

15

**Central Administrative Tribunal, Principal Bench**

**Original Application No. 3140 of 2002**  
**M.A.Nos. 2671/2002, 1488/2003**

New Delhi, this the 16th day of October, 2003

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman**  
**Hon'ble Mr. S.A. Singh, Member (A)**

1. Ajay Kumar  
S/o Shri Dharamveer Singh  
R/o Village & P.O. Neerpura,  
District Baghpat (U.P.)
2. Const. Mohinder Singh  
R/o Village & P.O. Ranchal  
District Baghpat (U.P.)

.... **Applicants**

(By Advocate: Shri S.K. Gupta)

Versus

1. Govt. of N.C.T. of Delhi,  
through Chief Secretary,  
Delhi Secretariat,  
IG Stadium, IP Estate,  
New Delhi
2. Commissioner of Police,  
Police Headquarters,  
M.S.O. Building, I.P. Estate,  
New Delhi
3. Joint Commissioner of Police,  
Southern Range, Police Head Quarters,  
New Delhi, IP Estate,  
New Delhi-2
4. Deputy Commissioner of Police,  
South West District,  
Through Commissioner of Police,  
Police Headquarters,  
MSO Building, IP Estate,  
New Delhi
5. Shri S.L. Dua,  
Assistant Commissioner of Police,  
D.I.U. South West District  
C/o Commissioner of Police,  
Police Headquarters,  
MSO Building, IP Estate,  
New Delhi

.... **Respondents**

(By Advocate: Shri Ajesh Luthra)

**O R D E R (ORAL)**

**By Justice V.S. Aggarwal, Chairman**

The applicants had faced disciplinary proceedings.

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-2-

The enquiry officer had been appointed. After the enquiry was concluded, the enquiry officer exonerated applicant no.1 and partially exonerated applicant no.2. The same came up for consideration before the disciplinary authority i.e. the Deputy Commissioner of Police, South West Distt., New Delhi. On 16.8.2001, the disciplinary authority did not agree with the findings of the enquiry officer and recorded:

"I have carefully gone through the statement of PWs/DWs, defence statement of both the Constables, Finding of the Enquiry Officer and the entire material brought on the DE file. I do not agree with the findings of the Enquiry Officer on the following grounds:-

i) That the E.O. has not given due credence to the statement of S.I. Jasmohinder Chaudhary (PW-2), who was the Emergency Officer on that night and had got enquired the matter from the public as well as from Constable Mahender Singh, No.517/SW on reaching the spot. Constable Mahender Singh, has himself had confessed the fact to the PW-2 on the spot that on 3.10.2000 at about 8.00 P.M., he along with Constable Ajay Kumar, No.1689/SW had gone to apprehend the vehicle carrying illicit liquor towards Naraina and further told that they also used to apprehend the such vehicles during their off duties. They they had apprehended vehicle No.DNA-0797 of blue colour carrying illicit liquor. He further told the PW-2 that Constable Ajay had called him through mobile phone to reach at Naraina and that the matter had been settled with the driver of the said vehicle for Rs.20,000/- for releasing the vehicle and further asked him to contact him on mobile phone to ascertain his position, as he would keep the said vehicle (car) shifted from one place to another. That when he alongwith the driver of the vehicle reached Sagar Pur to bring Rs.20,000/-, there had been scuffle between them on the issue of accompanying him as he (Constable Mahender Singh) was not ready to wait for the arrival of driver and he was caught and beaten up by the public. This has also been clearly mentioned by the PW-2 in his statement recorded during the DE proceedings by the E.O.

As such, the version of SI Jasmahinder Chaudhary, (PW-2) can not be overlooked. Thus, it is clear that both Constables Ajay Kumar and Mahender Singh were indulged in illegal activities on 3.10.2000.

That PW-4 Smt. Kamlesh and PW-5 Shri Jitender who

are the main witnesses and had seen Constable Mahender Singh at about 12.00 (midnight) attempting to board a moving Maruti Car and that the Constable had been caught and beaten up by the public. They have clearly mentioned in their statements in examination in chief during the course of DE proceedings that the public persons while apprehending Constable Mahender Singh got him to sit in the STD booth, which is in their house and from the booth, the constable made a telephone to Constable Ajay Kumar. The police came at the spot and took him to police station Dabri. They further deposed that after about an hour Constable Ajay Kumar had come there on a two wheeler scooter and enquired about Constable Mahender Singh and they told him that Constable Mahender Singh had been taken to the Police Station.

