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Central Administrative Tribunal, Principal Bench

Original Application No.2915 of 2002  
M.A.No.2497/2002

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

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

1. Jitender Kumar,  
Constable in Delhi Police  
PIS No.2893075  
R/o Barrack No.5  
1st Bn., Police Line  
Kingsway Camp, Delhi
2. Arun Kumar  
Constable in Delhi Police  
PIS No.2893095  
R/o RZ-38/B,  
Ganpati Enclave,  
Najafgarh, Delhi
3. Rajesh Kumar  
Constable in Delhi Police  
PIS No.28941481  
R/o A-3/49, Delhi Police Apartment,  
Paschim Vihar,  
New Delhi-63

.... Applicants

(By Advocate: Shri Anil Singal)

Versus

1. Jointt Commissioner of Police  
(Traffic), PHQ  
IP Estate, New Delhi
2. DCP (Traffic)  
Police Headquarters,  
IP Estate, New Delhi

.... Respondents

(By Advocate: Shri Ajay Gupta)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

M.A.2497/2002

M.A. is allowed subject to just exceptions.  
Filing of the joint application is permitted.

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All the applicants are Constables in Delhi Police. Disciplinary proceedings had been initiated against them. It is unnecessary to mention the facts in detail but suffice to say that the enquiry officer after recording of the evidence, had exonerated the applicants. The disciplinary authority had recorded a note of disagreement and the same reads:

"I have gone through the DE file and relevant record. The complainant namely Sh. Mam Chand S/o Sh. Mukh Ram R/o Vill. Titar Pur, Tehsil Mundavar, Dist. Alwar (Rajasthan) gave the statement on 26.9.99 at the spot that they had stopped a LGV Tata 709 bearing registration No. RJ-02G-4399 carrying goats and demanded Rs.10/- goat from him and threatened to impound the vehicle in case money was not paid. He paid Rs.170/-, which was accepted by Ct. Rajesh Kumar No.1708/T. Now during DE proceedings the complainant namely Mam Chand has deposed on 28.12.99 that when the LGV Tata 709 bearing registration No. RJ-02G4399 reached near Dhaula Kuan, one person gave indication from the torch to halt the truck. Then one Ct. came with truck and asked what were they carrying in the truck. They replied "goat". He told go. In the meantime, one person in plain cloth came with truck and directed to come in police post. The officer asked their residence from Sh. Mam Chand and Murari Lal of truck driver. They had told their address and then also asked about the money given to police, but they had denied. During statement in PE on 17.1.2000 Sh. Murari Lal has stated that when he and owner of goat Sh. Mam Chand reached at P.P. Dhaula Kuan. The officer after writing something on the two papers and asked them for sign and also threatened to impound their truck in case refusal to sign on the papers. The statements of both i.e. owner of goats and driver of the truck are contradictory and show that the complainants and driver of the truck have manipulated the story during proceedings. To save the Constables and won over by the defaulter Constables HC Rajinder Kumar No.2982/T who was the in-charge of these constables on that day for duty has admitted in his statement that when he came on road from the PP after taking medicine, the staff was not available on duty place. In the meantime TI came there, who asked about the staff on duty and only then he traced the staff. Hence, the statement of HC shows that the staff on seeing the TI runs away from the spot as they had taken illegal money from the truck driver. Hence, I do not agree with

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findings of the EO. It was done by TI/DCC, who has taken the complainant back to spot on that day who identified the delinquents."

2. After the show cause notice had been served and reply considered, the disciplinary authority imposed a penalty of withholding the increments for two years without cumulative effect on each of the applicants. The suspension period was decided as not spent on duty. The appeal was dismissed. Therefore, the present application has been filed.

3. Learned counsel for the applicants in the first instance had referred to Sub-rule 2 to Rule 14 of Delhi Police (Punishment and Appeal) Rules but during the course of submissions, the order passed by the Additional Commissioner of Police had been shown to him. Resultantly the said plea has not been stressed.

4. However, it was contended that the note of disagreement by the disciplinary authority was not a tentative decision but a final finding arrived at and, therefore, the show cause notice that was so served was an idle formality. In support of his plea, the learned counsel relied upon the decision of the Delhi High Court in the case of Commissioner of Police vs. Constable Parmod Kumar & Anr. (C.W.P.2665/2002) decided on 17.9.2002. Therein a similar question had arisen and 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.

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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."

He concluded:

"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."

5. The Delhi High Court, following the decision in the case of Yoginath D. Bagde vs. State of Maharashtra & Anr., JT 1999 (7) SC 62, 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,

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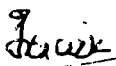
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cannot be expected to act fairly and impartially."

6. In the present case also, the position is identical. It is not a tentative decision recorded in the note of disagreement.

7. Resultantly, the impugned orders cannot be sustained. However, we make it clear that we are not expressing ourselves on the other pleas of the applicants.

8. Resultantly, we allow the present application and quash the impugned orders. The disciplinary authority, if deemed appropriate, may initiate further action from the stage the findings of the enquiry officer were received.

  
( S.K. Naik )  
Member (A) .

  
( V.S. Aggarwal )  
Chairman,

/dkm/