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Central Administrative Tribunal, Principal Bench

Original Application No.2100 of 2002

New Delhi, this the 7th day of August, 2003

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

Shri Narinder Singh, D-3370
S/o Shri Gajraj Singh
R/o WZ-93, Jwala Heri,
Paschim Vihar,
New Delhi-63

.... Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi
   Through its Chief Secretary

2. Jt.Commissioner of Police
   Southern Range
   PHQ I.P. Estate
   New Delhi

3. Dy.Commissioner of Police,
   (South West District)
   P.S. Vasant Vihar
   New Delhi

....Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R(ORAL)

By Justice V.S. Aggarwal,Chairman

The applicant is a Sub-Inspector in Delhi Police. He faced disciplinary proceedings and enquiry officer had been appointed. The enquiry officer had exonerated the applicant with respect to the charges. When the matter came up before the disciplinary authority, a note of disagreement was recorded by the Deputy Commissioner of Police (South West District) dated 9.10.2000 which reads:

> "A Departmental Enquiry was initiated against S.I. Narender Singh, No.D/3770 vide this office order No.6711-40/HAP-II/SWD dated 8.6.99 under the provision of Delhi Police (Punishment & Appeal) Rules, 1980. The DE was initially entrusted to Shri Deepak Purohit, ACP/Delhi Cantt. and thereafter to be conducted by the Enquiry Officer of D.E. Cell. The D.E. was entrusted to Shri K.C. Verma, ACP/DE Cell vide order No.1160-64/CA-II/DE Cell dated 2.2.2000 and then transferred to Shri Bhagwan Singh, ACP DE Cell vide

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order No.2234-43/CA-II/DE Cell dated 16.2.2000. The EO completed the DE proceedings and submitted his finding concluding therein that charge framed against Sub-Inspector Narender Singh, No.D/3770 is not proved.

I have carefully gone through the statement of PWs/DWs, defence statement of the S.I., finding of the Enquiry Officer and the entire material available on the DE file. I do not agree with the finding of the EO on the grounds that Inspector Ashok Kumar, PW-3 has fully supported his earlier version during the DE proceedings. He has stated that during enquiry conducted by him revealed that SI Narender Singh released Dinesh Pandit (owner of Oil Godown) on the spot intentionally, and taken a huge amount from him (Dinesh Pandit). His version can not be overlooked. PWs-2 & 4 Const. Ajay Kumar and Constable Sanjay who had accompanied the raid with the SI had reported during the PE that SI Narender Singh went in the office of Dinesh Pandit along with Constable Rajesh Kumar. That the SI had talked to Dinesh Pandit and after some time they came back without arresting him (Dinesh Pandit), but was left off definitely with malafide intention. During the DE proceedings Constable Ajay Kumar (PW-2) has also supported his earlier version that SI Narender Singh along with Const. Rajesh were talking to Dinesh Pandit in his office, though in cross examination he has stated that he does not know Dinesh Pandit and also did not listen talking him. Constable Rajesh Kumar (PW-6) who had gone with the SI in the office of Dinesh Pandit had mentioned in his earlier statement in PE that Dinesh Pandit had come on the spot in his car. But during DE proceedings this PW and Constable Sanjay (PW-4) have refuted their earlier version. Even, they have gone upto the extent that they does not know the person named Dinesh Pandit and that Inspector Ashok Kumar (PW-3) had obtained their signature on the already written statements and they were not allowed to read the same. This shows that both the PWs-4 & 6 have turned hostile due to the reasons best known to them.

Therefore, a copy of finding of EO is being given to S.I.Narender Singh, No.D/3770 for making his representation/submission against the above contents with in 15 days from the date of its receipt. He also remained under suspension for the period from 26.4.99 to 17.11.99. He is also called upon to show cause as to why his above mentioned suspension period should not be treated as period not spent on duty. His reply, if any, should reach the undersigned within the stipulated period failing which it will be presumed that he has nothing to say in his defence and the case will be decided as exparte, on merit."

2. The reply was considered and thereupon the

disciplinary authority imposed penalty of withholding of next increment of the applicant for a period of one year with cumulative effect. The suspension period from 26.4.99 to 27.11.99 was directed to be treated as period not spent on duty. The applicant preferred an appeal which was dismissed.

3. We are not dwelling into any other controversy for the present because learned counsel for the applicant contended that the disciplinary authority recorded the note of disagreement which was not a tentative decision but a final decision arrived at and once that is so, the calling for the reply was an idle formality. Necessarily according to him, therefore, the order of the disciplinary authority and that of the appellate authority should be quashed. In support of his argument, he referred to the decision of the Supreme Court in the case of **Yoginath D. Bagde vs. State of Maharashtra & Anr.**, JT 1999 (7) SC 62 and also of the Delhi High Court in the case of **Commissioner of Police vs. Constable Parmod Kumar & Anr.** (C.W.P.No.2665/2002) decided on 17.9.2002.

4. On the contrary, according to the respondents' learned counsel, once merely because the word tentative is not used, will not be enough for this Tribunal to conclude that the show cause notice was an idle formality. Once the show cause notice had been given and considered, there is precious little for the applicant to contend that it was not a tentative decision. In support of his claim, the respondents' learned counsel relies upon a decision of this

Tribunal in the case of Yogesh Gulati vs. Govt. of NCT of Delhi and others in O.A.3473/2001 decided on 15.1.2003.

