

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-3027/2002

New Delhi this the 14th day of August, 2003.

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

1. Ramesh Kumar,
S/o Sh. Narayan Singh,
R/o House No.336,
Vill. & Post Office Khera
Khurd, Delhi-82.
2. Puran Singh,
S/o Sh. Pyare Lal,
R/o A-244, Sonia Vihar,
1st Pushta, Street No.5,
Delhi, working as Constable
in Delhi Police No.663/N,
(PIS No.28880734). Applicants

(through Sh. Abhishek Atrey, Advocate)

Versus

1. Commissioner of Police,
Police Head Quarters,
ITO, I.P. State, Delhi.
2. Jt. Commissioner of Police,
Northern Range, Police
Headquarters, ITO, Delhi.
3. Dy. Commissioner of Police,
North District, Civil Lines,
Delhi.
4. Addl. Dy. Commissioner of Police,
North District, Civil Lines,
Delhi. Respondents

(through Mrs. Renu George, Advocate)

ORDER (ORAL)
Justice V.S. Aggarwal, Chairman

Applicants are Constables in Delhi Police.
On 31.7.2001 they had been served with the following
summary of allegations:-

"It is alleged against Constables
Puran Singh, No.663/N (PIS NO.28880734)

18 Aug.

and Ramesh Kumar No. 1403/N (PIS No.28823117) that on 9.6.2001 they were detailed for patrolling duty on motor cycle NM-12 in the area of P.S. Civil Lines from 11.00 A.M. to 2.00 P.M. and 5.00 P.M. to 10.00 P.M. On that day Insp. Ishwar Singh, T.I. Civil Lines Circle of Traffic unit who was also on patrolling duty at about 11.35 A.M., noticed that two TATA Sumos No. RJ-19-4689 and RJ-61-7594 were stopped and being checked by both the Constables. When the T.I. started enquiry from the drivers of the TATA Sumos, both of the Constables fled away from the spot. The drivers told the T.I. that they have been charged Rs.600/- by the police Constables for not stopping the vehicles at police signal. Insp. Ishwar Singh, T.I. brought both the drivers in P.P. Majnu Ka Tilla and motor cycle Omni NM-12 being operated by above named Constables was called on wireless through Control did not turn up despite flashing of several messages. After waiting for some time, Insp. Ishwar Singh T.I. left the Police Post alongwith both the drivers for his office in O.P.L. Delhi and he recorded the statements of both the drivers. In the meanwhile SHO/Civil Lines also arrived at the office of TI/Traffic at OPL and both the above named Constables were identified by the drivers namely Hosh Mohd. and Inder Singh of TATA Sumos as the same policemen who had stopped their vehicles for checking on Outer Ring Road and took the money which was later on returned to the drivers in the office of ACP/Traffic, North District, Delhi.

Both of the Constables Puran Singh, No. 663/N and Ramesh, No. 1403/N have been found checking the vehicles unauthorisedly and accepting the money illegally and unauthorisedly."

2. The departmental proceedings had been initiated. Thereafter the Disciplinary Authority after disagreeing with certain aspects of the report of the Enquiry Officer recorded that:-

"I have gone through the statements of the Gosh Mohd. and Inder Singh, the drivers, in both PE & DE. They do differ drastically. They have stated

MS Ag

that their version in DE is correct as against their version in PE or before SHO/Civil Lines. It can not carry weight as what could be the interest of SHO/Civil Lines to record it otherwise. The fact that both the drivers did identify them in OPL also points to their guilt. Policemen have to be not only honest but also give the impression of being honest also to the public at large. Therefore, I find no merit in the deposition. However, seeing their nearly clean record, I take a lenient view and award them the punishment of withholding of one future increment for a period of one year temporarily. Their suspension period be treated as Not Spent on Duty."

3. Aggrieved by the order of the penalty that has been imposed the applicants preferred an appeal which was dismissed. By virtue of the present application, the applicants seek quashing of the above said orders.

4. The petition has been contested. Various pleas so taken by the applicants have been countered.

5. We are not going into all those pleas because the learned counsel for the applicants at the outset urged that sub-rule(2) to Rule 15 of Delhi Police (Punishment & Appeal) Rules, 1980 has been violated in terms that prior approval of the Additional Commissioner of Police has not been obtained as to whether a criminal case has to be registered and a departmental enquiry should be held.

MS Ag

6. Sub-rule(2) to Rule 15 holds itself with the following words:-

"15. (2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

The ingredients of sub-rule(2) to Rule 15, therefore, are that (a) there has to be a preliminary enquiry; (b) It should disclose the commission of a cognizable offence by a police officer of subordinate rank; (c) It should be in his official relations with public; and (d) The approval of the Additional Commissioner must be taken before starting the departmental enquiry as to whether a criminal case should be registered or investigated or a departmental enquiry be held.

7. In the counter filed the respondents have pleaded in paragraph 5(1) that no preliminary enquiry was ordered under sub-rule(2) to Rule 15 of the Rules.

8. If this was so, the plea of the applicants would have no legs to stand. In fact it is not so. Perusal of the order passed by the Disciplinary Authority itself reveals that there was a preliminary enquiry to which reference is being made.

AS Ag

In fact the Disciplinary Authority took note of the fact that preliminary enquiry and ~~offence~~ ^{defence} in the departmental enquiry differ drastically. Therefore, the plea taken that there was no preliminary enquiry is not correct.

9. Perusal of the summary of allegations reveals clearly that the applicants were alleged to have demanded Rs. 600/- which they charged for not stopping the vehicle at police signal. This was an unauthorised amount taken and, therefore, it would be a cognizable offence, if proved, purported to have been committed by a police officer in relation with public. Admittedly, the prior approval of the Additional Commissioner of Police has not been obtained.

10. In that event the learned counsel for the respondents contended that under sub-rule(2) to Rule 15 the enquiry was not by a police officer of a subordinate rank and, therefore, strict provisions will not apply.

11. We have no hesitation in rejecting the said contention. The words used in Rule 15 (2) of the rules is clear. Therefore, there is no scope for extending the law lexicon. Mere reading to sub-rule(2) to Rule 15 indicates that the expression "discloses the commission of a cognizable offence by a police officer of a subordinate rank" pertains to the dereliction of duty by the said delinquent and not

18 Ag

pertaining to enquiry by a Police Officer of a subordinate rank.

12. These facts clearly show that in the present case admittedly approval of the Additional Commissioner of Police had not been obtained to start the departmental enquiry against the applicants which in the peculiar facts was necessary. In the absence of the same, therefore, the departmental enquiry could not be initiated.

13. Keeping in view this procedural flaw, we are not expressing ourselves to the other facts that were agitated.

14. Resultantly, we quash the impugned order and direct that if authorities feel that departmental action has to be initiated, necessary approval may be obtained before initiating the departmental proceeding.

Naik

(S.K. Naik)
Member(A)

Ag

(V.S. Aggarwal)
Chairman

/vv/