

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

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OA No.3473/2001
OA No.3474/2001
OA No.3475/2001

New Delhi this the 15th day of January, 2003.

HON'BLE MR. GOVINDAN S.TAMPI, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

OA No.3473/2001

Yogesh Gulati
S/o Late Shri B.R.Gulati,
R/o C-84, New Police Lines,
Kingsway Camp, Delhi-110009.Applicant.

(By Advocate: Shri S.K.Gupta)

-Versus-

1. Govt. of NCT of Delhi
Through Chief Secretary,
Delhi Secretariate,
I.P.Estate, New Delhi.
2. Commissioner of Police,
Delhi Police Headquarter,
MSO Building, I.P.Estate,
New Delhi-110002.
3. Joint Commissioner of Police (AP),
Delhi Police Headquarter,
MSO Building, I.P.Estate,
New Delhi-110002.
4. Additional Commissioner of Police (AP),
Delhi Police Headquarter,
MSO Building, I.P.Estate,
New Delhi-110002.
5. Deputy Commissioner of Police,
IIIrd Battalion,
D.A.P. Vikas Puri,
New Delhi.Respondents

(By Advocate: Mrs.Renu George)

OA No.3474/2001

Virender Kumar
Working as Constable in PCR
North Zone, Ludolw Castle,
Sham Nath Marg,
DelhiApplicant.

(By Advocate: Shri S.K.Gupta)

-Versus-

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New Delhi-110002.

5. Deputy Commissioner of Police,
IIIrd Battalion,
D.A.P. Vikas Puri,
New Delhi. Respondents

(By Advocate: Mrs. Sumedha Sharma)

OA No. 3475/2001

Ram Pal
S/o Late Shri B.Lal,
R/o 146/3, Gautam Colony,
Narela, Delhi. Applicant

(By Advocate: Shri S.K.Gupta)

~Versus~

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IIIrd Battalion,
D.A.P. Vikas Puri,
New Delhi. Respondents

(By Advocate: Shri Ram Kanwar)

O R D E R

By Mr. Shanker Raju, Member (J):

As the matters involve common questions of fact and law, these OAs are being disposed of by this common order.

2. Applicants who were posted in Punishment Branch of 3rd Bn. DAP of Delhi Police, on a complaint by Constable Naresh Kumar were proceeded in a preliminary enquiry conducted by ACP Ram Singh and on the basis of the report Deputy Commissioner of Police (DCP) by an order dated 15.4.96 ordered a common DE against them.

3. Applicants have been served upon a summary of allegation and at present we are dealing with the cases of ASI Yogesh Gulati, HC Rampal and Constable Virender Singh, who have been issued the following imputation:

"It is alleged that:-

I) Head Const. Ram Pal No.2150/DAP and Const. Virender Kumar No.2364/DAP demanded amount of Rs.2,000/- from Const. Naresh Kumar, No.2366/DAP Hd. Const. Ram Pal, NO.2150/DAP also followed illegal official procedure in submitting the file on 4.1.96 directly to Sh. D.T. Barde the then DCP/III Bn. DAP while the DCP was under transfer to Ist. Bn. and that too he produced the D.E. file of Const. Naresh Kumar, No.2366/DAP after an inordinate delay of 39 days while the file was ordered to be put up on 27.11.95. The above circumstances indicate the malafide intention on the part of Head Const. Ram Pal with some ulterior motive best known to him.

(II) ASI (Min.) Yogesh Gulati, HAP/III Bn. DAP for poor supervision over his staff. Misrepresenting the facts to senior officers, causing undue delay of about 25 days in submitting application dated 12.1.96 submitted by Const. Naresh Kumar, No.2366/DAP before the DCP/III Bn. DAP and he further tried his level best to protect his staff.

(III) Sub-Inspector Mangee Singh, NO.D/362 (Head Clerk) III Bn. DAP for poor supervision over his staff and he also failed to take note of the application submitted by Const. Naresh Kumar, NO.2366/DAP vide which he had requested for permission to appear before DCP/III Bn. DAP.

The above act of omission/Commission on the part of Sub-Inspector Mangee Singh, No.D/362 (Min.), ASI (Min.) Yogesh Gulati, No.4036/D, Head Constable Ram Pal No.2150/DAP (Min.) and Const. Virender Kumar, No.2364/DAP (Exe.) amounts to grave misconduct, carelessness, negligence and dereliction in the discharge of their official duties which render them liable for punishment as envisaged in section 21 of the Delhi Police Act, 1978."

4. Enquiry Officer (EO) after recording evidence of 8 PWs framed a charge. Applicants produced six DWs in the enquiry and submitted their defence statements.