5. In the case of Yoginath Bagde, the Supreme Court was concerned with a somewhat similar situation. The apex court concluded that the disciplinary authority must form a tentative decision if it does not agree with the findings of the enquiry officer. The findings of the apex court in this regard read:

> "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 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. Similarly in the case of Parmod Kumar decided by the Delhi High Court, the facts were very near to the facts of the present case. The disciplinary authority had disagreed with the findings of the enquiry officer and thereupon had given the findings:

> "I have carefully considered the evidence on record and the findings submitted by the Enquiry Officer. I do not agree with the conclusion of the E.O. that the charge does not stand proved against defaulters Inspr.Dal Chand No./D/1865, Consts.Jag Pravesh No.1573/E and Pramod No.1394/E. From the evidence on record, the sequence of events, which took place related to the charge is quite clear. The testimony of PW-3, DW-2, DW-3 and DW-5, all electrical Contractors, clearly indicates that the electrical engineers were operating as a matter of routine outside the DESU Office, Karkardooma. This activity continued unchecked by the local police. It is evident from the statement of PW-3, which has not been disputed, that in Dec.1995, a scheme was launched by DESU, which permitted additional load, which resulted in increased activity at and outside DESU office. This again does not seem to have resulted in any police action. If what the electrical engineers were doing was illegal or if the manner in which they were doing their duties was illegal, then appropriate action should have been taken as prescribed under the law. More so, since Inspr. Dal Chand has alleged at point 5/K of his written defence statement that PW-3 was in a habit of making complaints against DESU/Police Officer when "his illegal activities are checked." If, indeed, the activities of PW-3 were illegal, then, what prevented the police from taking appropriate legal action against him? Since no action was taken against PW-3 and the other electrical engineers operating outside DESU Office, it is evident that they were nothing illegal about their activities."
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> He concluded:
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> "The totality of the facts and circumstances of the case and evidence on record lends credence to the allegations made. This aspect of the charge, therefore, also stand proved against the Inspr."

7. The Delhi High Court, following the decision in the case of Yoginath Bagde referred to above, had recorded

the findings:

> "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."

8. As already pointed above, respondents' learned counsel has drawn strength from the decision of this Tribunal in the case of Yogesh Gulati (supra). But perusal of the cited case clearly shows that the disciplinary authority had disagreed with the findings of the enquiry officer which was recorded in following words:

> "The instant DE has been completed by Sh.R.C. Thakur, ACP/Ist Bn. DAP, E.O. who has submitted his findings to the disciplinary authority concluding therein that the charge levelled against all the delinquents mentioned about has not been proved. However, the undersigned does not agree with the findings of the E.O. on the following counts:
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> (i) Natural conduct of weeping of Ct. Naresh Kumar, No.2366/DAP in utter desperation;
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> (ii) Deposition of SI Rajesh Juneja and SI Om Parkash, PA & SO to DCP/III Bn. DAP to the undersigned regarding demand of money by HAP Branch officials. As those two Police personnel are the independent witnesses.
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> (iii) Sense of conviction of Ct. Naresh Kumar, No.2366/DAP in raising the matter in the open Darbar of the Sr. Addl. C.P. (AP&T), Delhi.
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> (iv) Pinpointing of the HAP Branch officials by the Ct.
>
> (v) Inordinate delay in submission of note by HAP on 6.2.96 though the incident took place on

12.1.96.

In view of the above facts, dis-agreeing with the findings of the E.O. a copy of the same is hereby supplied to SI (Min.) Mangoo Singh, No.D/368, ASI (Min.) Yogesh Gulati, No.4996/D, HC (Min.) Ram Pal, No.2180/DAP and Ct. Virender Kr. No.2364/DAP with the direction to submit written representation in this regard within 15 days from the date of its receipt if no reply is received within stipulated period ex-parte decision shall be taken on its merits."

9. Perusal of the said note of disagreement certainly reveals that it was not a final finding that had been arrived at. This prompted this Tribunal to conclude that it was a tentative decision. Therefore, the decision in the case of Yogesh Gulati must be held to be distinguishable.

10. In the present case in hand, we have already reproduced above the note of disagreement recorded by the disciplinary authority. The disciplinary authority specifically used the words that he does not agree with the findings of the enquiry officer and thereafter proceeds to give the reasons as to why he differs. It is true that it is not the words of "tentative decision" differing with the finding or final finding arrived at which would matter. The contents of note of disagreement necessarily have to be perused in the facts and circumstances of each case.

11. What is the position here? The note of disagreement certainly does not indicate that it is a tentative decision. It is a final finding being arrived at by the disciplinary authority and thereupon as held in the case of Yoginath Bagde, calling for an explanation after a

final finding must be an idle formality.

12. Resultantly, following the decision of the Supreme Court in the case of Yoginath Bagde and of the Delhi High Court in the case of Parmod Kumar (supra), we hold that the impugned orders necessarily have to be set aside. We quash the same and remit the case back to the disciplinary authority who may go into the facts afresh and if deemed appropriate, may pass a fresh order in accordance with law. The consequential reliefs, if any, that may flow be awarded to the applicant. Keeping in view the above, we are not expressing ourselves on the other submissions that may be available to either party.

(S.K. Naik)
Member(A)

(V.S. Aggarwal)
Chairman

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