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**Central Administrative Tribunal
Principal Bench**

**OA No. 2706/2004
With
OA NO. 2704/2004**

New Delhi, this the 19th day of January, 2006

**Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. N.D. Dayal, Member (A)**

OA NO. 2704/2004

HC Shri Bhagwan,
67-T,
RND/Traffic Unit,
M/Delhi.

...Applicant

(By Advocate: Shri Arun Bhardwaj)

-Versus-

1. Commissioner of Police,
PHQ, MSO Building,
I.P. Estate,
New Delhi.
2. Jt. Commissioner of Police,
Traffic,
PHQ, I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
Traffic, NDR,
I.P. Estate, PHQ,
Delhi.

(By Advocate: Shri Harvir Singh)

OA No. 2706/2004
Ct. Devi Sharan,
1809-T,
RND/Traffic Unit,
N.Delhi.

...Applicant

(By Advocate: Shri Arun Bhardwaj)



-Versus-

1. Commissioner of Police,
PHQ, MSO Building,
I.P. Estate,
New Delhi.
2. Jt. Commissioner of Police,
Traffic,
PHQ, I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
Traffic, NDR,
I.P. Estate, PHQ,
Delhi.

(By Advocate: Shri Harvir Singh)

O R D E R (ORAL)

Mr. Shanker Raju, Member (J):

On a joint departmental proceedings and being aggrieved by a common penalty order dated 11.11.2003 imposing major penalty as well as a common appellate order dated 31.8.2004, these OAs are being disposed of by this common order.

2. Applicant in OA No. 2704, an Assistant Sub Inspector, and applicant in OA No. 2706/2004, a Constable, being proceeded against in a common proceedings on the allegations that while posted at Traffic Branch of Central District on 14.11.2002 in the wake of PRG Team conducting a vigilance check, illegal entry fee was recovered from Home Guard Constable who fled from the spot, by alleging that instead of restraining the subordinates from illegal

activities applicants allegedly having been found actively involved in such illegal activities of collection of illegal entry money.

3. In an enquiry held concluded the charge against the applicants on which a major penalty of forfeiture of five years' approved service with cumulative effect was imposed and the same was upheld in appeal, which have been assailed by the applicants in the present OAs.

4. Shri Arun Bhardwaj, learned counsel for the applicants had taken several legal contentions to assail the impugned orders but, at the outset, it is stated that no misconduct is attributable to the applicants and they have been punished on 'no evidence', 'suspicion', 'surmises' and 'conjectures', which cannot be countenanced in law.

5. Learned counsel would contend that no public witness had deposed as to demand or acceptance of illegal entry money by the applicants and yet the bus conductor, who had not supported the prosecution, has been illegally and against the rules declared hostile. The enquiry officer without recording reasons as to how the misconduct is attributable to the applicants has established the charge against the applicants and held them guilty of the charge.

6. Learned counsel has also impugned the punishment order on the ground that without any evidence as to

connivance of the applicants with Home Guard Constable, punished the applicants merely on 'suspicion', 'surmises' and 'conjecture' and the appellate authority also had not at all dealt with this aspect of the matter and on ipsi dixit maintained the punishment, which is not in accordance with law.

7. On the other hand, respondents' counsel Shri Harvir Singh opposed the contentions and stated that the applicants had been punished on legal evidence after following due process of law. Though there is no recovery from the applicants yet the testimony of PRG Team officials is indicative of the fact and as preponderance of probability is the rule, circumstantial evidence is sufficient to hold the guilt of the applicants. It is also stated that the punishment imposed is commensurate with the misconduct.

8. We have careful considered the rival contentions of the parties and perused the material available on record.

9. In judicial review, in disciplinary proceedings we cannot sit as an appellate authority to either re-appraise the evidence or to examine the correctness of the charge yet the only aspect open is when a finding recorded does not pass the test of a common reasonable prudent man but is based on 'suspicion', 'surmises' and 'no evidence'

constituting 'no misconduct', inference would be warranted as per law.