5. EO through his findings dated 8.9.97 has recorded a finding exonerating applicants from the charge.

6. On receipt of the enquiry report, disciplinary authority by his memo dated 29.9.97 disagreed with the findings of the EO and before taking a final decision afforded applicants a reasonable opportunity. He has disagreed with the findings of the EO on the following counts:

"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:

- (i) Natural conduct of weeping of Ct. Naresh Kumar, NO.2366/DAP in utter desperation;
- (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.

(15)

(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.

(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."

7. Applicants filed their representations against the disagreement Note.

8. Disciplinary Authority on the basis of the representations and contentions put-forth by applicants imposed upon ASI, punishment of permanent forfeiture of one year's approved service for a period of two years with cumulative effect.

9. As regards the other two Head Constable and Constable their three years' approved service has been forfeited permanently for a period of five years with cumulative effect. SI Mangoo Singh has been exonerated from the charge and the DE was dropped.

10. Applicants preferred appeals against the impugned order wherein the appellate authority maintained the punishment.

11. At the outset by referring to the decision of the High Court of Delhi in Shakti Singh v. Union of India & Ors. CWP No.2368/2000 decided on 17.9.2002, Shri S.K. Gupta, learned counsel for applicants contended that punishment is not in-conformity with Rule 8 (d) (ii) of the Delhi Police (Punishment & Appeal) Rules, 1980. One of the grounds taken by applicants is that the disciplinary authority while disagreeing with the findings of the EO instead of recording tentative reasons for his disagreement rather proved the charge against applicants and in this manner he has pre-judged the issue which is not in consonance with the decision of the High Court in CWP No.2665/2002 Commissioner of Police v. Constable Pramod Kumar decided by the High court of Delhi on 19.9.2002.

12. Shri Gupta has further taken us to various documents annexed with the OA to contend that in so far as four counts of disagreement relates to the allegation of demand of money by applicants and the last disagreement pertains to ASI Gulati by taking inordinate delay in putting up of the Note. He has taken us to the evidence of PW-3 as well as PW-6 to contend that Constable Naresh Kumar had made a compliant for demand of money by the officers of HAP branch and not disclosed the name of the officers and though the money was allegedly demanded earlier there is no explanation as to the delay in reporting the same.

13. Shri Gupta states that the file as per evidence of DCP recorded during the course of the enquiry called by DCP 3rd Bn. on 23.11.95 has been put up on 27.11.95 and a final order of punishment was passed against Constable on 4.1.96. As such there was no occasion for

applicants to have demanded money from the complainant as it was not within their jurisdiction to be in any manner instrumental in imposition of punishment against the complainant.

14. Shri Gupta further contended that the disagreement is based on extraneous matter and is not borne out from the official record as during disagreement the disciplinary authority has to restrict himself to the record of the enquiry and in this conspectus it is stated that application made by complainant Naresh Kumar to the DCP is dated 12.1.96 and therein word DE has been subsequently manipulated otherwise this has been made in connection with his personal problems which does not transpire any iota of material as to demand of money or harassment to the complainant at the hands of applicants. By further referring to a Note dated 12.1.96 where Constable Naresh Kumar has insisted upon a personal appearance before the disciplinary authority when he has already been given the same and the matter stood concluded in the disciplinary proceeding, a show cause notice was issued to the complainant on 18.3.96 and was confirmed where applicants have been alleged to have remained adamant and misbehaved with HAP staff by threatening them to make a false complaint against them and as applicants were punished in the DE as well as with a minor penalty of censure in Sampark Sabha he deliberately raised this issue of demanding some money. Apparently on 30.3.1996 and before this it was opened for the complainant to have made a specific complaint as to demand of money allegedly by applicants. Further relying on the statement of D.T. Barde, DCP, it is contended that Constable was heard in OR

on 24.11.95 after the findings of the EO have been served and file was called on 27.11.95 which was submitted by the dealing Assistant on 29.11.95 allegation cannot be established against applicants. Shri Gupta stated that in the disagreement Note there is no whisper as to adoption of illegal procedure by Head Constable and Constable by processing the DE file of Naresh Kumar with delay of 39 days, as such no punishment can be imposed upon applicants on that count.

15. In so far as Yogesh Gulati is concerned, it is contended that nobody has seen the complainant weeping, including PW SI Rakesh Juneja. In so far delay in putting up the Note is concerned, it is contended that previously Constable Naresh Kumar was heard by Sh. D.T. Barde, DCP and on his transfer Shri Naresh Kumar was appointed as DCP who called the complainant in OR and when he found that he has already been heard in OR he had not acceded to his request.