This proves about presence of Constable Ajay Kumar on the spot and about his involvement in illegal activities on 3.10.2000 and shifting of vehicle carrying illicit liquor."

2. A notice was issued to the applicants to which they had replied. On consideration of the same, the disciplinary authority imposed the following penalty:

"Keeping in view the overall facts and circumstances of the case, and gravity of their misconduct, I hereby order to impose the penalty of withholding of one increment of Constable Ajay Kumar, No.1689/SW and Constable Mahender Singh, No.517/SW for a period of two years with cumulative effect.

They are re-instated from suspension with immediate effect. Their suspension period from 6.10.2000 to the date of issue of this order is treated as period not spent on duty."

The applicants preferred an appeal which has since been dismissed.

3. By virtue of the present application, the applicants assail the orders passed by the disciplinary authority as well as the appellate authority.

4. Without dwelling into any other controversy to which we are also not adverting to, learned counsel for the

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applicants raised a pertinent argument. According to him, the disciplinary authority should have recorded a tentative note of disagreement but herein the disciplinary authority while issuing the notice, already had recorded a finding that he does not agree with the findings of the enquiry officer and, therefore, according to the learned counsel, fair opportunity in this regard has been denied.

5. Our attention has been drawn towards the decision rendered by the Supreme Court in the case of Yoginath D. Bagde v. State of Maharashtra & anr., JT 1999 (7) SC 62. Therein the Supreme Court while noting a similar controversy held:

"33. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311 (2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary

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Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "Right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment of Service Rule including Rules made under Article 309 of the Constitution."

6. This decision in the case of Yoginath D. Bagde (supra) had been referred to by the Delhi High Court in the case of Commissioner of Police v. Constable Parmod Kumar (Civil Writ Petition No.2665/2002) decided on 19.9.2002. The High Court held:

"However, while disagreeing with such findings, he must arrive at a decision in good faith. He, while disagreeing with the findings of the Inquiry Officer, was required to state his reasons for such disagreement but such a decision was required to be tentative one and not a final one. A disciplinary authority at that stage could not have pre-determined the issue nor could arrive at a final finding. The records clearly suggest that he had arrived at a final conclusion and not a tentative one. He proceeded in the matter with a closed mind. An authority which proceeds in the matter of this nature with a pre-determined mind, cannot be expected to act fairly and impartially."

7. From the aforesaid, it clear and established beyond any pale of controversy that it is only the tentative decision which is required to be taken while the disciplinary authority differs with the findings of the enquiry officer. We hasten to add that nothing said herein should be taken as an expression that disciplinary authority does not have a right to differ.

8. On the contrary, learned counsel for the respondents had drawn our attention to the decision of this Tribunal in the case of Yogesh Gulati vs. Government of NCT of Delhi and others in O.A.No.3473/2001 decided on

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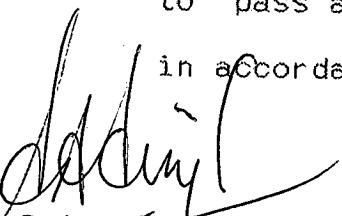
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-6-

15.1.2003. Perusal of the cited decision shows that in the facts of the said case, this Tribunal had recorded that it was a tentative decision and not a final finding and, therefore, reasonable opportunity had been granted.

9. What is the position herein? We have already reproduced above the note of disagreement recorded by the disciplinary authority. The disciplinary authority in different paragraphs had disagreed finally with the findings of the enquiry officer and went on to record that the applicants indulged in illegal activities and that their involvement in illegal activities and presence of Constable Ajay Kumar, applicant no.1 is established. It does not show that it was not a tentative note of disagreement and consequently taking note of the decision of the Supreme Court in the case of Yogenath D. Bagde and of the Delhi High Court in the case of Constable Parmod Kumar (supra), we pass the following order:

- (a) the impugned orders are quashed;
- (b) the matter shall be placed before the disciplinary authority from the stage the note of disagreement had been recorded; and
- (c) the disciplinary authority would be competent to pass a fresh order, as deemed appropriate, in accordance with law.

  
( S.A. Singh )  
Member (A).

  
( V.S. Aggarwal )  
Chairman.

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