

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1823 of 2001

New Delhi, this the 1st day of April, 2002

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Constable Mukesh Kumar
Presently working in Delhi Police,
S/o Late Shri Lachi Ram, aged 28 years
R/o A-183, Phase-II, Nangloi,
Delhi-110041.

-APPLICANT

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India
through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Commissioner of Police, Delhi,
Police Headquarters, I.P. Estate,
MSO Building, New Delhi.
3. Additional Commissioner of Police,
Rashtrapati Bhawan,
New Delhi.
4. Deputy Commissioner of Police,
Rashtrapathi Bhawan,
New Delhi.

-RESPONDENTS

(By Advocate: Mrs. Jasmine Ahmed)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)


The applicant was proceeded departmentally on the charges that applicant Shri Mukesh Kumar while on duty on 16.7.97 with SI Rakesh Kumar at T point Seelampur near Welcome Colony, Shahdara, Delhi at about 11.00 hours had stopped a truck No.DNG 1561 which was coming in no entry area and was being driven by driver Maya Ram and demanded Rs.500/- for allowing him to go without taking any legal action and on his refusal to pay the money, the truck was brought under custody and the



applicant got the driver challaned under the Motor Vehicle Act through SI Rakesh Kumar, ZO Shahdara, Delhi Circle and the vehicle was impounded. This act on the part of the applicant is stated to amounts to gross misconduct, negligence and carelessness in discharge of his official duties which renders him liable to be dealt departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.

2. The enquiry was held. The Inquiry Officer held that charge is not proved and thus exonerated the applicant. But the disciplinary authority recorded a disagreement note vide Annexure-III with detailed reasons and directed the defaulter to submit a representation if any against the disagreement note and thereafter the disciplinary authority imposed a penalty of forfeiture of 2 years approved service temporarily for a period of 2 years entailing reduction in his pay from Rs.3350/- p.m. to Rs.3200/- p.m. with immediate effect. It was further directed that he will not earn increments of pay during the period of reduction and on the expiry of this period, the reduction will not have the effect of postponing of his future increments of pay.

3. The applicant preferred an appeal against this order, which was dismissed. A revision petition was also filed which too was dismissed by the Commissioner of Police.



4. Now assailing these orders, the applicant submitted that the enquiry is vitiated on account of non-accord of prior approval by the Additional Commissioner of Police under Rule 15 (2) of the Delhi Police (Punishment and) Rules 1980. According to the applicant a preliminary enquiry was conducted which revealed commission of cognizable offence so it was incumbent upon the department to seek the approval of the Additional Commissioner of Police whether to initiate departmental enquiry or whether a criminal case should be registered or investigated as required under Rule 15 (2).

5. Rule 15(2) was pressed into to buttress the arguments that the approval of the Additional Commissioner of Police was required, which is reproduced hereinbelow:-

" 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 dafter 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".

6. In order to get support from the above, the learned counsel for the applicant submitted that a preliminary enquiry was conducted. The counsel for the applicant referred to the disagreement note, Annexure-III (A-2) which does mention that TI/RRG who conducted the preliminary enquiry had also admitted that a SCN for censure be issued to defaulter demanding money which shows that the defaulter certainly demanded money which is a cognizable offence so before initiating the enquiry approval of the Additional Commissioner of Police was required.



7. So what is to be seen whether the summary of allegations as served upon the applicants itself discloses a commission of cognizable offence or not. We may mention that as per the contentions raised by the learned counsel for the applicant the summary of allegations can be said to be pointing towards commission of offence of corruption by a Government servant which offence has been defined under Section 7 of the Prevention of Corruption Act and Section 161 of the Indian Penal Code. Section 7 of the Prevention of Corruption Act says as under:-

" 7. Public Servant taking gratification other than legal remuneration in respect of an official act:- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, Corporation or Government company referred to in clause (c) of Section (2) or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine".

8. Section 161 of the Indian Penal Code is also reproduced for ready reference:-

"161. Public Servant taking gratification other than legal remuneration in respect of official act:- Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central



or any State Government or Parliament or the Legislature of any State or with any local authority, Corporation or Government Company referred to in Section 21 or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both".

9. The ingredients of both the provisions are as follows:-

(1) At the time of commission of the offence the accused was or was expected to be a public servant,

(2) He accepted or agreed to accept a bribe a gratification.

(3) Such bribe or gratification was not a legal remuneration to him.

(4) He accepted the bribe for

(a) motive or reward for:

(i) doing or forbearing from doing an official : and

(ii) showing for or forbear from showing favour or for showing disfavour for some one in the exercise of the official position:

(iii) rendering or attempting to render any service or disservice to some one connected with the Central Government or State Government or Parliament or State Government or any Government servant".

10. According to the criminal jurisprudence, established that 4 stages have to be undergone, before an act becomes an offence. There should be intention or motive and then preparation for a crime and then actus reus the final act which forms a commission of offence and ultimately which transforms to all the 4 ingredients, then only commission of an offence is complete. In this case the summary of allegations as served upon the applicant show that the applicant had asked for Rs.500/- as bribe to release the vehicle without challan and this allegation for demand of money was still a subject matter of enquiry and this alone was not sufficient to say that



an offence under Section 7 of the Prevention of Corruption Act and/or under Section 161 IPC has been committed because there was no taking or accepting of money by the applicant. The offence remains at the stage of preparation itself because actus reus has not actually been committed so in technical sense offence of corruption as defined under Section 7 of the Prevention of Corruption Act or Section 161 of IPC had not yet been committed. The crime was still at the stage of preparation so Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 was not attracted and the disciplinary authority had rightly initiated the disciplinary proceedings and no approval of the Additional Commissioner of Police was required under Rule 15(2) as such this contention of the learned counsel for the applicant has no merits.

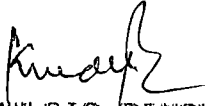
11. The next contention of the applicant that the disagreement note has been recorded with a pre-determined mind as in the disagreement note itself has been stated that while concluding the disagreement note it has been mentioned that all the facts clearly prove that the defaulter constable had certainly demanded Rs.500/-. Thus the applicant submitted that the disagreement note was written with a biased mind as in the said note the disciplinary authority had concluded that the applicant demanded Rs.500/- as a bribe. In our view this contention of the applicant has no merit because if the disciplinary authority had already concluded then there was no purpose for issuing the show cause notice and calling upon the applicant to give explanation which was asked for by the disciplinary authority and that is why




the disciplinary authority called for the explanation and on the basis of the said representation from the applicant that if he wanted to say anything against the facts mentioned in the disagreement note then he may submit a representation. The applicant has no grievance that his representation was not considered or that he has not been given proper opportunity to make his representation. The applicant has also stated that the order passed by the disciplinary authority is perverse as the contention taken by the applicant in the representation has not been considered.

12. We have gone through the order passed by the disciplinary authority Annexure-III and on going through the same we find that all the pleas taken by the applicant in his representation had been duly considered. The disciplinary authority had clearly held that the preponderance of probability clearly indicated that he tried to squeeze out money and on his refusal only he ensured his challan on account of traffic violation, so we find that the order passed by the disciplinary authority has been passed after all the rules and principles of nature justice has been fully observed by the appellate authority and revisional authority, as such no interference is called for.

13. In view of the above, OA does not call for any interference and the same is dismissed.


(KULDIP SINGH)
MEMBER (JUDL)


(V.K. MAJOTRA)
MEMBER (A)