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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2159/2004

New Delhi this the 28th day of January, 2005.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Yashveer Singh,
Ex. Constable of Delhi Police,
(PIS No.28861550),R/o WZ-344/98,
F-Block, Gali No.2,Hari Nagar,
New Delhi.

-Applicant

(By Advocate Shri Anil Singhal)

-Versus-

1. Govt. of NCT of Delhi,
through its Chief Secretary,
Delhi Secretariat, I.P. Estate,
New Delhi.
2. Commissioner of Police,
Police Head Quarters,
I.P. Estate, New Delhi.
3. Jt. Commissioner of Police,
Armed Police, PHQ,
I.P. Estate, New Delhi.

-Respondents

(By Advocate Shri Ajesh Luthra)

1. To be referred to the Reporters or not? YES / ~~NO~~
2. To be circulated to other Benches of the Tribunal? YES / ~~NO~~

S. Raju
(Shanker Raju)
Member (J)-

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ORDER (ORAL)

Mr. Shanker Raju, Hon'ble Member (J):

Applicant, an ex-Constable, impugns respondents' order dated 4.8.2003, imposing upon him, along with others, a punishment of dismissal from service and treatment of suspension period as not spent on duty. The order passed in appeal on 26.7.2004, upholding the punishment is also assailed.

2. Applicant, while posted at Seemapuri Traffic Circle on a raid by PRG Team, was placed under suspension and was ordered to be proceeded with in a joint enquiry along with other police officials with issuance of summary of allegations by the disciplinary authority on the ground that at the relevant time

while an illegal gratification was accepted from a truck driver by the Zonal Officer (ZO), which was subsequently recovered. Applicant along with others assembled at the spot with a common intention of collecting money from the commercial vehicles.

3. After the inquiry culminated into a report of the Inquiry Officer (IO) holding the charge proved against applicant as well as others. On representation by a common order after imposition of punishment of dismissal, which has been upheld by the appellate authority, the present OA has been filed.

4. At the outset, before dealing with the rival contentions we must elucidate the principles of interference in a judicial review by the Tribunal in a judicial proceeding and matter of punishment. It is trite law that the disciplinary proceedings cannot be equated with a trial by the judicial authority and the principle is preponderance of probability where the strict rules of evidence and relevancy of facts and evidence brought has no role to play. Circumstantial evidence and hear-say evidence are also admissible. Rule 20 of the Delhi Police (Punishment & Appeal) Rules, 1980 (the Rules, for short) clearly provides that in departmental inquiries the authorities are not bound to follow the provisions of either Cr.PC or Indian Evidence Act. It is at their discretion that the relevant evidence be admitted and irrelevant is excluded, which is introduced to prejudice the opposite party or to cloud the issue. However, there cannot be a denial from the fact that a quasi judicial authority even while discharging the functions of the disciplinary authority or as an IO is bound by the cardinal principles of fair play and application of mind with afford of reasonable opportunity.

5. The sufficiency and relevance of evidence cannot be scrutinized by this Court, assuming the role of an appellate authority in a judicial review, but there is an exception to it is the principle of 'no evidence' and 'no misconduct' does apply even to a departmental proceedings where preponderance of

probability is a rule. If the conclusion arrived at is based on suspicion, conjectures and surmises and also rested on presumptions that the finding is perverse the same cannot be sustained in law. The Apex Court in **Union of India v. H.C. Goel**, AIR 1964 SC 864 has held as follows:

“(20) This conclusion does not finally dispose of the appeal. It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311 (2), the High Court under Art. 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate proceedings, which is the basis of the dismissal, is based on no evidence. In fact, in fairness to the learned Attorney-General, we ought to add that he did not seriously dispute this position in law.”

6. **In Nand Kishore Prasad v. State of Bihar & Ors.**, 1978 AIR 1211 SC

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“17. Before dealing with the contentions canvassed, we may remind ourselves of the principles in point, crystallized by judicial decisions. The first of principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in *Union of India v. H.C. Goel*, “the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to the regular criminal trials as to disciplinary enquiries held under the statutory rules”.”

