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Central Administrative Tribunal
Principal Bench

OA No.2057/1999

New Delhi, this the 27th day of November, 2012

Hon'ble Mr. George Paracken, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Javed Khan
Ex. Constable (1149/C)
S/o Shri Mahmood Khan,
R/o Vill. & PO Banthi Khara,
Distt. Muzaffar Nagar (UP)Applicant

(Through Shri Satish Mishra, Advocate)

Versus

1. Govt. of NCT of Delhi,
Through its Chief Secretary,
5, Sham Nath Marg,
Delhi
2. Joint Commissioner of Police,
(Northern Range) Delhi
Police Headquarter,
IP Estate, New Delhi
3. Deputy Commissioner of Police,
Central Distt. I
PS: Darya Ganj,
New DelhiRespondents

(Through Shri N.K. Singh for Mrs. Avnish Ahlawat, Advocate)

Order

Mrs. Manjulika Gautam, Member (A)

This OA was filed by the applicant on 21.09.1999 and, therefore, has a long history.

2. The applicant is a Constable in Delhi Police. Departmental action against the applicant was initiated vide order dated 2.01.1998 and inquiry officer was appointed. The applicant was served with the summary of allegations along with list of

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Central Administrative Tribunal
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Pre-delivery order in OA-2057/99 is sent herewith for kind
consideration please.

With regards,


(Manjulika Gautam)
Member (A)

Hon'ble Mr. George Panicker, Member (S)


26/11/11

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witnesses (Annexure 'D'). Thereafter, nine Prosecution Witnesses (PWs) were examined. According to the applicant, there was no oral evidence to substantiate the charge against him except the disclosure of PW-6, Jagat Kumar, which was made during the investigation by the police. The charge framed against the applicant reads as follows:

"I, Inspector Surender Kumar, charge both of you Const. Bijender Singh No. 1113/C and Const. Javed Khan No. 1149 that on 20-02-1997 an information regarding Car No. DL-2C-J-2414 carrying liquor in huge quantity was received at Police Station Nabi Karim which was recorded vide D.D. No. 13A dated 20-02-97. A.S.I. Rajeshwar who was detailed to take follow up action reached the spot i.e. Sheila Cinema alongwith his Staff and found the said Car parked there. Jagat Kumar S/o Sh. Gurdial Lal R/o H. No. 510, Gali No.1, Prem Nagar, Patel Nagar, Delhi, the occupant of the said Car was apprehended and search of the Car by the A.S.I. resulted in the recovery of six cartoons containing 72 bottles of liquor and an amount of Rs. 22,600/- only in Cash. Accordingly a case vide FIR No. 130 dated 20/2/97 u/s 61/1/14 Excise Act was registered at Police Station Nabi Karim. During the course of interrogation accused Jagat Kumar disclosed that on 20/2/1997, he was informed by one Naresh Kumar R/o Nand Nagri that his truck full of country made liquor has been confiscated by the Nabi Karim Police. He alongwith others including Naresh Kumar, his nephew and Rama Nand reached Sheila Cinema where the truck was parked in a Gali and both of you Const. Bijender Singh No.1149/C and Const. Javed Khan No. 1114/C were present there. The driver of the truck disclosed that both of you Constables had chased their truck from Azadpur boarded the truck from Prem Bari Pul Red Light from both sides of Cabin and forced him to take the truck to Sheila Cinema when they all reached Sheila Cinema, both of you Constable settled the matter with Naresh Kumar that the truck would be released provided a sum of Rs. 60,000/- is paid to both you Constable by Naresh. Ultimately an amount of Rs. 50,000/- was given to you Const. Bijender No. 1113/C who allowed the Truck to go. Naresh Kumar told you Const. Bijender Singh No. 1113/C to escort them upto Ajmeri Gate but the truck slipped away. Naresh Kumar, thinking that the truck has been taken to

Police Station tried to snatch back the money from you Const. Bijender Singh alongwith his associates. Another Constable travelling on a Motor Cycle noticed this commotion and stopped the Car. While three persons managed to run away, Jagat was apprehended and brought to Nabi Karim Police Station with the remaining money.

