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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2366/2004

This the 3rd day of August, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Virender Singh,
S.I., Delhi Police (PIS No.28710412)
R/O C-60, Rajiv Nagar, Begum Pur,
New Delhi-110041.

... Applicant

(By Shri Anil Singal, Advocate)

versus

1. Govt. of N.C.T. of Delhi through
Commissioner of Police,
Police Headquarters,
I.P.Estate, New Delhi.
2. Joint Commissioner of Police Traffic,
PHQ, I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police Traffic,
PHQ, I.P.Estate,
New Delhi.

... Respondents

(By Ms. Renu George, Advocate)

ORDER

Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

Applicant, Shri Virender Singh, SI, has challenged punishment of forfeiture of two years' approved service temporarily for a period of two years entailing reduction in pay from Rs.5850/- to Rs.5500/- with immediate effect, in departmental proceedings against him. It has been alleged that around 2.45 p.m. on 19.3.2002 he had challaned the truck bearing registration No. MP 04K 2282 u/s 50/177 M.V.Act and demanded Rs.150/- (Rs.100/- as compounding money and Rs.50/- as illegal entry money). The currency note of Rs.50/- was passed on

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to a civilian person who escaped from the spot along with the currency note of Rs.50/- given to him by co-defaulter Constable Neeraj Kumar, when the RPG team was investigating and as such the recovery of illegally collected money could not be effected. A joint departmental enquiry had been ordered on 27.3.2002 against applicant, Constable Neeraj Kumar and Constable Kuldeep Singh. Applicant is stated to have been found actively conniving with his subordinates in collection of illegal money from trucks instead of stopping his subordinates from indulging in illegal activities.

2. The learned counsel of applicant stated that nothing was recovered from applicant nor was any demand/acceptance of money on the part of applicant established in the disciplinary enquiry against him. He stated that charges have been wrongly established against applicant in violation of the principles of natural justice and misreading of evidence. He raised the following contentions:

- (1) The departmental enquiry is vitiated on the ground of violation of rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980. While the allegations leveled against applicant amounted to commission of a cognizable offence by applicant in official discharge of his duties, no prior approval of the Additional Commissioner of Police as mandated by rule 15(2) *ibid* was obtained before ordering the departmental enquiry. In this connection, the learned counsel relied on order dated 22.9.2004 in OA No.3021/2003 : **Krishan Kumar v Govt. of NCT of Delhi & Ors.**, which in turn relying on the Division Bench decision of the Delhi High Court in the case of **Commissioner of Police v R.C.Shekharan** (CW-1553/2003) decided on 30.4.2003 held that there has to be an application of mind by the Additional Commissioner of Police in terms of rule 15(2) *ibid* whether the concerned person is to be dealt with departmentally or a criminal case should be registered, pointing out that in the present case no such decision had been taken at the level of the Additional Commissioner of Police in

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terms of rule 15(2). As such, the disciplinary proceedings against applicant would stand vitiated.

- (2) The learned counsel then stated that no PW had stated to have seen applicant receiving any money as bribe from anyone nor had they heard anything about the demand and acceptance of entry money. He further contended that PW-7 Shri Gurmukh Singh who had brought the truck in question from Bhopal to Mayapuri, Delhi had stated in his statement before the enquiry officer that his signatures were obtained on three blank papers, ^{or} one paper his signatures were obtained at three places and on two at one place each. Nothing was written on these papers at the time of his putting signatures. He had not made any statement earlier and had stated that the statement made before the enquiry officer was correct which had not been made under any pressure or fear. The learned counsel stated that PW-7 who is the main witness who had been stopped by the PRG team and had gone to applicant and his colleagues along with the PRG team, did not depose anything against applicant in support of the charge. He stated that the statement of witnesses other than PW-7 could not be relied upon for the finding of guilt against applicant. Respondents cannot be permitted to rely on a statement prior to the statement recorded by the enquiry officer as he had merely put his signatures on blank papers, in the PE. No weightage can be given to any such statement in preference to what the statement has stated in the DE. The learned counsel contended that as per the provisions contained in rules 15(3) and 16(iii) of the Rules *ibid*, the statement during the PE can be brought on record and considered only when the witnesses are no longer available and not when they are examined in DE. Thus reliance of the statement of PW-7 recorded in PE in preference to the statement recorded during DE is in violation of the aforesaid rules.