7. **In Kuldeep Singh v. The Commissioner of Police & Ors.**, JT 1998

(8) SC 603 the Apex Court has made the following observations:

"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate authority. But this does not mean that in no circumstance can the Court under the Constitution take in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

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8. The findings, recorded in a domestic enquiry, can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in **State of Andhra Pradesh v. Sree Ram Rao**, 1964 2 LLJ 150, in which the question was whether the High Court under Article 226, could interfere with the findings recorded at the departmental enquiry."

8. Recently the Apex Court in **Sher Bahadur v. Union of India**, 2002

SCC (L&S) 1028 held as under:

"7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R.A. Vashist, Ex. CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged

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misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside."

9. If one has regard to the above proposition of law, as settled by the Apex Court, what is discernible as a precedent, binding one on us, is that where there is no evidence conclusively *pointing* towards guilt of a delinquent official, ^w the finding recorded culminated into the punishment would be a nullity in law, being perverse based on no evidence.

10. As regards misconduct, though in a disciplinary proceedings the department has every right to allege common intention but there must be some evidence to link the concerned and to point out towards his guilt. If no evidence is adduced to indicate that with a pre-concerted mind the various persons have committed an illegality and if there is no evidence that they have common intention as an over tact this common intention would remain as a presumption and surmise.

11. As regards misconduct there is no hard and fast rules or exact definition discerned from the precedents but yet it is a conduct against the norms unbecoming of a government servant but there are certain acts which, without any over tact impute suo moto take form of a conduct against law or norms to make its nomenclature as a misconduct sustaining the disciplinary proceedings and punishment as well. The Apex Court in **State of Punjab v. Ex.-Constable Ram Singh**, (1992) 4 SCC 54, defined the misconduct with the following observations:

"6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the

context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."

12. After the above discussion we must go into the facts of the present case. The charge levelled against applicant is as follows:

"You ASI Mange Ram Sharma, No.3446/D, HC Veer Pal Singh, No.296/T, Const. Sanjeev Kumar, No.3475/t, Const. Yashvir Singh, No.3014/T and Const. Dinesh Kumar, No.704/T are hereby charged that while posted in Seemapuri Traffic Circle Delhi on 3.12.2000 you were found present at Mandoli Chungi Red Light point Wazirabad Road along with two DHG Constable namely Rambir Singh, No.7826/DHG and Vinod Kumar No.7829/DHG and one private person namely Devender Kumar Agarwal S/o Sh. Jai Prakash Agarwal C/o Shri Vinod Singhal, 20 Foota Raod Partap Nagar, Siboli, Nand Nagri, Delhi. All you three traffic Constables with the DHG were standing on Central Verge. They signaled truck No.HR-37-3475 to stop at about 12 noon. You Const. Sajeew Kumar approached the truck and asked the driver Mohd. Ahtesham S/o Bashir Ahmed R/o Vill. Gana Khari, P.O. Guna Distt. Sharanpur (UP) to come down from the truck and took him to the Z.O. You ZO ASI Mange Ram Sharma challaned him vide challan No.L-907535 u/s 29RRR.1777 MV Act and demanded Rs.150/- (Rs.100 for compounding amount and Rs.50/- entry fee). You HC Veer Pal Singh who were also standing with the ZO near traffic booth, obtained the said amount from the truck driver and handed over Rs.50/- to the ZO and Rs.100/- to the aforesaid Mr. Devender for safe custody to avoid recovery from your person in the event of raid. The PRG team caught all of you red handed on the spot. Signed GC note of Rs.50/- denomination was recovered from the right side pocket of shirt of you ZO Mange Ram which was kept along with Rs.2800/- found in your person. On further enquiry it was established that you ZO had challaned a certain number of vehicles during the last 2 days and cash amount should have been Rs.2900/-. But here the amount was Rs.2800/- plus signed note of Rs.50/- denomination. An amount of Rs.1780/- including signed GC note of Rs.100/- denomination was recovered from the right side pant pocket of Shri Devender Kumar stuffed in an haphazard and in disorderly manner from which it could be included that the amount had been given to him by you above mentioned traffic staff by collecting illegally from commercial vehicles. You ZO ASI Mange Ram along with above traffic staff, DHG Constables and private person Mr. Devender Kumar had assembled at the spot with common malafide intention of collecting illegal entry money from the commercial vehicles.