16. Factual matrix as highlighted indicate that on 24.11.95 complainant Naresh Kumar was heard in OR and a final decision was taken on 4.1.96 which was sealed on 5.1.96 for approval. File was sealed on 9.1.96 and Constable Naresh Kumar was directed to appear on 12.1.96, when he appeared alongwith the ASI. DCP did not allow OR as this had already been availed. Shri Gupta further contended that the relevant documents including PE report statements of witnesses recorded during the PE evidence have not been served upon them, which is not in consonance with the principles of natural justice. By explaining the delay against ASI Gulati it is contended that the

application was written by Naresh Kumar on 12.1.96, which was forwarded and for the period from 13.1.96 to 29.1.96 few days were holidays on account of Republic Day arrangements and after taking the aforesaid period six days delay comes which cannot be undue. Moreover, application was marked to AC-I to be put up on file, as such Note was filed on 29.1.96. The complainant after 12.1.96 despite holding of three Sampark Sabha has not reported this matter, which shows his malafides.

17. On the other hand, respondents in their reply vehemently opposed the contentions of applicants and stated that disagreement is on the basis of the record whether there is clear demand of money by HAP Branch officials and as Constable Naresh Kumar reported the matter in Sampark Sabha and pinpointed applicants, the same on the pre-ponderence of probability is sufficient to hold them guilty.

18. It is further stated that disagreement is tentatively arrived and after submission of representations by applicants through detailed reasons they have been held guilty of the charge. The appellate authority has also considered the contentions and passed a reasoned order.

19. Moreover, on the multiplicity of the punishment, decision in Shakti Singh's case (supra) is not disputed.

20. Learned counsel further stated that deposition made by PWs SI Rajesh Juneja and SI Om Parkash who were working as PA and SO to DCP they have corroborated

the existence of money from Constable Naresh Kumar as HC Rampal was found to have followed illegal procedure in submitting the file directly to the DCP while he was under transfer he should have put up the file through HAP viz. ASI Yogesh Gulati. As the file has been inordinately delayed being put up for 39 days applicants are guilty of the charge.

21. Show cause notice issued to Naresh Kumar has been deferred as in the wake of allegation of demand of illegal money from the complainant and the same has been vacated in favour of Constable Naresh Kumar.

22. Lastly, it is contended that in a judicial review this court has no jurisdiction to go into the correctness of the charge or sufficiency of evidence on reappraisal. From the angle of a common prudent man sufficient evidence exists to sustain the charge against applicants, as such the OA is liable to be dismissed, as it does not suffer from any procedural illegality.

23. We have carefully considered the rival contentions of the parties and perused the material on record. At the outset having settled principles of law and specifically in the light of the decision of the Apex Court in Kuldeep Singh v. Commissioner of Police, JT 1998 (8) SC 608 in a disciplinary proceeding judicial review is limited to the extent of procedural illegality or infirmity and in case of no evidence. As the disciplinary proceedings as per Rule 20 of the Delhi Police (Punishment and Appeal) Rules, 1980 is based on pre-ponderence of probability the strict rules of evidence and criminal procedure are not

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applicable. What is to be seen is whether the conclusions arrived at are neither perverse nor based on no evidence and passes the test of a common reasonable prudent man.

24. In the light of what has been laid down if the evidence in the present OAs are examined the irresistible conclusion which can be safely drawn is that disciplinary authority has arrived at the guilt of applicants on the basis evidence but the correctness of which or reappraisal cannot be gone into by this court.

25. We have perused the enquiry report and find that EO has exonerated ASI on the ground that there is no evidence to show his poor supervision and no delay on his part to put the application of Naresh Kumar before the DCP.

26. In so far as charge against HC Rampal and Constable regarding demand of money from the complainant it is stated that not even a single PW has corroborated this fact and the allegation against SI Om Parkash by not following the procedure in submitting the file to the Senior Officer and delaying it for a period of 39 days, it has been proved that as the complainant has not reported the allegations to the DCP the allegations have not been found substantiated.

27. Disciplinary authority took cognizance of the evidence which has forthcome in the DE that the Constable Naresh Kumar wept before the officers and also the evidence of PW-3 SI Rajesh Juneja who clearly stated that while working as PA to DCP/II Ird Bn. Naresh Kumar met him and reported that personnel posted in HAP Branch have



demanded money and for doing favour SI took the complainant to HAP Branch. Moreover, Constable Raj Kumar, PW-4 also corroborated the fact that Naresh Kumar had wept and wanted appearance before the DCP/IIId Bn. This has further been corroborated by PW-1 ASI Harbhajan Singh. PW-6 SI Om Prakash also corroborated that Naresh Kumar wanted to appear before the DCP/IIId Bn. regarding demand of money. This is a piece of evidence not rebutted against applicants in the course of the DE. EO though specifically recorded that demand of money from the complainant has not been corroborated by not even a single witness is belied on the face of it in the light of the aforesaid evidence.

