified that the petrol which was deposited in PS Malkhana was poured in underground petrol tank vide DD No. 36A, dated 16.6.09. Cross examination of all the PWs, except PW2 and PW3, have not emerged anything which could support the delinquent ASI except difference in number of tanker.

In his defence statement the delinquent ASI has more emphasized on entry in petrol pump register, difference in number of tanker, depositions of PW2 and PW3, non registration of theft case.

PW4, PW5, PW7 and PW9 have all witnessed the whole incident of theft and recovery of petrol and have supported the prosecution. PW8, PW10 and PW6 have also proved that the delinquent ASI Har Bhagwan was posted as I/C petrol pump and that the recovered petrol which was deposited in PS Malkhana was poured in underground tank at Def. Colony petrol pump. PW2 and PW 3 have denied for carrying petrol purchased unauthorizedly from ASI Har Bhagwan I/C petrol pump, recovery of petrol from their possession etc. PW3 has also disowned his previous statement. If, according to PW2 and PW3 nothing such had happened then how they both came into pictures and from where the recovery of petrol was affected. If these two PWs have not deposed so, their own integrity would have been at stake. Version of PW3 has been totally overruled and made ineffective by the deposition of PW1 who is independent witness. Hence depositions of PW2 and PW3 have no credibility.

Testimony of all the PWs except that of PW2 and PW3 have proved that on 11.6.09 the delinquent ASI Har Bhagwan, being I/C petrol pump Def.Colony, was found removing petrol unauthorizedly from the govt.petrol pump and selling the same to his known persons. Depositions of PW2, PW3 and defence plea are not having any force to deprive the delinquent ASI from the charge.

CONCLUSION

On the basis of above discussions, depositions of witnesses, exhibits and the other evidence which is adduced on file, the charge served upon the delinquent ASI Har Bhagwan No.4955/SD (PIS No.28780192) is proved."

4. The inquiry report was provided to the applicant as per rules. The applicant submitted his representation against the inquiry report. The disciplinary authority after considering the inquiry report, the representation and after giving personal hearing passed a penalty order awarding punishment of forfeiture of two years approved service temporarily entailing proportionate reduction in his pay from Rs.10840/- + 4200 to Rs.9970/-+ 4200/-. The applicant filed an appeal. The appellate authority also passed a detailed order after giving an opportunity of personal hearing to the applicant. The appellate authority upheld the order of punishment imposed upon the applicant by the disciplinary authority by rejecting the appeal. At the

time of hearing, the counsel for the applicant took us through the entire evidence. He has not pointed out any procedural lapses in the conduct of the disciplinary proceedings. His submission is that the Enquiry Officer has not taken into account the statement given by some of the witnesses in their cross-examination. He further submitted that in contravention of rule 15(3) and 16(iii) of the Delhi Police (P&A) Rules, 1980, the Enquiry Officer has taken into account the material collected at the time of preliminary enquiry in so far as PW 2 and PW3 are concerned. On close scrutiny, we found that the Enquiry Officer has not taken into consideration the material collected at the time of preliminary enquiry. The Enquiry Officer, the relevant portion of whose report is extract, has taken into account the deposition of all the witnesses and he has stated that in view of the deposition of other witnesses, the deposition of PW 2 and PW3 do not tilt the scale in favour of the applicant.

5. The disciplinary authority has carefully examined the entire material before him and even he has given personal hearing and passed the impugned penalty order. The appellate authority also has gone through the entire material before him and after hearing the applicant personally upheld the penalty order passed by the disciplinary authority. We have not found violation of any procedural rules in conducting the departmental enquiry. In the circumstances, there is no merit in the OA. Accordingly, OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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