Further you ASI Mange Ram had threatened the truck driver Mohd. Ahtegsham of dire consequences if he deposed against all of you. Overawed by the threat, the said truck driver did not turn up to depose against you during the enquiry proceedings.

The above act/acts on the part of you ASI Mange Ram No.3446/D, you HC Veer Pal Singh No.296/T, you Ct. Yashvir Singh No.3014/T, You Const. Sanjeev Kumar, No.3475/T and

you Const. Dinesh Kumar, No.704/T amounts to gross misconduct, negligence, malafide and dereliction in the discharge of your official duties which render you liable to be punished under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.”

13. If on a plain reading of the above though applicant has been alleged having a common malafide intention of collecting illegal entry money from commercial vehicles and individual basis, he has been charged for stopping the truck and this has been established during the inquiry that this was done at the behest of his superior, i.e., ZO. Apart from it, demand, acceptance and recovery of illegal gratification had been imputed to other officers and no role has been attributed to applicant.

14. The IO while recording his findings, while discussing the evidence has not recorded any reasons for coming to the guilt of applicant and it has not been demonstrated and established that in what manner the conduct of applicant has crystallized into misconduct on the evidence adduced. The discussion and conclusion are relevant to be highlighted as under:

“DISCUSSION ON EVIDENCE

During the course of D.E. proceedings, 10 PWs were examined to establish the allegation levelled against the delinquents. Out of these 10 PWs five are the members of raiding party and these PWs fully supported the prosecution. Other four PWs have proved the posting of the delinquents in Seema Puri Traffic Circle. Only one PW by the name of Shri Devender Kumar who is a civilian did not support the prosecution and deposed a different story. His statement is not worthy of reliance as he was the person helping the traffic staff in keeping illegally collected money with him. The signed currency note of Rs.100/- denomination was also recovered from him during the raid. The delinquents have raised certain pleas to rebut the charge but none of these absolve them of the charge. There are minor contradictions in the statements in the deposition of some of the PWs. The failure in preparing handing over memo on the part of raiding officer do not absolve the delinquent of the charge as the signed currency notes were handed over to one of the delinquents by the driver and that is too on demand of the ASI. Both these signed currency notes of Rs.100/- and Rs.50/- denominations were recovered on the spot by the PRG team from the possession of Shri Devender Kumar and ASI Mange Ram respectively. It is fact that no departure and arrival was recorded in the daily diary by the PRG raiding team before and after the raid. As regard fixed signal the PW 1 has supported the raid report

prepared by him in which it has clearly been stated that on receipt of agreed signal from the driver the traffic staff was hauled up. The preponderance of evidence clearly establishes that Shri Devender Kumar was found actively connived with the traffic in the collection of illegal money. The recovery of signed currency note of Rs.100/- denomination from him strengthens his connivance with traffic staff in the collection of illegal money. Shri Ahtesham one of the prosecution witnesses never joined the DE proceedings due to threats extended to him by the ASI. As such his earlier statement was brought on the record of DE. The position of traffic staff at the time of raid conducted by PRG was at different places and it was the ZO who detailed them on different points. ASI Mange Ram, HC Veer Pal and Shri Devender Kumar, a civilian were found standing together near booth and the other three constables were found standing on Central Verge. The evidence clearly speaks that ASI Mange Ram had demanded Rs.150/- (Rs.100/- as compounding amount and Rs.50/- as entry fee) from the driver. HC Veer Pal had accepted both the currency note in the presence of ZO and transferred Rs.100/- to Shri Devender Kumar a civilian and Rs.50/- to ASI Mange Ram. Both these currency notes of Rs.100/- and Rs.50/- denominations having initials of raiding officer were later recovered from Shri Devender Kumar and ASI Mange Ram respectively on the spot by the PRG team. The challan book was in the possession of the ZO and he can easily mention the time of his choice on a challan while prosecuting a traffic rule violator as such the plea of difference in the time mentioned in the challan as well as raid time of raid conducted, has no force. The signed currency note of Rs.50/- denomination taken as entry fee from the driver, was recovered from ASI Mange Ram and the same was taken into police possession by the raiding officer. Shri Ahtesham the driver of the truck and one of prosecution witnesses could not join the DE proceedings due to the threats extended to him by ASI Mange Ram and this PW has also given in writing to this effect. The plea of three Constables that they were performing their duty on the direction of ZO cannot absolve them of their hand in glove with the ZO in the collection of illegal money from the innocent drivers of commercial vehicles. The deposition of two civilian produced as DWs by the delinquents is not trustworthy as such witnesses can easily be managed. Whatever deposed by the 3rd DW produced by the delinquents during DE proceedings is a matter of record.

