

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2675/2002

Thursday, this the 22nd day of May, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

Ct. Paramvir
s/o Sh. Bhurthal Jat
r/o Kakaria
Rewari Haryana
Working as Constable in Delhi Police, Delhi
..Applicant
(By Advocate: Shri Arun Bhardwaj)

Versus

1. Union of India
through Commissioner of Police
Police Headquarters
IP Estate New Delhi
2. Joint Commissioner of Police
Traffic, PHQ, New Delhi
3. Deputy Commissioner of Police
Traffic, Delhi
..Respondents
(By Advocate: Smt. P.K. Gupta)

O R D E R (ORAL)

Shri Govindan S. Tampi:

The applicant (Constable Paramvir) challenges the order dated 30.6.2001 passed by the disciplinary authority imposing on him a penalty of withholding of two increments and treating the suspension period as not spent on duty and the appellate order dated 27.5.2002 upholding the above penalty.

2. Shri Arun Bhardwaj and Smt. P.K. Gupta, learned counsel represented the applicant and respondents respectively during the hearing.

3. The applicant, who was working with the Delhi Police as a Constable, was proceeded against on 6.10.2000

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on the allegation that he and HC Tejinder Singh had taken an amount of Rs.100/- on the pretext of entry fee from one truck driver Shri Virender Tyagi, but after noticing arrival of the Vigilance Party in the area had returned the amount. The inquiry officer, at the culmination of the departmental inquiry proceedings, held that the charge of corruption framed against the delinquent officials could not be proved but that keeping in view the unwarranted presence of the delinquents beyond their duty-point, where they were noticed, the malafide on their part cannot be ruled out. In spite of applicant's making a detailed representation against the findings of the inquiry officer which were full of contradictions, conjectures and surmises, the Disciplinary Authority inflicted upon him the punishment of withholding of two increments for a period of two years along with treating the period of suspension as 'not spent on duty'. The same was upheld in the appeal. The applicant points out that the entire proceedings which culminated in the imposition of the punishment on him was illegal, arbitrary and was highly prejudicial. The perusal of the inquiry report itself indicated that there was absolutely no evidence against the applicant and the charge was shown as proved, purely on extraneous material and in utter violation of the rules governing disciplinary inquiry proceedings. Further, while the penalty was imposed on him holding that he was away from his duty-point, the same had not been a part of the charge-sheet. In fact, the Disciplinary Authority had himself concluded that since the point where the alleged incident had taken place was near to their duty-point,

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the explanation that they had gone to take lunch, was possible. It was also relevant that no evidence actually has been brought on record that he had made any entry in the small note book belonging to the truck driver in token of having taken the money. This was a case of no evidence but he has still been punished. All the above points were very strongly reiterated by Shri Arun Bhardwaj.

4. In the reply filed on behalf of the respondents, reiterated during the oral submissions by Smt. P.K.Gupta, it was pointed out that the proceedings were initiated against the applicant and his co-accused HC Tejinder Singh, as they were found standing improperly at G.T. Karnal Road near Jahangir Puri by the Vigilance Staff who on a complaint from the truck driver that they had taken Rs.100/- and had made an entry in the same investigations were initiated. They had been deployed for duty at Hyderpur More and not where they were standing. In the disciplinary proceedings, the Inquiry Officer had held that while the charge of corruption against the applicant could not be proved but it was indicated that their having been away from duty-point, the malafide on their part could not be ruled out. The Disciplinary Authority held that the original statement given by the Driver about the taking or giving of the money could not be entirely ignored in spite of its having been retracted and as it was found that the applicant and his co-accused were unauthorisedly found in an area where they were not expected to be, they had to be penalised. In the appeal, the Appellate Authority had confirmed the findings of the Disciplinary Authority in a

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mechanical manner. According to the learned counsel, the action taken by the Department was proper and that the proceedings had been gone through correctly and the applicant's pleas, therefore, deserved to be rejected. The small note book of the PW-I, i.e., truck Driver, also had an initial, which appeared to be that of applicant showing his malafide. Inasmuch as the proceedings had been initiated correctly and gone through properly and they were found at a place other than the actual duty-point, the charge stood proved and the proceedings initiated and the punishment imposed should be taken as correct. There was no reason to interfere with the same, is what Smt. Gupta pleads.