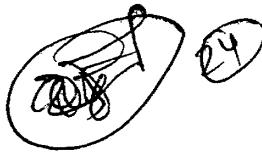
28. Moreover, not only this material which has formed basis of disagreement it is also the reporting of the matter by complainant before the Sampark Sabha conducted by Senior Additional Commissioner of Police. It is a natural conduct from a Constable who has been traumatised and harassed at the hands of the HAP Branch to the extent of demand of money to report the matter to the higher authorities and if nothing comes as a result he reported the matter in Sampark Sabha which has been held from time to time. The very conduct of the complainant to raise his grievance as to specifically alleging demand of money against applicants by naming them in the complaint before the Sampark Sabha is also a factor which should have been taken into consideration by the EO.

29. Not only this, the delay on the part of ASI Gulati to submit the Note on 6.2.96 whereas the incident had taken place on 12.1.96 and had been entrusted to him cannot be countenanced on the pretext that the force was

busy in Republic Day celebrations, as the Republic Day celebrations would not have been initiated by them and moreover he has had ample time to put up the Note which he deliberately avoided till 6.2.96 clearly shows that he lacked supervision and was guilty of the charge against him.

30. In so far as mitigating factor that a show cause notice was issued to complainant of censure of his misbehaviour and threat to the officials of HAP branch is not relevant as after the allegation of demand of money has been alleged the aforesaid notice was vacated against the complainant.

31. In the result we find that the disciplinary authority on the basis of the EO report has tentatively recorded his reasons and had given a reasonable opportunity to applicants to represent and thereafter on receipt of their replies a final decision was taken. What has been laid down by the Apex Court in Yogi Nath D. Bagde v. State of Maharashtra, JT 1999 (7) SC 62 has been followed in the cases before us by recording tentative reasons. Nowhere in the disagreement Note a final conclusion has been drawn proving the charge against applicants. As such the decision quoted of the High Court of Delhi in Pramod Kumar's case (supra) would be distinguishable and have no application to the present cases as therein the disciplinary authority while giving show cause notice instead of recording tentative reasons concluded the charge showing pre-determination, whereas in the cases in hand a tentative conclusion is drawn. What has been mandated by the Apex Court is not exactly the word mentioning tentative



but if from the perusal of the show cause notice it is found that the disciplinary authority has not made up its mind to pre-judge the issue and while disagreeing recorded reasons and indicated to take a final action on receipt of the reply the same would be tentative conclusion on reasons recorded. As such, we do not find any infirmity in the show cause notice issued disagreeing with the findings.

32. We have also perused the orders passed by the disciplinary authority, wherein the contentions of applicants have been taken care of and with recording reasons the punishments are imposed. The reasoning accorded by the disciplinary authority is based on the record of the enquiry and as it has been found that Constable Naresh Kumar who has been victimised when he has tried to make a complaint to DCP/IIIRD Bn. he made specific allegation of demand of money which has been proved during the course of the enquiry. The punishments are imposed on the basis that police personnel have tried to indulge themselves into corruption and moreover ASI Gulati who submitted the Note belatedly without any reasonable explanation of delay he not only provided protection to the HAP Branch officials but also have delayed putting up of Note was also held guilty.

33. We have also seen the appellate order where the contentions taken by applicants have been considered and a speaking order is passed. In our view on merits none of these orders suffer from any legal infirmity.

(25)

34. However, having regard to the decision of the High Court of Delhi in Shakti Singh's case (supra) the latter part of the punishments is not in consonance with Rule 8 (d) (ii) of the Rules ibid and requires modification accordingly.

35. In the result, for the foregoing reasons, although we do not find any merit in these OAs, but having regard to the penalties imposed the matters are remanded back to the disciplinary authority to suitably modify the orders of punishment and in the event applicants are entitled to any consequential benefits, the same may be accorded to them within a period of three months from the date of receipt of a copy of this order. The OAs are accordingly disposed of. No costs.

Let a copy of this order be placed in the case file of each matter.

S. Raju
(Shanker Raju)
Member (J)

"San."

S. Tampi
(Govindan S. Tampi)
Member (A)