CONCLUSION

Taking into consideration the facts and circumstances of the case the statements of PWs, DWs and defence statements of PWs, DWs, the charge against ASI Mange Ram No.3446-D, HC Veer Pal No.296-T, Constable Sanjeev Kumar, No.3475-T, Const. Yashvir Singh, NO.3014-T and Const. Dinesh Kumar No.704-T is fully proved beyond any shadow of doubt."

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15. When the aforesaid finding has gone to the Disciplinary Authority though the common order has been passed to impose a punishment of dismissal upon applicant, the following observations have been made:-

"In view of the above in the light of overall facts and circumstances, I agree with the findings of the E.O. and I am of the considered opinion that there is conclusive material on record to hold the defaulters ASI Mange Ram Sharma No.3446/D, HC Veer Pal No.4038/DAP, Ct. Sanjeev Kumar, No.4803/DAP, Ct. Yashvir Singh No.3014/T, 4805/DAP and Ct. Dinesh Kumar No.704/T, 4709/DAP responsible for their acts of corruption. This is a case where the protectors of law have turned into extortionists and have not only abused the powers they have been bestowed with, but converted that power into an instrument for crime. Showing even a bit of leniency towards them will be a bad precedent and will encourage other members of the force in believing that these acts are minor delinquencies which will be overlooked. Corruption is eating into the vitals of our society and if the guardians of law themselves indulge in such nefarious activities in flagrant violation of decent behaviour, it becomes all the more important to check them forthwith. The defaulter ASI Mange Ram Sharma No.3446/D, HC Veerpal Singh, No.296/T, 4038/DAP, Const. Sanjeev Kumar No.3475/T; 4803/DAP, Ct. Yashvir Singh No.3014/T, 4805/DAP, and Ct. Dinesh Kumar No.704/T, 4709/DAP are a blot on the name of a disciplined force and they cannot be retained in the Delhi Police. They are hereby dismissed from the force with immediate effect. Their suspension period from 3.12.2000 to 12.8.2001 will be treated as period 'not spent on duty' for all intents and purposes. They will deposit all Govt. belongings in their possession like identity Card, CGHS Card, Appointment Card and Kit articles with the respective offices/Stores".

16. The aforesaid punishment was carried in appeal and the Appellate Authority in so far as plea of applicant is concerned, recorded as under:-

"Though the appellant was not standing with the ZO when the 'entry' money was demanded and accepted, the circumstantial and documentary evidence clearly indicates that all the delinquents including the appellant had assembled at Mandoli Chungi Red Light Point with common malafide intention of collecting illegal entry money from the commercial vehicles. The role of each delinquent is quite clear Ct. Yashveer Singh (the appellant), Ct. Dinesh Kumar, Const. Sanjeev Kumar and two DHG Constables were standing on Central Verge. They signaled to stop the truck. Const. Sanjeev Kumar approached the driver and took him to the Z.O. The Z.O. challaned the truck driver and demanded entry money (Rs.100/- as compound and Rs.50/- as entry money). Head Const. Veer Pal obtained the said amount from the driver and handed over Rs.50/- to the Z.O. and Rs.100/- to the public person namely Shri Devender Kumar Aggarwal. Therefore, involvement of all the delinquents was proved beyond doubt".