10. In *Union of India vs. H.C. Goyal*, AIR 1964 (SC) 364 and also in *Kuldeep Singh vs. Commissioner of Police*, JT 1998 (8) (SC) 603, it has been held that 'suspicion' and 'surmises' would not take place of proof and perverse finding, without any evidence to link or to conclusively establish the charge, would not be sufficient to hold guilty, even on preponderance of probability, a delinquent officer in a disciplinary proceedings. Recently a High Court's decision Andhra Pradesh in *Union of India vs. G. Krishna*, 2005(3) ATJ 359, held as under:

"11. In NAND KISHORE V. STATE OF BIHAR AIR 1978 SC 1277, it was 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 conclusion 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.

12. The High Court in cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate Court/authority. The jurisdiction of the High Court in such cases is very limited, for instance where it is found that the domestic enquiry is

vitiated because of the non-observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence and/or the punishment is totally disproportionate to the proved misconduct of an employee. (See. INDIAN OIL CORPORATION Vs. ASHOK KUMAR ARORA (AIR 1997 SC 1030)).

13. A broad distinction has to be maintained between the decision which is perverse and those, which are not. If a decision is arrived at on no evidence or it is thoroughly unreliable or no reasonable person can act on it, the Order would be perverse. But, if there is some evidence on record, which is acceptable and which could be relied upon, how so ever compendious it may be the conclusion would not be treated as perverse and the findings would not be interfered with (See: KULDIP SINGH Vs. COMMISSIONER OF POLICE (AIR 1999 SC 677)).

14. It is clear from the aforesaid decisions that in departmental proceedings, the disciplinary authority is the sole Judge of a fact and in case an appeal is presented to the appellate authority, the appellate authority has also the powers of a Judge and jurisdiction to re-appreciate the evidence and come to its own conclusion on facts being the sole fact finding authority. Once finding of fact based on evidence is recorded, the High Court in writ jurisdiction may not normally interfere with the proceedings, unless it finds that the recorded findings were based either on no evidence or that the findings are wholly perverse and which are legally untenable. The adequacy or inadequacy is no permitted to be canvassed before the High Court, since High Court does not set as an appellate authority over the factual finding recorded in departmental proceedings. While exercising the power of the judicial review, the High Court cannot, normally speaking, substitute its own conclusion with regard to the guilt of the delinquent for the departmental authorities. Even so far as the

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imposition of the penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary authority is either impermissible or such that it shocks the conscience of High Court, it should not normally substitute its own opinion and imposed some other punishment or penalty. Even though, the power of judicial review of being expected to be flexible and its dimension not closed, yet the Court in exercise of the power of its judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those Orders are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. The disciplinary enquiry is not a criminal trial. The Standard of proof required to be proved is preponderance of probabilities and not proof beyond reasonable doubt. It has to be remembered that the judicial review is directed not against the decision, but is confined to the examination of the decision making process. In the words of Lord Haltom in Chief Constable of the North Wales Police v. Evans (1982) 3 All ER 141, it was observed: -

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the "Court."

11. In the conspectus of above, charges against the applicants were that they were at the spot and had not restrained their subordinates from involving in illegal

activities and even found them actively involved in such activities. The evidence came forth of PW 7 Ashok Kumar, who is a bus conductor, clearly shows that he had stated not to have been demanded any amount or stoppage of bus by any of the police officials as well as demand or acceptance of illegal entry fee. The PRG Team official PW1 SI Rajiv Ranjan clearly stated that he was sitting along with the Inspector Rajbir Singh in the rear of the bus and had neither heard nor seen ASI demanding money and the money was never recovered from either of the applicants.

PW2 SI Surender Dalal has adopted the same cross-examination. Enquiry Inspector Rajbir Singh also reiterated that he had not heard the conversation between the applicants and driver. In this view of the matter, the discussion of the enquiry officer is relevant to be highlighted.

"I have carefully gone through the statements of PWs, DWs and written statement submitted by the delinquent officer.

