

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.179/2004

This the 2ⁿ day of June, 2004

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE SHRI S.A.SINGH, MEMBER (A)

Yashveer Singh Sharma
[Ex. Ct. 4805/DAP],
S/O Rameshwar Prasad Sharma,
WZ-344/98, F-Block,
Virender Nagar,
Post Office Virender Nagar,
Hari Nagar, New Delhi.

... Applicant

(By Shri Shyam Babu, Advocate)

- versus -

1. Govt. of NCT of Delhi through
its Chief Secretary,
Players Building,
I.P.Estate, New Delhi.
2. Commissioner of Police Delhi,
Police Headquarters,
I.P.Estate, New Delhi.
3. Jt. Commissioner of Police
(Armed Police), Police Headquarters,
I.P.Estate, New Delhi. ... Respondents

(By Shri Harvir Singh for Ms. Pratima Gupta, Advocate)

O R D E R

Hon'ble Shri Justice V.S.Aggarwal :

Applicant faced disciplinary proceedings with respect to the assertions contained in the following summary of allegations :

"It is alleged against ASI Mange Ram Sharma No.3446/D, HC Veer Pal Singh, No.296/T, Ct. Sanjeev Kumar 6475/T, Ct. Yashveer Singh, No.3014/T and Ct. Dinesh Kumar No.704/T that while posted in Seemapuri Traffic Circle, Delhi on 3/12/2000 they were found present at Mandoli Chungi Red Light point Wazirabad Road along with two DHG constables namely Rambir Singh, No.7826/DHG and Vinod Kumar No.7829/DHG and one private person namely Devender Kumar Agarwal s/o Sh.

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Jai Prakash Agarwal c/o Sh. Vinod Singhal 20 Foota Road Pratap Nagar, Siboli Nand Nagri, Delhi. All the above three traffic constables and DHG were standing on Central Verge. They signalled to stop truck No. HR-37-3475 at about 12 noon. Ct. Sanjeev Kumar approached near the truck and asked the driver Mohd. Ahtegsham s/o Bashir Ahmed r/o Vill. Gana Khari P.O. Guna, Distt. Saharanpur UP to come down from the truck and took him to the Z.O. Z.O. ASI Mange Ram Sharma challaned him vide challan No. L-907835 u/s 29RRR.177 MV Act and demanded Rs.150/- (Rs.100/- for compounding amount and Rs.50/- entry fee). HC Veer Pal Singh who was also standing with the Z.O. near traffic booth obtained the said amount from the truck driver and he handed over Rs.50/- to ZO and Rs.100/- to the private person Mr. Devender for safe custody to avoid recovery from their person in the event of Raid. PRG team caught them red handed on the spot. Signed GC note of Rs.50/- denomination was recovered from the right side pocket of uniform shirt of ZO Mange Ram kept alongwith Rs.2800/- obtained as compounding amount short by Rs.100/- of cash challan made 3 (three) on 2.12.2000 and 26 on 3.12.2000 each cash challan of Rs.100/-. An amount of Rs.1780/- including signed GC note of Rs.1000/- denomination was recovered from the right side pocket pant pocket of Sh. Devender Kumar kept in haphazard manner which was given to him by above mentioned traffic staff who had collected illegal mondy from commercial vehicles. ZO ASI Mange Ram alongwith above traffic staff, DHG constables and private person Mr. Devender Kumar assembled at the spot with common malafide intention of collecting illegal entry money from the commercial vehicles.

From the above facts it is clear that Inspr. Azad Singh No.D-1847 TI SPC being supervisory officer failed to supervise his subordinate staff properly and thus the staff under his supervisory control were allowed to indulge in malpractices."

2. The enquiry officer had been appointed and he had framed the charge basically on the lines of the assertions in the summary of allegations and concluded that the same stood proved as against the applicant and others. During the duscussion, the enquiry officer returned the following findings :

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".....As such his earlier statement was brought on the record of D.E. 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 notes in the presence of the 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/- denomination, having initials of raiding officer, were later recovered from Shri Devender Kumar and ASI Mange Ram, respectively on the spot by the PRG team....."

3. The disciplinary authority agreed with the findings of the enquiry officer and thereupon passed an order dismissing the applicant from service. As against the same, the applicant preferred an appeal which was heard by the Commissioner of Police. The commissioner of Police dismissed the appeal but while dismissing the same had held :

".....As per testimony of PWs, all the three constables were standing near the Z.O. Therefore, their involvement cannot be doubted. The appellants have committed a grave misconduct by indulging in malpractice/corrupt activities. The disciplinary authority had recorded his finding about the complete unfitness of the appellants for the police force. The undersigned fully agree with the conclusion of the disciplinary authority....."

4. By virtue of the present application, the applicant seeks to assail the orders passed by the disciplinary as well as the appellate authorities.

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Needless to state that the application has been contested.

5. During the course of arguments, the learned counsel for the applicant raised a number of pleas. As for present, we deem it unnecessary to delve into those controversies. But one of the contentions raised that so far as the applicant is concerned, he had no common intention, if any; there is no evidence of demand of illegal gratification on the part of the applicant nor there is any evidence of acceptance of money in the alleged nefarious activity. Therefore, according to the learned counsel, while the applicant was standing at a distance, he cannot be held responsible for the acts of others.

6. In support of his argument, the learned counsel referred to us the fact that the enquiry officer had clearly held that so far as the applicant was concerned, he was at a different place as the Z.O. had detailed the constables on different points. We have already reproduced above the said portion of the report of the enquiry officer. The appellate authority while dismissing the appeal, on the contrary, had recorded that as per the testimony of the PWs, all the three constables were standing near the Z.O. It is on the strength of these facts that it was urged vehemently that without recording otherwise, the finding is totally contrary to the evidence on the record and the findings of the enquiry and the disciplinary authorities. It,

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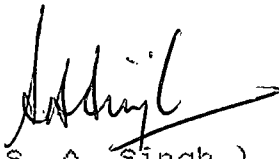
therefore, necessarily should be held further that the applicant was never near the scene of the incident.

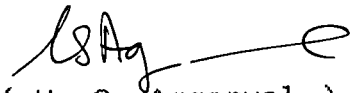
7. In our opinion, the said finding may reflect on the merits of the matter but we hasten to add that it is for the authorities to reappraise the evidence and come to the said conclusion. The appellate authority in this regard indeed has recorded a finding contrary to that of the enquiry officer. We have already pointed that the report of the enquiry officer was accepted by the disciplinary authority.

8. In face of this ambiguity on the record which reflects on the ultimate finding, we deem it necessary that the matter should be remitted to the appellate authority to go into the controversy afresh and pass a fresh order in accordance with law.

9. Resultantly, we quash the order passed by the appellate authority and direct that a fresh order taking note of the evidence and facts on record may be passed. Nothing said herein should be taken as any expression of opinion on the merits of the matter.

10. The OA stands disposed of as above.


(S. A. Singh)
Member (A)


(V. S. Aggarwal)
Chairman

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