

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1441/1994

Wednesday this the *28th* day of July, 1999

COPRAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

Ex-Sub Inspector Kappor Singh, No.345/D
Delhi Police,
Son of Shri Udai Siongh
R/o Village Ladpur PO. JK hajjar,
Distt.Rohtak,
Haryana.

...Applicant

(By Advocate Mrs. Avnish Ahlawat)

Vs.

1. Government of National Capital Territory
of Delhi, through Commissioner of Police,
Delhi Police Headquarters,
IP Estate, NewDelhi.110 002.
2. The Addl.Commissioner of Police (S&T)
Delhi Police,
Police Headquarters,
MSO Building, IP Estate,
New Delhi-110 002.
3. Deputy Commissioner of Police (Traffic)
Delhi Police
Police Headquarters,
MSO Building, IP Estate,
New Delhi.110 002.
4. Shri S.K.Indora, Enquiry Officer,
to be served through
Deputy Commissioner of Police (Traffic)
Delhi Police,
Police Headquarters.
MSO Building, IP Estate,
New Delhi-110 002.

...Respondents

(By Advocate Mr. Rajinder Pandita)

The application having been heard on 20.7.1999, the
Tribunal on *28*.7.1999 delivered the following:

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Ex-Sub Inspector Kappor Singh of the Delhi Police, applicant in this case was dismissed from service by the order dated 15.9.93 (Annexure.B) of the third respondent after a departmental enquiry held against him. He filed an appeal to the Additional Commissioner of Police (2nd respondent) who by his order dated 1.3.94 (Annexure.C) rejected the appeal. It is aggrieved by this that the applicant has filed this application. The summary of allegation on the basis of which the proceedings were initiated against the applicant reads as follows:

"It is alleged against SI Kapoor Singh No.345/D that on 3.8.90 while posted in Pahar Ganj Circle, Traffic Unit demanded illegal gratification (monthloy) from one Sri Harish Kumar R/o 3973, Ajmeri Gate, Delhi to allow his vehicle to pass through the circle and extorted Rs.100/- from him as illegal gratification (monthly) for the month of July, 1990. The Rs.100/- scurrency note bearing No.4-PL-029201 signed by Shri Mohan Kudelsya, ACP/Vigilance with date ie., 3.8.90 was later on recovered from his personal search.

The above act of SI Kapoor Singh No.345/D amounts to gross misconduct, negligence and dereliction in the discharge of his official duties which renders him liable to be dealt with departmentally u/s 21 of Delhi Police Act, 1978."

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2. The applicant has alleged that the proceedings were initiated ^{against} him without any basis, that no raid as alleged in the summary of allegations has ever taken place, that the raid and the trap on the basis of summary allegations were raised is a bogus one, that papers have prepared from the office and that as there is absolutely no legal evidence to establish that the applicant has demanded and received a sum of Rs.100/- from Harish Kumar (PW5) as illegal gratification because Harish Kumar who is alleged to have made a complaint to the ACP (Vigilance) has denied to have made any such complaint, that the Enquiry officer himself has opined in his report that the incident of the raid as alleged was apparently a concoction he should not have entered a finding of guilt for any reasonable person would ^{have} on the basis of the evidence on record reached such conclusion and that the finding of the Enquiry Officer which was accepted by the disciplinary authority being based on no evidence at all, the order passed on the basis of the proceedings is liable to be set aside. It has also been alleged that the enquiry has been held in violation of the principles of natural justice because the applicant was not supplied the documents namely the report of the ACP on the basis of which the proceedings against the applicant was ordered by the DCP (Traffic). The applicant prays that the impugned order may be set aside.

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3, The respondents in their reply contend that the enquiry has been held in consonance with the principles of natural justice giving the applicant a fair and reasonable opportunity to defend himself and that as the finding of guilt has been arrived at on the basis of legal evidence, no interference is called for.

4. Mrs. Avnish Ahlawat, learned counsel for the applicant confined her argument to only one point namely that the finding of the enquiry authority which was accepted by the disciplinary authority was based on no evidence at all as it is evident from the Enquiry Report itself that the alleged raid itself was a concoction.

5. Shri Rajendra Pandita, learned counsel appearing for the respondents Delhi Administration argued that a reading of the Enquiry Report which is a detailed one in which evidence of as many as five witnesses examined in support of the charge have been discussed in detail, establish that the finding that the applicant was guilty was reached on the basis of legal evidence and that therefore, no intervention by the Tribunal is either called for or justified.