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(3) The learned counsel of applicant then took exception to recalling and re-examining PW-2 Inspector Rajbir Singh Malik. After examination of all the PWs, he contended that such a procedure is violative of rule 16 *ibid*. The enquiry officer cannot cross examine the PWs or DWs or re-examine by recalling them and as such he had exceeded his jurisdiction, and without any competence assumed the role of prosecutor. The enquiry officer had also cross examined PW-7 in order to fill up the gaps in the enquiry without providing any opportunity to applicant to re-cross examine PW2 and PW7. The learned counsel maintained that because of these *lacunae* in the procedure, the whole enquiry is liable to be set aside and quashed.

3. The learned counsel of respondents opposed the contentions made on behalf of applicant. He has also produced the related DE file in support of his contentions.

4. As regards prior approval of the Additional Commissioner of Police in terms of rule 15(2) *ibid*, the learned counsel stated that the Joint Commissioner of Police (Traffic) had kept in mind the provisions of rule 15(2) and directed that regular DE be initiated against applicant and his co-defaulters.

5. The learned counsel of respondents stated that the enquiry officer has discussed the evidence of PW7 recorded by him and mentioned that PW7 had not altogether denied the incident of 19.3.2002. PW7 had admitted that he was stopped and questioned by the traffic staff in plain clothes regarding demand of illegal money with challan money by the staff. The learned counsel stated that the enquiry officer has stated that PW7 had admitted his signatures on Ex.PW1/A and PW1/B but had before him stated that his signatures were obtained on blank papers. The enquiry officer has stated that PW7 has been won over by applicant and his co-defaulters on the point of handing over of currency notes to him by

PW1. He contended that the earlier statement of PW7 was not taken into consideration and as such there has been no violation of the provisions of rules 15(3) and 16(iii) of the rules *ibid*.

6. As regards re-examination of certain witnesses and also cross-examination of PW7 by the enquiry officer, the learned counsel stated that enquiry officer could summon witnesses whose statements have been recorded earlier for clarification of statements made by them. He stated that no provisions of law have been violated in recalling and re-examination of certain witnesses and cross examination of PW7 by the enquiry officer.

7. We have considered the respective contentions of parties and also carefully perused the record produced by respondents.

8. For proper adjudication in this case, it would be appropriate to extract the provisions of rules 15(2), 16(iii) and 16(viii) of the Delhi Police (Punishment & Appeal) rules, 1980 -

“15. Preliminary enquiries. – (1) xxx xxx

(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.”

“16. Procedure in departmental enquiries – The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where *prima facie* the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer:

(i) xxx xxx

(ii) xxx xxx

(iii) If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-

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examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and records so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements of documents thus brought on record."

"(viii) After the defence evidence has been recorded and after the accused officer has submitted his final statement, the Enquiry Officer may examine any other witness to be called "Court Witness" whose testimony he considers necessary for clarifying certain facts not already covered by the evidence brought on record in the presence of the accused officer who shall be permitted to cross-examine all such witnesses and then to make supplementary final defence statement, if any, in case he so desires."

9. Whether in terms of rule 15(2) *ibid* prior approval of the Additional Commissioner of Police/Joint Commissioner of Police, Traffic for ordering departmental enquiry had been obtained or not, we have carefully gone through the departmental file produced by respondents for our perusal. The departmental file indicates that while a note was submitted to the Joint Commissioner of Police, Traffic pertaining to the act of applicant along with others also stating that the concerned staff were placed under suspension, it is not established from the record that there was any consideration as to whether a criminal case should be registered against applicant and the alleged co-defaulters or not. In terms of rule 15(2) *ibid* departmental action could be ordered after the approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered or departmental enquiry should be held. This provision specifically requires an application of mind by the Additional Commissioner of Police to make a choice between registration of a criminal case and institution of a

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departmental enquiry. This ^{has to be} a positive act on the part of the Additional Commissioner of Police rather than a mere procedural requirement. In the present case, the departmental record does not indicate application of mind on the part of the Additional Commissioner of Police/Joint Commissioner of Police, Traffic in terms of the provisions of rule 15(2). Obviously, the legal requirement as stated above has not been complied with. The ratio *decidendi* of the case of **Krishan Kumar** (supra) is certainly applicable to the facts of the present case.