The above act on the part of both of you Const. Bijender Singh No. 1113/C (PIS No. 28901348) and Const. Javed Khan 1149/C (PIS No. 28891558) amounts to grave misconduct, negligence, carelessness, dereliction in the discharge of your official duties, disgraceful and unbecoming of Police Officer which renders both of you liable to be punished under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980."

3. Enquiry report was submitted on 29.05.1998 (Annexure 'F') concluding that the charge was proved. The applicant submitted his reply (Annexure 'G') and thereafter the impugned orders dated nil were passed dismissing the applicant from service with immediate effect. Also the period of suspension was decided as period not spent on duty. The applicant preferred an appeal dated 28.07.1998 (Annexure 'H'). In the appeal, he raised certain factual details and also legal issues. The appeal was rejected by the appellate authority vide impugned orders dated 12.04.1999. The OA was decided vide orders dated 28.03.2001 and the operative part of the order reads as under:

"After taking into consideration the rival contentions of the contesting parties and perusing the record placed before us, we are of the considered view that there is evidence against the applicant about his involvement in the incident of 20.2.1997 with regard to extortion of money. This is settled law that the court cannot reappreciate the evidence and also it cannot go into the quantum of punishment. The charge has been proved. The inquiry has been held in accordance with the Rules and instructions. The applicant has been given full opportunity to defend his case and was also heard in Orderly Room. In

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view of the aforesaid reasons, we see no grounds to interfere with the orders passed by the disciplinary authority. The OA is, therefore, devoid of merit and the same is accordingly dismissed without any order as to costs."

4. The applicant filed CWP No.4410/2002. The Hon'ble High Court of Delhi vide orders dated 4.08.2011 remitted the matter back to the Tribunal to decide the OA on merit by passing a speaking order. Relevant extract of the order of the Hon'ble High Court is quoted below:

"It is the contention of the petitioner before us which was advanced before the Tribunal as well that the petitioner was innocent. It was further argued that the charge itself was not correctly made and is incorrect and that from the deposition of none of the witnesses, the said charge could be treated as established. The petitioner has also enabled to demonstrate that statements of various witnesses recorded were self-contradictory and self-defeating which made the story of the prosecution unbelievable and unreliable. The copy of the OA which is filed in these proceedings reveals that the petitioner had pointed out various such contradictions in the statements of some of these witnesses on the basis of which he had argued that there were contradictions in the statements of these persons. He then pleaded to the extent of saying that the petitioner was not present on the spot and the same was not also established by any credible evidence. That apart, the petitioner also alleged that the enquiry was conducted in violation of certain rules.

We find from the order of the Tribunal that the Tribunal has not specifically dealt with any of these aspects. It has simply recorded general observations that the scope of interference of the Tribunal in such proceedings is limited and the Tribunal is not to re-appreciate the evidence.

After recording this general principle of law, without specifically adverting to the argument made by the petitioner, the Tribunal has simply stated that after perusing the record, it is of the opinion that there was evidence against the petitioner about his

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involvement in the incident on 20th February, 1997 and with regard to the extortion of money.

Except this statement, there is no discussion in the impugned order as to how such conclusion was arrived at and what kind of evidence was there against the petitioner which proved his involvement in the aforesaid incident.

We state at the cost of repetition that while doing so, the Tribunal did not consider or dealt with various submissions made by the petitioner. We are, thus, of the opinion that the impugned order is non-speaking and is liable to be set aside on this ground itself.

Accordingly, the matter is remitted back to the Tribunal to decide the OA filed by the petitioner on merit by passing a speaking order. We may clarify that having regard to the aforesaid course of action we have taken, we have not dealt with or examined the contentions raised by the petitioner before us on merits. It would be for the Tribunal to take a call and decide the case in accordance with law but by passing a speaking order. Since considerable time has elapsed, the Tribunal shall decide the case as expeditiously as possible. The parties shall appear before the Tribunal on 6th September, 2011.

Copy of the order be given dasti to counsel for the parties."