6. It is well settled by now by a catena of decisions of the Apex Court that the scope of judicial review of orders of domestic tribunals extends only to see whether an enquiry was held in conformity with the rules and principles of natural

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justice and that if the finding recorded is based on some evidence, the judicial intervention would not be justified. In a recent ruling of the Hon'ble Supreme Court in Kuldip Singh Vs. Commissioner of Police, 1998 (6)Scale 55, after discussion of the case law on the point as to what is the scope of judicial interference with the finding of domestic tribunals their Lordships held as follows:

"Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence it would be a perverse finding and would be amenable to judicial scrutiny.

A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with." (emphasis supplied)

7. We will examine the case in the light of the above guiding principles laid down by the Apex Court.

8. The charge framed against the applicant after examination of the witnesses of prosecution reads as follows:

"I, S.K.Indora, ACP/HQ BE Cell/Vig. charge you, SI Kapoor Singh N.345/D that on 3.8.90 while posted in Pahar Ganj Circle, Traffic Unit, you demanded and

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accepted Rs.100/- as illegal gratification (monthly) from one Shri Harish Kuamr r/O 3973, Ajmeri Gate, Delhi to allow his vehicles to pass through the circle for the month of July, 1990. The Rs.100/- currency note bearing No.4-PL-029201 signed by Shri Mohan Kudeisya, ACP/Vigilance with date ie., 3.8.90 was later on recovered from your personal search."

The above charge is sought to be proved on the basis of the statements of witnesses PWs 1 to 5. For a proper appreciation of the question whether there is some evidence on the basis on which a reasonable conclusion of guilt can be arrived at, it is profitable to state in brief what these witnesses have deposed.

9. PW1 Constable Rambir Singh duty Munshi of Pahargaj Circle Traffic Unit during 28.6.90 to 25.8.90 has stated that the applicant S.I. Kapoor Singh was on duty on 3.8.90 in Paharganj Zone as Z.O., that his duty was from 7 am to 8 pm and that he had been deployed on duty vide D.D.No.2 dated 3.8.90 Traffic P aharganj. PW2 Manphool Singh, Inspector who is said to have led the raiding team has stated that he had made a statement which was marked as PW2(a) to the effect that while posted as Vigilance Inspector on 3.8.90 at 10 am one Shri Harish Kumar (PW5) made a complaint against S.I. Kapoor Singh that he produced the complainant before ACP Shri Mohan Kudesya (PW3) that ACP advised him to make a complaint in writing, that PW5 gave a written complaint to the ACP which was reported to the DCP (Vigilance), that on this a

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raiding party consisting of himself, PW4 Inspector Dilbagh Singh and complainant Harish Kumar (PW5) was prepared, that ACP Mohan Kudesya put his signature on a currency note of Rs.100/- whose number was 4-PL-02929, that this was handed over to the complainant Harish Kumar through a handing over memo signed by himself, Inspector Dilbagh Singh, Harish Kumar and the ACP, that after that the raiding party departed by a Government vehicle with driver ASI Jasbir Singh which reached chowk P.S. Paharganj at about 12 noon, that ACP Vigilance and Harish Kumar came in a Maruti Van No.DDA-8627 which was parked near the traffic booth, that Harish Kumar was sitting in drivers seat and ACP was sitting next to him, that the applicant went to the Maruti van, shook hand with Harish Kumar, talked with him, that Harish Kumar took out the marked note from his pocket and gave it to the applicant, that the applicant put it in his pocket and went to the traffic booth, that the ACP along with the raiding party covered the booth and seized the note from his pocket. He has further stated that a seizure memo was prepared on which ACP, Inspector Dilbagh Singh and Harish Kumar put signatures and that he recorded the statement of PW1, PW3, PW5 etc. PW3 Mohan Kudesya, ACP Sadar Bazar North, Delhi stated that on 3.8.90 while he was ACP (Vigilance) Police Headquarters one Harish Kumar submitted a complaint in writing to DCP (Vigilance) in which it was alleged that while passing through main chowk, Paharganj, the applicant Kapoor Singh SI posted there used to extract money from truck owners etc,

