

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2126 of 2001

New Delhi, this the 12th day of August, 2002

HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. M.P. SINGH, MEMBER (A)

Shri R.C. Shekharan
(314/SB)

presently posted at the office of
Dy. Commissioner of Police (Special Branch)
PS Lodhi Colony,
New Delhi.

...Applicant

By Advocate: Shri Shaym Babu.

Versus

1. Government of NCT Delhi
Through its Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Commissioner of Police
Delhi,
Police Headquarters,
I.P. Estate,
New Delhi.
3. Addl. Commissioner of Police
(Traffic & Security)
Delhi, Police Headquarters,
I.P. Estate,
New Delhi.
4. Dy. Commissioner of Police
(Traffic)
Police Headquarters,
I.P. Estate,
New Delhi.

..Respondents

By Advocate: Mrs. Jasmine Ahmed.

O R D E R

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

The applicant impugns the order dated 6.2.1998 Annexure-A whereby after departmental enquiry the applicant had been punished to the effect that his 2 years approved service be forfeited permanently for a period of 2 years entailing proportionate reduction in his pay with immediate effect. His pay was reduced from Rs.4390/- p.m. to Rs.4220/- p.m. in the time scale of

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pay. It was also directed that he will not earn increment of pay during the reduction period and on expiry of this period, the reduction will have the effect of postponing his future increments of pay. The appeal against this order was filed which was rejected. Revision against this order was also filed. The same was not entertained and the applicant was informed that since no revision lies, so the same is not maintainable.

2. Facts in brief are that a departmental enquiry was started against the applicant on the following allegations:-

" It is alleged against HC R.C. Sekhran, No.163/T that on 8.1.1997 while posted in Road Safety Cell of Traffic Police at Pargati Maidan New Delhi demanded money i.e. Rs.100/- from each drivers and directed them to bring on day after tomorrow i.e. on 10.1.1997, who are attending classes in Road Safety Cell w.e.f. 6.1.1997 for badges including one Naresh Kumar in lieu of taking the completion Certificate. On 10.1.1997 about 9.45 AM HC R.C. Sekharan, No.163/T came and started preparing a list and taking Rs.100/- as bribe money from each drivers, who were about 20/22 at the spot i.e. Pargati Maidan New Delhi. He completed this exercise within 15 minutes. During this time Shri Naresh Kumar driver also handed over Rs.100/- numbering OMU-286984 initialled by SHri P.C. Mann Inspector PRG and a witness Shri Ashwani Kumar Singh S/O SHri S.K. Singh R/o 4/372 Bhola Nath Nagar, Shahdara, Delhi. The activities of HC were watched by the raiding party and witness. At about 10 AM HC R.C. Sekhran No.163/T was apprehended by the PRG Staff consisting Inspector P.C. Mann, HC Ram Bhagat NO.1519/T and Ct. Kaptan Singh No.843/T in the presence of witness Shri Ashwani Kumar Singh and Driver Naresh Kumar. During his search a sum of Rs.1700/- including a hundred rupee note bearing number OMU-286984 was recovered from the right side pocket of his wearing trouser through seizure memo. The list prepared by the HC was also taken into possession by Inspector PRG. Beside this a black purse was also recovered from his back pocket containing Rs.600/- and one Identity Card. Rs.600 claimed by the HC as his own money and those not taken into possession and those returned to him. A photocopy of receipt Form No.34696 was also taken from driver Naresh Kumar.

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The above act on the part of HC R.C. Sekhnan, No.163/T amounts to gross misconduct and unbecoming of a member of disciplined force which renders him liable to be dealt with departmentally under the provision of Delhi Police (Punishment and Appeal) Rules, 1980. "

3. After the enquiry was completed, the Inquiry Officer submitted his report holding that the charge against the applicant was not proved. Thereafter DCP recorded a dissent note and after receiving the reply and comments on the dissent note, the same was also considered and only thereafter the impugned order dated 6.2.1998 was passed vide which applicant was punished.

4. To challenge the same the applicant has taken a ground that a preliminary enquiry was also held which disclosed commission of cognizable offence by the applicant so as per the Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 it was incumbent upon the department to place the facts before the Additional CP concerned and who shall give good and valid reasons for ordering departmental enquiry in preference to the criminal prosecution.

5. The next ground taken by the applicant is that the evidence recorded by the IO is such a contradictory evidence which cannot be relied upon to hold the applicant guilty so he has prayed for the quashing of the impugned order.

6. The OA is being contested by the respondents. The respondents denied having conducted any preliminary enquiry but submitted that rather a fact finding enquiry

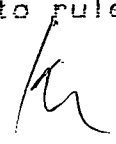
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was conducted but finding there was no sufficient evidence to prosecute the applicant in the court of law, so only a DE was started.

7. However, in reply to this the counsel for the applicant referred to the counter-affidavit filed by the department where in para 5(b) at page 11 of their reply had admitted that "the preliminary enquiry conducted against the applicant had disclosed the commission of cognizable offence but there was no sufficient evidence to prosecute the applicant in the court of law but there was sufficient evidence against the applicant to be dealt with departmentally". Commenting upon this the counsel for the applicant submitted that it is a trap case of bribe. The same witnesses who had appeared in the departmental enquiry were to be examined before the criminal court so the department cannot take a plea that there was no sufficient evidence to prosecute the applicant in the court of law.

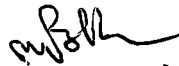
8. Besides that the counsel for the applicant submitted that as per Rule 15(2) the matter was to be placed before the Additional CP and it was he who had to take a decision whether a criminal case should be registered or a departmental enquiry should be held. But in this case the counter-affidavit does not disclose if at all a file was put up before the Additional CP or not.

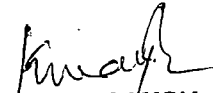
9. Though there are various other grounds taken by the applicant to challenge the impugned order but we find that this objection of Rule 15(2) as taken up by the applicant is sufficient to rule that the enquiry held by



the department was more in disobedience of rule 15(2) rather in compliance of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 so in this view of the matter, we feel that since the matter was not placed before the Additional CP, so the decision to initiate departmental enquiry in preference to criminal case has been taken by the DCP itself which is totally in violation of Rule 15(2) so on this ground alone the unpugned orders are liable to be quashed and the matter has to be remanded back for placing the same before the additional CP.

10. Accordingly we hereby quash the impugned order dated 8.2.98 and the order dated 1.4.99 rejecting the appeal of the applicant and the order dated 28.6.2001 passed on the revision of the applicant and the case is remanded back to the department for placing the file before the Additional CP in accordance with rule and law on the subject who may take a decision within a period of 2 months, if so advised, to proceed from the stage of taking a decision whether to initiate a departmental enquiry in preference to criminal case or not. No costs.


(M.P. SINGH)
MEMBER (A)


(KULDIP SINGH)
MEMBER (JUDL)

Rakesh