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Central Administrative Tribunal, Principal Bench
New Delhi

O.A. No.743 of 2002

New Delhi this the 11th day of November, 2002

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. M. P. Singh, Member (A)

1. Umesh Kumar~
~Head Constable of Delhi Police
PIS No.(28800931)
R/o Vill. Khuram Pur
P.O. Murad Nagar,
Distt. Ghaziabad, U.P.~
2. Subhash
Constable of Delhi Police
PIS No.28880558
R/o I-9, Sector-22,
Noida, U.P.

- Applicants

(By Advocate : Shri Anil Singal)

Versus

1. Commissioner of Police
Police Headquarters,
I.P. Estate, New Delhi.
2. Jt. Commissioner of Police,
New Delhi Range, PHQ,
I.P. Estate, New Delhi.
3. DCP (East Distt.)
Bhola Nath Nagar,
Shahdara, Delhi.


- Respondents

(By Advocate : Shri Ajay Gupta)

ORDER (ORAL)

Mr. Kuldip Singh, Member (J)

The applicants in this case have impugned the order dated 12.11.1998 (Annexure A-6) vide which the applicants had been awarded punishment of reduction by five stages from Rs.3880/- to Rs.3455/- in the time scale of pay for a period of five years. Further they will not earn increments of pay during the period of reduction and in expiry of this period, the reduction will have the effect of postponing their future increments.



2. The facts in brief are that the applicant were proceeded departmentally on the basis of summary of allegation, which reads as under:-

"It is alleged that HC Omesh Kumar No.246/E (PIS NO.28800931) and Const. Subhash No.1195/E (PIS NO.28880558) while posted at P.S. Trilokpuri, they were detailed for patrolling duty on Motor Cycle - TP-06. During the night intervening 17/18.8.97. Inspr. Bir Singh, SHO/Kalyanpuri was night checking officer in the area of Sub-Divn. Kalyanpuri alongwith HC (Dvr.) Ishwar Singh, No.334/E at about 12.30 A.M. the Inspr. was going by National High Way No. 24 to check TP-01, when he reached near Khichri Pur Bridge, he saw one truck stopped at opposite direction by the patrolling staff TP-06 and second truck was stopped by them 50 yards away from the sopt. On seeing the SHOs vehicle the staff of TP-06 i.e. HC Omesh Kumar No.246/E and Const. Subhash No.1195/E ran away towards Mandawali. They also did not respond the call of Echo-58 at the instance of SHO/K.Puri. In the meantime the trucks left away from the sopt. On checking the sopt the Inspr. found Rs.70 (50+20) from there.

The above act on the part of HC Omesh Kumar No.246/E and Const. Subhash No.1195/E amounts to grave misconduct, corrupt activities and unbecoming of a police officer, which renders them liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

3. It is pertinent to mention here that before the applicants had been proceeded departmentally, a preliminary inquiry was also held. While impugning the order, learned counsel for the applicants has submitted that in the preliminary inquiry the inquiry officer had observed that the applicants were guilty inasmuch as that they ran away from Khichri Pur bridge seeing SHO Kalyan Puri and also did not respond when called by Echo-58 at the instance of checking officer. This shows the guilty consciousness on their part. However, the recovery of

Rs.70/- (50+20) could not be linked with them in the absence of proper procedure of recovery adopted by the checking officer and no corroboration from any other witness.

4. Learned counsel for applicant even referred to the findings recorded by the inquiry officer who also concluded that the presence of the applicants was proved on the said spot where two trucks were stopped. But sofar as the recovery of Rs.70/- is concerned non of the witness has seen the SHO picking the money from the spot. Even the driver of SHO HC Ishwar Singh had not seen the SHO picking the money. There is no truck number and no statement of drivers. In the absence of seizure memo and corroborating statements the recovery of Rs.70/- could not be linked neither to the defaulters nor to the truckwalas.

5. However, the disciplinary authority did not agree with the findings of the inquiry officer and issued a show cause notice. In its show cause notice, the disciplinary authority had observed that it cannot be agreed with the findings of the inquiry officer that as far as recovery of Rs.70/- is concerned non of the withness has seen the SHO picking the money from the spot and even the driver of SHO HC had not seen the SHO picking the money. There is no truck number and no statement of drivers. In the absence of seizure memo and corroborating statements the recovery of Rs.70/- could not be linked neither to the defaulter nor to the

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truckwalas. Thus, holding them guilty on the second charge of recovery of Rs.70/-. A show cause notice was issued as to why they should not be punished.

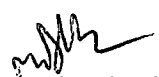
6. Shri Anil Single, learned counsel for the applicants submits that in the disagreement note, the disciplinary authority may have taken a tentative view and could not have finally hold the charge relating to recovery of Rs.70/- as proved without affording an opportunity to the applicants. In this background, counsel for the applicants as also referred to a recent judgement of the Hon'ble High Court of Delhi in the case of Commissioner of Police Vs. Constable Parmod Kumar & Anr. (CWP No.2665/2002) decided on 12.9.2002 wherein the Hon'ble High Court while relying on the judgement in the case of Yoginath D. Bagde v. State of Maharashtra & Anr. (JT 1999 (7) SC 62) upholding the decision of the Tribunal wherein the Tribunal had also observed that in the case of disagreement note, the disciplinary authority give a tentative opinion and should not give a final opinion. The final opinion should be given only after affording an opportunity to the delinquent officer(s).

7. In this case, since the disciplinary authority had not afforded any opportunity to the applicants before holding them guilty. The show cause notice issued to the applicants shows that the disciplinary authority has first held them guilty without affording them any opportunity of hearing.

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8. In view of the judgement of the Hon'ble Delhi High Court in the case of Commissioner of Police v. Constable Parmod Kumar & Anr. (supra) and law laid down by the Hon'ble Supreme Court and the Hon'ble High Court, thus show cause notice cannot be sustained in the eyes of law and the same and is liable to be quashed.

9. Resultantly, OA is allowed and the respondents are directed to restore the pay of the applicants with all consequential benefits: No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

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