5. We have carefully considered the matter. We find that the summary of allegations issued in this regard reads as below:-

"It is alleged against HC Tejinder Singh No.282/T (PIS No.28850841) and Ct. Paramvir Singh No.3028/T (PIS No.28931184) that on 4.2.2000, at about 2.00 PM while posted in Model Town Traffic Circle had stopped a truck No. HR-46/A-6660, which was noticed standing improperly on G.T. Karnal Road near Jahangirpuri More. Both of them were talking with driver and helper at a distance of 25/30 feet away from the truck near a tea stall, as observed by Vigilance staff (headed by Sh. Randhir Singh, ACP/Vigilance). On enquiry, driver Sh. Virender Tyagi s/o Puran Chand Tyagi r/o 9/22, Sarup Nagar near Shiv Mandir, Delhi - 110042 disclosed that both traffic police personnel have taken Rs.100/- as entry fee from him and made entry in his small note book but after noticing police party, returned the amount. Entry was made by Ct. Paramvir Singh, No.3028-T in small note book. Though, they were deployed for duty at Hyderpur More and G.T.K. Depot point respectively.

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The above act on the part of HC Tejinder Singh, No.282/T and Ct. Paramvir Singh, No.3028/T amounts to gross misconduct and taking illegal gratification during the performance of their official duties which render them liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

6. The findings recorded by the Inquiry Officer after completing inquiry, however, reads as below:-

"After carefully going through the statement of P.Ws., D.W., Defence statement of the delinquent HC Tejinder Singh No.282/T and Const. Paramvir, other material on record and in view of the above discussion, I have come to the conclusion that the charge of corruption framed against the delinquent officials could not be proved beyond reasonable doubt. However, in view of unwarranted presence of the delinquents at a place other than their duty point, the malafide on their part can not be ruled out."
(emphasis supplied)

7. It is thus clear that the charge, which is indicated in the summary of allegations, had not been proved. The Disciplinary Authority has also accepted that nobody had seen the Constable taking the money or returning it and held that as the point where the alleged incident had taken place was very near to their duty-point, their explanation that they had come to the place for taking lunch, as it was lunch time, was correct. With regard to the charge about the acceptance of Rs.100/-, the Disciplinary Authority has recorded that the placing of initials in the small note book of the truck driver was with an ulterior motive and it had "direct relevance on the fact whether the constable has taken the bribe is not relevant here but the fact that he has dared before doing so in the eye of the public and while performing his duty is relevant and very serious".

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Based on these observations, he has imposed the impugned punishment. The fact, however, is that neither the acceptance of the bribe nor the signing in the small book is proved. Further in the appellate order, it is indicated that "From the facts brought out, it is evident that if nothing else, both are guilty of leaving their particular duty point and gone to the dhaba for lunch per their own admission. Against the constable is also the fact of his inability to explain the presence of his signatures (initials) in the pocket diary of the truck driver, and thus irrespective of the truck driver retracting his statement during the DE and stating that his own signatures were obtained on a blank piece of paper by the Vigilance team".

8. From the above, it is evident that while no charge of taking or accepting the bribe is proved, the Inquiry Officer has gone on to record that the individuals were found at a point different from their duty point which has led to the imposition of the punishment. The same in fact was not part of the charge-sheet. What had formed charge of the charge-sheet had not in fact been proved.

9. In the above view of the matter, OA succeeds and is allowed. The impugned orders dated 30.6.2001 and 27.5.2002 are quashed and set aside. The applicant shall

be entitled to full consequential benefits arising out of the said exoneration. No costs.

(Govindan S. Tampi)
Member (A)

Unil/

(V.S. Aggarwal)
Chairman