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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.48/2003

Monday, this the 22nd day of September, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri R.K. Upadhyaya, Member (A)

Babu Lal Gautam
D-I/677
s/o Late Sh. Nathu Ram
r/o C-8/229, Yamuna Vihar
Delhi-53

..Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi
through its Chief Secretary
Players Building
IP Estate, New Delhi
2. The Commissioner of Police
Police Headquarters
IP Estate, New Delhi
3. The Addl. Commissioner of Police- [Traffic]
[Now Jt. Commissioner of Police - Traffic]
Police Headquarters
IP Estate, New Delhi

...Respondents

(By Advocate: Shri Rishi Prakash)

O R D E R (ORAL)

Shri Justice V.S. Aggarwal:

The applicant had faced disciplinary proceedings and suffice to say that the following charge had been framed against the applicant:-

"Misleading his superior officer by reporting that the Const. driving the scooter in the photograph published in the Daily "Dainik Jagran" dated 23.7.97 was Const. Sanjeev Kumar, No.1360-T and not Const. Chander Pal, No.3176-T.

That Inspr. B.L. Gautam encouraged ASI Nem Pal, No.203-D to commit forgery by tempering with the challan receipt No.1204861 dated 18.8.97 and took illegal gratification from the ASI after the alleged forgery had been made.
That Inspr. B.L. Gautam took money from ASI Nem Pal to purchase a pet dog for senior officer."





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2. Subsequently, the disciplinary authority on 16.10.1998 had directed that the statement of Constable Sanjeev Kumar has not been recorded. Keeping in view this fact, a direction was given to record the statement and submit supplementary findings. The statement of Constable referred to was recorded and supplementary findings were submitted by the inquiry officer. Thereupon, it was recorded:-

"From the statements of PW ASI Nem Pal and Addl. PW, Ct. Sanjeev Kumar, No.908/T it is clear that ASI Nem Pal and Ct. Sanjeev Kumar were asked by Inspr. B.L. Gautam to fetch a puppy from Sh. Kamal Naresh of Gurgaon. Whether the entire cost of the puppy i.e. Rs.5000/- was paid by Sh. H.P.S. Virk, Addl. DCP/T or by Inspr. Gautam and ASI Nem Pal jointly cannot be said with certainty while ASI Nem Pal insists that he paid Rs.3500/- for the puppy, Sh. Virk has stated that the entire cost of Rs.5000/- was borne by him and the defaulter claims that he had nothing to do with it. However keeping in view the fact that the dog was originally bought in the name of Sh. Qamar Ahmed, DCP-T and in view of the statements of Sh. Kamal Naresh Sharma, ASI Nem Pal and Ct. Sanjeev Kumar, the inescapable conclusion is that ASI Nem Pal and Ct. Sanjeev were asked by Inspr. B.L. Gautam to fetch the dog in question from Gurgaon on 6.7.98 which, incidentally was a Sunday."

3. When the matter came up before the disciplinary authority, he recorded that he was agreeing with the findings of the inquiry officer but in addition to that, further findings were recorded:-

"With regard to Part-'C' of the charge, findings of the Enquiry Officer show that Inspr. B.L. Gautam had directed Const. Sanjeev Kumar and ASI Nem Pal to fetch the dog from Gurgaon. Inspr. B.L. Gautam has taken different positions in his defence statements and in the supplementary enquiry after the

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questioning of Const. Sanjeev Kumar. Earlier he had taken the position that he had directed Const. Sanjeev Kumar alone to go to Gurgaon to fetch the dog and that ASI Nem Pal had gone at his own. At the supplementary stage the Inspector has taken the position that he had asked neither ASI Nem Pal nor Const. Sanjeev Kumar to go to Gurgaon and that while the puppy was brought from Gurgaon he was on Medical Rest. Although Inspr. B.L. Gautam has taken the position that he had asked neither the Const. nor the ASI to go to Gurgaon, his conflicting statements throw a doubt on the Inspector's conduct."

4. The applicant preferred an appeal against the penalty of withholding of two increments for a period of two years temporarily without cumulative effect. The appellate authority dismissed the appeal but had further recorded:-

"In the above facts and circumstance, I am of the opinion that the misconduct of not taking any action against Const. Chander Pal or even Const. Sanjeev Kumar who was the pillion rider or driving the scooter, for not wearing helmets as required under the rules, stands proved. As far as second allegation is concerned, it is the statement of only ASI Nem Pal Singh ZO of the appellant corroborated by the then ACP/Traffic (East). As far as this allegation is concerned, it also stands proved. I have considered the appeal, which does not have any legal force and is therefore rejected."

5. It is on the strength of these facts that the learned counsel for applicant had urged that while the disciplinary authority agreed with the findings of the inquiry officer but still without recording a note of disagreement had went on to record that pertaining to the acceptance of a particular amount for purchase of puppy, the conduct of the Inspector (applicant) is doubtful. It has further been argued that though the inquiry officer

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had exonerated the applicant with respect to charge Nos. 2 and 3, which we have already reproduced above, the appellate authority stated in the order that second allegation against the applicant is proved.

6. Learned counsel for respondents defended the orders arguing that the disciplinary authority had agreed with the findings of the inquiry officer and the appellate authority has not enhanced the sentence and, therefore, there is no ground to interfere.

7. On a careful consideration of the matter, we find that the submissions of applicant's learned counsel must prevail and the contention of the respondents should be ignored.

8. The reasons are ^{not} far to fetch. Whenever the inquiry officer submits the findings, the disciplinary or the appellate authorities do have the right to differ but when they do differ, they must convey the note of disagreement and call for a fresh answer/representation to what the disciplinary or the appellate authorities think about the said report.

9. When an authority expresses itself in writing, in that event, the reasons are known. Here in the present case while the disciplinary authority agreed with the findings of the inquiry officer, it still went on to record findings about the conflicting statements (reproduced above already) and that in the opinion of the disciplinary authority, it throws a doubt on the conduct

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of the applicant. It has to be remembered that pertaining to the purchase of puppy and the price, the inquiry officer had exonerated the applicant. Inadvertently, this fact has been ignored by the disciplinary authority. If he was to hold the applicant responsible for any such dereliction of duty, in all fairness, a note of disagreement should have been served giving the tentative reasons. Same mistake, as already referred to above, has crept in into the order of the appellate authority.

10. Keeping in view these facts, it becomes unnecessary for us to go into any other contention.

11. Resultantly, on this short ground, we allow the OA and quash the impugned orders and remit the matter back to the disciplinary authority, who may, from the stage of receiving the report of the inquiry officer, pass a fresh order in accordance with law.



(R.K. Upadhyaya)
Member (A)



(V.S. Aggarwal)
Chairman

/sunil/