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that as per the direction of the DCP (Vigilance) it was decided to conduct a raid, that he alongwith Inspector Dilbagh Singh and Inspector Manphool Singh of Vigilance Branch conducted the raid, that he was sitting in a Maruti Van which was driven by Harish Kuamr (PW5) that both the inspectors were in the departmental Carn No. DL-A/6529 that in between 11.30 am and 12 noon the complainant Harish Kumar stopped his vehicle near traffic booth, called SI Kapoor Singh and gave him the note signed by him after he got down from the van and seized the marked currency note from the pocket of the applicant wherein Inspector Manphool Singh and Inspector Dilbagh Singh were seen. He also identified the complaint Ext. PW5A said to have been made by Shri Harish Kumar. PW4 Dilbagh Singh also stated that at 10.30 am on 3.8.90 Inspector Manphool Singh called him before the ACP Mohan Kudesya who ordered him to remain in the office, that at 12 noon Inspector Manphool Singh called him again in the office room of ACP and in his presence ACP signed a note of Rs.100/- and gave it to Shri Harish Kumar, that Inspector Manphool Singh the handing over memo Ext. PW2(B) in which he put his signature, that all the three ie., ACP, Inspector Manphool Singh and he proceeded in staff car which was driven by ASI Jasbir Singh, that as soon as they reached the Ring Road, ACP got down from the staff car, sat in the Maruti Van of Shri Harish Kumar and ordered them to follow him, that on the out of Paharganj he stopped, instructed them to wait there, that he went to the check post in

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the car of Harish Kumar, that after little time SI Kapoor Singh went to the Maruti Van, he had some talk with Harish Kumar, stretched his hand to the driver seat of the Maruti Van and then returned to the booth, that thereafter the ACP told them that on searching the pocket of the applicant, the marked Rs.100/- note was recovered and a memo was prepared. PW5 Shri Harish Kuamr who is said to have made a complaint about the applicant said that he never made any complaint, that the letter which was marked as complaint is not in his hand writing, that it was prepared by somebody making use of a paper signed by him and entrusted to his staff for the purpose of his transport business,, that he never participated in a raiding team and that neither the applicant has made any demand nor has he paid any amount to the applicant.

10. The Enquiry Officer recalled the PW5 as a Court Witness No.2. He examined one Mohinder Sing also as Court Witness No.1. Mohinder Singh has deposed that on 3.8.90 he took a Maruti Van No.DDA 8627 from Harish Travel Agency, Ajmiri Gate at 8 am to go to visit his relative at Ghaziabad and returned in the vehicle at 5p.m. Harish Kumar PW5 examined as Court Witness has also stated that the CW.1 had hired his Maruti Van No.DDA 8627 on 3.8.90 at 8 am and returned it at 5 p.m. and identified the photo copy of the booking as Ext.CW 1(B). The seven witnesses attempted to depose in favour of the applicant.

11. The applicant has denied the entire occurrence and has stated that he was taken to the Police Station in a car and the case has been foistered on him by Manphool Singh.

12. To bring home the guilt of the applicant on the charge framed against him, it has to be established by legally acceptable evidence, that the applicant attempted and accepted Rs.100/- as illegal gratification (monthly) from Harish Kumar to allow his vehicle to pass through the circle for the month of July, 1990 on 3.8.90. Shri Harish Kumar who is said to have made the complaint to the Inspector Manphool Singh, the ACP and the DCP while examined as PW5 has denied to have made any complaint. He has also denied to have given the marked currency note to the applicant. In fact he has denied the entire allegation against the applicant. He has also as CW No.2 stated that the vehicle No.DDA 8627 was out of Delhi from 8 am to 5 pm on 3.8.90, that he along with the ACP has not gone to the place where the alleged payment to the applicant took place. Therefore, there is no evidence at all to show that the applicant demanded illegal gratification from Harish Kuamr to allow his vehicle to pass through circle as monthly for the month of July. Though Harish Kuamr has stated that the signatures which were found in the complaint marked as EXT.P5(b) were his, he has stated that his signed papers left with the staff have been made use of. He has denied to have signed the handing over memo as also the seizure memo. PW2 Inspector Manphool Singh and PW3 ACP Mohan Kudesioya have sworn xxxxxxxx that the marked note of Rupees 100/- (One hundred) was recovered from the possession of the applicant. xxxxx

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However, even though it is alleged that ACP Mohan Kudesiya was present, the statement of PW2 Manphool Singh also was seen attested only by Inspector Manphool Singh and not by the ACP, Mohan Kudesiya, who is the higher officer in ^{the} raiding team. At least the statement of PW2 should have been in the ordinary course of nature recorded by Mohan Kudesiya. It is curious that PW2 made the statement of himself and he himself attested it. It is also quite abnormal that no DD entry was made about the complaint, if made by the PW5 Harish Kumar to the ACP and on the direction of the DCP a raiding team was constituted. The Enquiry Officer was conscious of all these shortcomings and improbabilities in this case and he has in his report stated that:

"Mere the incidence prepared by the raiding party is apparent as concocted because the Maruti Van No.DDA/8627 in which the ACP/Vig. has reached the place of raid at 12 noon on 3.8.90 along with complainant Shri Harish Kumar is found to be out of Delhi on the same day from 8 am till evening. CW.1 Shri Mohender Singh has produced the photo copy of the documents in this regard that he had hired the vehicle Maruti Van No,DDA/86278 from the Harish Travel Agency on 3.8.90 from 8 AM till night. It is duly entered in the register the photo copy of the same is marked as Ext.CW.1(B) and the duty slip given to the driver of this Maruti Van is marked as Ext.CW-1(C). The complainant Harish Kumar was also summoned as a CW.2. who has verified the above mentioned documents to be genuine. The CW.1 Sh.Mohinder Singh has deposed that he had taken the said Maruti to Faridabad for whole day from 8 AM and was out of Delhi then how the said Maruti was got involved in the raid. This is

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a major point in defence of defaulter because the officer of Vig. Branch except Shri Mohan Kudaisiaya ACP were allegedly in that van.

Moreover, from the perusal of the documents and statements of PW it is found that ACP/Vig. the I/C raiding party has not attested any documents and statements of the witnesses prepared and recorded during the said procedure. The signature of this ACP is found only in one place vigilance on the handing over memo which was prepared in the office of ACP/Vig, at PHQ".

But thereafter, he held as follows:

"here his signature is as a witness and thus the same carried weight and is proved."

The Enquiry Officer has also at an earlier stage stated:

"The complainant Harish Kumar has admitted his signature on the complaint letter Ext.PW3/A to be his own but refused the signatures on the statement recorded during the said procedure Ext.PW2F to be his own. He also refused the signature on the handing over memo Ext.PW2/B and recovery memo Ext.PW.2/C to be his own. On a minutes observation the difference in the above signatures of the complainant are also revealed. The signatures on the statement during the said procedurer on the handing over memo and on the recovery memo are the same and the signature on the complaint letter is different from them."

and added "but there all materials are not so strong in the presence of the signatures of defaulter SI Kapoor Singh on recovery Memo Ext.PW 2/C. The defaulter SI Kapoor Singh himself has admitted the recovery of specified note of Rs.100/- from his

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possession on personal search by making his signature on the recovery memo Ext.PW2/C. Therefore, the extortion of Rs.100/- by defaulter SI Kapoor Singh from complainant Harish Kumar is proved."

13. The above quoted observations in the report of the Enquiry Officer would go to show that the Enquiry Officer found that the alleged raid was a concoction. There was no evidence from which it can be discerned that the applicant had demanded and accepted Rs.100/- from the PW5 as illegal gratification. None of the witnesses has deposed that any one has heard the applicant demanding illegal gratification from the PW5. The PW5 Harish Kumar has denied the story. He has denied to have made a complaint. He has stated that the alleged complaint was not in his hand writing. Then on what evidence can the Enquiry Officer and Disciplinary Authority come to a finding that the applicant demanded and received the illegal gratification. We find total dearth of evidence on this point. The evidence adduced regarding the recovery of marked note also is not legally acceptable because PW5 the person on whose alleged complaint the trap was laid has not supported the story and also because the Enquiry Officer on the basis of evidence on record found that apparently the alleged raid was a concoction. The fact that the ACP Mohan Mudesiya did not attest the recovery memo and record the statement of PW2 Manphool Singh also goes to show that the observations of the Enquiry Officer that the raid was a concoction is well founded.

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14. In the light of this nature of evidence we are of the considered view that no reasonable person could have reached a conclusion that the applicant was guilty on the basis of the evidence on record. The finding of the Enquiry Officer that the applicant was guilty of the charge alleged against him being based on no evidence, the same is per verse and the order of the disciplinary authority finding the applicant guilty of the charge and imposing on him the penalty of dismissal is also vitiated being based on perverse finding. The appellate authority's order is also lacking in application of mind to this important aspect of the case.

15. In the result, in the light of the above discussion, we find that the applicant is entitled to succeed in this application and therefore, we allow this application setting aside the impugned orders dated 15.9.93 (Annexure.B) and 1.3.1994 (Annexure.C) and directing the respondents to reinstate the applicant in service forthwith with all consequential benefits and to pay him full backwages for the period he was kept out of service within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.

Dated the 28th day of July, 1999


S.P. BISWAS
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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