To prove the above mentioned allegation against the delinquent, total 9 PWs were cited in the list of PWs and examined during DE proceedings. PW 3 Ct. Lokender No. 1247/T, PW4 Ct. Kunwar Pal Singh No. 2665/T, PW5 Ct. Kuldeep Singh No. 3856/T and PW 9 Ct. Manoj Kumar No. 3450/T are formal witnesses who have produced the relevant record i.e. posting order, duty roster and the Mud register being maintained in L0 branch regarding PRG raids.

PW1 SI Rajeev Ranjan No. D/3554, PW 2 SI Surender Dalal No. D/3561, LPW 6

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Inspr. Jitender Kumar and this Insp. Rajbir Singh are the members of PRG raiding team. In their statements during DE proceeding all these PWs have categorically corroborated prosecution story and allegations contained in the charge against the delinquents.

PW 7 Ashok Kumar is the main material witness in this DE. In his statement during D.E. preceding this PW has backtracked from his earlier statement recorded by Insp. PRG and has denied regarding any demand or acceptance of the entry by the delinquents. This PW has not corroborated the prosecution story. He has not supported the prosecution story and stated that his signature was obtained on blank paper and his statement was not recorded by any police officer. His signature simply obtained on plain paper. His explanation does not seem to be plausible as his signature was also found on seizure memo ex PW 6/C along with the signature of the defaulters. It appears that he has been won over by the defaulter.

Conclusion:

To sum up the whole discussion it is concluded on the basis of evidence produced during the inquiry that the charge framed against ASI Shree Bhagwan No. 2215/T and Ct. Devi saran No. 1809/T is proved, as I find no evidence to disbelieve the statements of the member of PRG team."

12. If one has regard to the above, the finding of the enquiry officer, as to corroboration of prosecution story and allegations contained in the charge, is perverse. None of the witnesses in the enquiry had ever stated that they had either seen or heard applicants demanding bribe or accepting the same. Recovery effected from Constable Devi

Saran cannot be imputed upon the applicants in order to establish the charge on ipsi dixit rather credible legal evidence has to be adduced. The Enquiry Officer's conclusion is not as per Rule 16(ix) of the Delhi Police (Punishment & Appeal) Rules, 1980, as no reason has been given as to how the prosecution evidence has outweighed the defence version. There is no reference to the defence produced by the applicants. This sort of inconclusive finding is against the law as held by the Apex Court in ***Anil Kumar vs. Presiding Officer***, 1985 (SCC) (L&S) 873.

13. The disciplinary authority in the order passed merely on the presence of the applicants at the spot without any overtact, presumed their guilt.

14. In a departmental enquiry even though preponderance of probability is rule but sufficient evidence has to be put forth which conclusive points towards guilt of the accused delinquent officer but mere 'suspicion' will not take place of proof holding that there is conclusive material whereas there is no iota of evidence against applicants which could have connected them in any manner to the allegations of either demanding or accepting illegal money. The order passed by the disciplinary authority is certainly based on 'presumption' and 'no evidence'.

15. The appellate authority in its order has, on the ground that Constable Dev Saran stopped the bus, which is not established otherwise, imputed the allegations of demand and acceptance of bribe. In a disciplinary proceedings, it is essential for the disciplinary authority and the enquiring authority to individually establish the charge and specific allegations of misconduct conducted allegedly by another officer cannot be linked with the other unless sufficient evidence to show that the entire episode was an aftermath of common intention which requires an essential pre-concert of mind. The punishment imposed even by taking the test of common reasonable prudent man would be a 'conjecture' and a case of 'no evidence'.

16. Having satisfied that neither any misconduct has been found against the applicants nor any evidence to support the charge holding the present cases of 'no evidence', the findings recorded in appeal by the authorities cannot be sustained in law. Other legal grounds are left open.

17. In the result, for the foregoing reasons, both these OAs are allowed. Impugned orders are set aside. Applicants are entitled for consequential benefits. No costs. ^{Copy kept}
_{in each file.}


(N.D. Dayal)

Member (A)


(Shanker Raju)

Member (J)

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