5. The OA came up for hearing on 9.09.2011 but was dismissed in default. An MA was filed for restoration of OA dated 24.09.2011 and the restoration was allowed. When the OA came up for hearing on 22.11.2011, the Tribunal was informed that both the applicant and his co-delinquent Bijender Singh were dismissed from service. Both filed Writ Petitions in the Hon'ble High Court. In the case of the applicant, the matter has been remitted back to the Tribunal whereas in the case of co-delinquent, the Writ Petition is still pending in the High Court. The Tribunal gave time for placing the orders in the OA filed by the co-delinquent on record. On perusing the judgment in the

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case of co-delinquent Bijender Singh, it was decided by the Tribunal vide orders dated 16.01.2012 that since the Writ filed by the co-delinquent was pending in the High Court, the Tribunal had no option but to await decision of the High Court and the matter was adjourned sine die with liberty to the parties to apply. Learned counsel for the applicant again moved to the Hon'ble High Court of Delhi against the decision of the Tribunal adjourning the matter sine die on the ground that petition of the co-delinquent is pending in the High Court. Vide orders dated 7.03.2012, the Hon'ble High Court of Delhi directed that "Since the orders passed by the Tribunal in the two matters were different, we feel that there is no necessity for the Tribunal to await the decision of the Court in the case of the co-delinquent. Consequently, we direct the Tribunal to take up and conclude the hearing of the Original Application No.2057/1999 as already directed by the Court on 04.08.2011 as expeditiously as possible." In view of the above, the matter was heard and reserved for orders on 1.11.2012.

6. While deciding this OA, we are aware that a detailed order has already been passed by this Tribunal on 28.03.2001 but in view of the directions of the Hon'ble High Court of Delhi, the matter has to be decided on merit by passing a speaking order.

7. During the course of the arguments, learned counsel for the applicant pointed out several discrepancies and omissions in the statement of witnesses recorded in the inquiry and on basis of that, submitted that prosecution had failed to prove that there

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was a truck full of country made liquor of Naresh Kumar, that the truck was seized by both the constables, that there was a demand of Rs.60000/- by both the constables for release of the said truck and that the truck was released after receipt of Rs.50,000/- by Constable Bijender. Learned counsel stated that in fact it has not been proved that any such incident had happened as mentioned in the second part of the charge and there is no finding from the inquiry officer regarding seizure of truck full of liquor, demand of money from Naresh Kumar and receiving of money from Naresh Kumar. Referring to **M.V. Bijlani Vs. Union of India**, (2006) 5 SCC 88, the following observations of the Hon'ble Supreme Court have been brought to our notice:

"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record."

Reference is also made to **Moni Shankar Vs. Union of India and anr**, (2008) 3 SCC 484 according to which "The Tribunal was thus entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely – preponderance of probability. If on such evidences, the test of the doctrine of

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proportionality has not been satisfied, the Tribunal was within its domain to interfere."

8. In **Kuldeep Singh Vs. The Commissioner of Police and ors**, JT 1998 (8) SC 603, the Hon'ble Supreme Court has held that "the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse." Thus, according to the learned counsel for the applicant, there is ~~not~~ sufficient evidence and application of mind to prove the guilt of the applicant.

9. In the counter affidavit filed, the respondents have defended their action stating that the entire proceedings have been conducted in accordance with rules and principles of natural justice. It is stated by the learned counsel for the respondents that the entire evidence on record was appreciated by the inquiry officer and a definite finding was given. The witnesses Ashok Kumar and Naresh Kumar were won over by the applicant and, therefore, they deposed in favour of the applicant.