10. While it has been contended on behalf of applicant that the present is a case of no evidence, respondents have contended that the preponderance of probability and evidence as well as material on record proves the charge against applicant. The learned counsel of respondents has contended that even in the statement recorded by the enquiry officer PW7 had not altogether denied the incident of 19.3.2002. He had admitted that he was stopped and questioned by the traffic staff in plain clothes regarding demand of illegal entry money by the staff with challan money. One of the staff members sat with him in his truck and the truck was stopped at Ring Road where he was challaned for Rs.100/-. Further that he had admitted his signatures on Ex.PW1/A and PW1/B though later on he stated that his signatures were taken on blank papers. The enquiry officer has stated that PW7 had been won over by the defaulters on the point of handing over currency notes to him by PW1 through memorandum EX.PW1/A and payment of Rs.50/- as illegal entry money demanded by the defaulter. Discussion by the enquiry officer and also reference to PW7's signatures on Ex.PW1/A and PW1/B in the PE does suggest that the enquiry officer has given preference to the earlier statement in the PE than the statement made to him by PW7. A statement recorded at a later stage over signatures obtained on a blank paper cannot be relied upon at all in preference to the statement made by a witness before the enquiry officer. This is absolutely prohibited in terms of rule 16(iii) *ibid*. The earlier statement could be taken on record by the enquiry officer or relied upon in

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case the presence of such a witness could not be procured "without undue delay, inconvenience or expense". Such has not been the case presently. Shri Gurmukh Singh, PW7, appeared before the enquiry officer. His statement had been recorded by the enquiry officer. The earlier statement of this witness is inadmissible in terms of rule 16(iii). No reliance whatsoever can be placed on the earlier statement of this witness. No good reasons have been assigned by the enquiry officer for believing that this PW had been won over by the defaulters. The statement of PW7 regarding being stopped and questioned by the traffic staff in plain clothes and his going to applicant and his colleagues by his truck and getting challaned and paying Rs.100/- as challan money cannot be said to have established the charge against the applicant. The evidence of other witnesses vis-à-vis the statement of this witness are not material for establishing the charge against applicant. It is also not established that any money was recovered from the possession of applicant or his colleagues. There must be overt act to the act of stopping the vehicle which is missing in the present case. In our view, here is a case of no evidence regarding demand/acceptance of money on the part of applicant.

11. It has been contended on behalf of applicant that the enquiry officer recalled and re-examined PW2 after examination of all the PWs and also cross examined PW7 in order to fill up the gaps in the enquiry and to bring the evidence in the enquiry against applicant with the aim of achieving the objective of proving the charge. The learned counsel maintained that such a procedure is impermissible in law and the enquiry is liable to be set aside/quashed on the basis of this infirmity. In rebuttal the learned counsel of respondents stated that the enquiry officer can re-examine a witness and also cross examine a witness who has already been examined, for clarification of certain facts. The learned counsel of respondents could not refer to any provision of rules or law in support of his contention. The provision of rule 16(viii) *ibid* is the only provision under which

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after the evidence of prosecution and defence witnesses has been closed, the enquiry officer can examine some witnesses. Vide this rule the enquiry officer can examine some other witnesses who have not already been examined as "court witnesses" whose testimony is considered necessary for clarification of certain facts not already covered by the evidence on record in the presence of the accused officer who has a right to cross examine all such witnesses and can then make supplementary final defence statement as well. Re-examination of PW2 and cross examination of PW7 after completion of examination of these witnesses is, therefore, illegal in terms of the related provision cited above. This is a serious flaw committed by the enquiry officer.

12. In result, having regard to the above discussion, we allow the present OA quashing and setting aside the impugned orders of punishment in question. Applicant shall be entitled to consequential benefits, such as restoration of original pay, arrears, seniority, consideration for promotion, if any. No costs.

S. Raju
(Shanker Raju)
Member (J)

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A) 3.8.05

/as/