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17. If the aforesaid is taken keeping in the light the decision of the Apex Court applicant has been charged for stopping the truck only and his guilt has been concluded and punishment upheld on the ground that though he was not standing with the ZO when the entry money was demanded and accepted, mere assemblance at red light point with common malafide intention substantiated the charge.

18. We are shocked that morality has prevailed over the established principles of law. If the only allegation against applicant is of stopping the truck at the behest of his ZO to which he is bound to follow, failing which a misconduct would be attributed, his non-indulgence in either demand acceptance or recovery of illegal money clearly indicates and gives a conclusive finding, applying the test of a reasonable common prudent man that he has no role to play in acceptance of money etc. As such, without being charged with an overt act merely stopping the truck would not per se show his common intention as no evidence has come-forth to indicate conclusively towards his guilt of being a party to the illegal transaction. Applicant was posted at Seema Puri Traffic Circle and the Traffic Police is within its jurisdiction to stop the truck for routine checking. If a person stops the truck what transpires between the ZO and other Constables which resulted in an allegation of illegal gratification would not suo moto ^{be} deemed as ^{an intention} of his being a party unless the same is established.

19. In the above view of the matter, we also find that as per Rule 16 (ix) of the Rules while recording a finding of guilt it is incumbent upon the IO on the basis of evidence of both sides to state reasons to hold applicant guilty. A non-speaking finding is contrary to law as held by the Apex Court in **Sher Bahadur** (supra) as well as **Anil Kumar v. Presiding Officer**, 1985 SCC (L&S) 815.

20. The disciplinary authority, it appears, decided the case more on morality than on application of mind. The conclusion that applicant was

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responsible for an act of corruption and involvement in nefarious activities has brought the same alien material to support his conclusion as except the evidence that applicant has stopped the truck and then went of, no other evidence has come-forth in the inquiry to substantiate either the common intention or alleged charges of corruption. Accordingly the order of the disciplinary authority is a mechanical order and the evidence on record has not been scrutinized, which is his obligation before arriving at a finding.

21. The appellate order though absolves applicant of the charge of demand and entry money etc. but on the substantial evidence that applicant was posted in traffic and was present at the Mandoli point a common malafide intention has been inferred on suspicion, surmises and conjectures without any iota of evidence.

22. A Division Bench of the Principal Bench of this Tribunal in **ASI Satish Chand v. The Commisioner of Police & Ors.**, (OA No.101/2003) decided on 3.10.2003 in an identical situation merely because applicant therein was present without any over tract has not treated him to be *an accomplice* in the proceedings and this is despite drawing presumption and applying the rule based on propensity of probabilities. The probabilities and its preponderance would arise only when if there is some material or evidence to link applicant with the charge. If stopping of truck, as a Police Constable on dictate of the ZO is no misconduct, in absence of any corrupt motive attributed to applicant the common intention would not play any role and the aforesaid conclusion does not pass the test of a common reasonable prudent man. Accordingly, the findings arrived at are perverse and based on no evidence.

23. To be immoral and corrupt is a sin. Though in a disciplined force like Delhi Police any conduct indulging in corrupt activities has to be dealt with by a *Stevn* approach, we have also been witnessing the frequent instances of corruption by the Traffic Police but yet on morality we cannot upheld a punishment which is based on no evidence and has no legs to stand in the

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judicial scrutiny. The old maxim of *hate the sin not the sinner* still holds good. What is produced before us in the form of record is the only field on which we can operate. Traversing our right to consider other material would be against the judicial propriety. We have, therefore, no hesitation to hold that the orders passed by the authorities cannot be sustained in law.

24. In the result, for the foregoing reasons, OA is allowed. Impugned orders are quashed and set aside. Respondents are directed to re-instate applicant in service within one month from the date of receipt of a copy of this order. Applicant shall be entitled to all consequential benefits except back wages, which we have not accorded in the peculiar facts and circumstances of the case. Our conclusions deduced in this OA pertains to individual role of applicant and would not hold good to others as we have no occasion to examine their cases. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Vice-Chairman(A)
28.1.05

'San.'