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10. While deciding this OA, we have to go back to the pleadings in the OA and, in particular, the grounds taken by the applicant. The first ground taken by the applicant is that there are discrepancies in statements of various PWs. In particular, there is confusion as to whether Jagat Kumar was apprehended at Delhi Gate or near Sheila Cinema, which are at a distance of about four kilometers. Another ground taken by the applicant is that the charge with regard to truck allegedly carrying liquor and standing at Sheila Cinema is not proved. Naresh Kumar, alleged to be the owner of the truck, has stated to be not present in Delhi on 28.02.1007, which is the date of the incident and, therefore, his going to the house of Jagat Kumar does not arise. There is also no evidence with regard to the number of the truck, name of the driver or presence of two Constables at Sheila Cinema. According to ASI Rajeshwar, none of these Constables were seen by him. PW-4, Constable Acheta Nand failed to testify identity of Constables. The prosecution has relied heavily on the disclosure statement of Jagat Kumar, which was made in police custody during interrogation and, therefore, is not reliable evidence. The story set up by Jagat Kumar has not been corroborated by other witnesses. Jagat Kumar himself was not able to give number of the truck carrying liquor as also the name of the driver. He is also admitted to be a bad character of P.S. Jahangir Puri. Thus, according to the learned counsel for the applicant, the disciplinary authority has given his finding on the basis of suspicion as he has stated that the involvement of the applicant is not ruled out. The statement of Jagat Kumar is also

demolished by the evidence given by Naresh Kumar and Ashok Kumar. Also, none of the PWs connected the applicant with the alleged misconduct except PW-6 Jagat Kumar. It is also the contention of the learned counsel for the applicant that the inquiry officer did not take into consideration the defence of the applicant and did not assess the evidence available. Learned counsel for the applicant has also taken the ground that the order of the appellate authority is a non-speaking order and the appellate authority has not considered the submissions made in appeal and the order is perfunctory and without reasons.

11. In the earlier order of the Tribunal dated 28.03.2001, the various grounds taken by the learned counsel for the applicant have been mentioned in para 7 of the order. In the same para, it has been stated that the learned counsel for the respondents admitted the discrepancy found between the facts mentioned in the chargesheet and the statements of PWs 4 and 7. But it was not the case of the respondents that evidence can be re-appreciated only if there is a case of no evidence or if the inquiry is perverse. In this particular case, there is evidence against the applicant and, therefore, it cannot be said that it is a case of no evidence or that the inquiry is perverse. In para 8 of the judgment, it has been specifically mentioned that "we are of the considered view that there is evidence against the applicant about his involvement in the incident of 20.2.1997 with regard to extortion of money." Thus, a finding has been given that it is not a case of no evidence. The inquiry against the applicant has been conducted as per rules and he is given full opportunity to

defend himself and, therefore, no case for interference is made out.

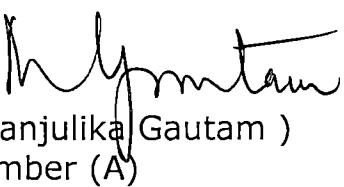
12. For proper appreciation of this OA, it is necessary to go back to the report of the inquiry officer which is at pages 56 to 63 of the paper book. Submissions no.1 to 27 made by the two accused Constables have been discussed by the inquiry officer and he has come to the final conclusion that in view of the statements of prosecution witnesses, documentary and circumstantial evidence, the charge against both the Constables stands proved. According to the inquiry officer, the presence of both the Constables at Shiela Cinema and Ajmeri Gate Crossing is proved by witnesses and no Defence Witnesses have been produced by the accused Constables that they were on patrolling duty elsewhere. It is also stated by the inquiry officer that PW Naresh Kumar has become hostile and that is why he has stated that he was not in Delhi on the date of the incident.

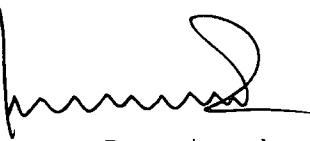
13. We have also noticed the fact that when the maruti car was apprehended, six cartoons containing 72 bottles of liquor and an amount of Rs.22,600/- only in cash was found and accordingly FIR No.130 dated 20.02.1997 under Sections 61/1/14 Excise Ac was registered at Police Station Nabi Karim.

14. Thus, we are satisfied that this is not a case of no evidence and that in spite of some contradictory statements, the incident did occur leading to recovery of bottles of liquor and Rs.22,600/- only in cash. We, therefore, cannot support the theory that the entire incidence is ^{an} concocted one. We are also satisfied that the

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inquiry officer has applied his mind, appreciated the evidence collected during DE and found the charges proved. All further proceedings based on this have been conducted as per rules and, therefore, no case for intervention is made out. OA is accordingly dismissed. No costs.


(Manjulika Gautam)
Member (A)


(George Paracken)
Member (J)

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