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**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.2733/2004**

New Delhi, this the <sup>15</sup> 26 day of July, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman**  
**Hon'ble Mr. S.A.Singh, Member (A)**

HC (Dvr) Narendar Kumar  
S/o Sh. Fateh Singh  
R/o U-26, Gali No.4  
R/o U-26, Gali No.4  
Gautam Colony, Narela  
Delhi.

... Applicant

**(By Advocate: Sh. R.K. Jain)**

Versus

1. Govt. of NCT of Delhi  
Through Commissioner of Police  
Police Headquarters  
IP Estate  
New Delhi.
2. Addl. Commissioner of Police  
Security  
Police Headquarters  
IP Estate  
New Delhi.
3. Deputy Commissioner of Police  
VIII Bn, DAP  
New Delhi.

... Respondents

**(By Advocate: Sh. Ajesh Luthra)**

**O R D E R**

**By Mr. Justice V.S. Aggarwal:**

Applicant is a Head Constable (Driver) in Delhi Police. By virtue of the present application, he seeks to assail the order passed by the disciplinary authority forfeiting one year's approved service of the applicant entailing reduction in his pay from Rs.5000

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to Rs.4900 and an order of the appellate authority dismissing the appeal on 16.6.2004.

2. The relevant facts in sequence are that on 21.8.2000, the applicant was served with the following show cause notice:

“You ASI Babu Lal No.935/D I/C Van, Const. Virender Singh No.1816/PCR, G.Man and H.C. Driver Narinder Singh, No.3852/PCR were detailed for duty on 21.8.2000 from 8 AM to 8 PM on PCR Van C-59. It came to the notice that at about 18 noon you approached at H-14 Hudson Line Kingsway Camp i.e. the residence of Mr. Hitish Malik where some construction work was going on and demanded money from the owner Mr. Malik who approached to P.S. Mukherji Nagar to complain against you. Where the matter was finalized by the SHO Mukherji Nagar by the way of compromise.

The above act at your part amounts to gross misconduct, carelessness and dereliction in the discharge of your official duty.

You are, therefore, calling upon to show cause as to why your conduct should not be censured for the said lapse. Your reply if any, should reach the undersigned within 15 days from the date of receipt of this notice failing which necessary action will be taken against you.”

3. Thereafter, the said show cause notice to censure the conduct of the applicant was withdrawn by the Assistant Commissioner of Police. It reads:

“The Show Cause notice for censure issued to ASI Babu Lal No.935/D. Ct. Virender Singh, No.1816/PCR and HC (DVR) Harinder Singh, No.3852/PCR vide this office No.1297-98/SO/ACP/NNS, dated 2.8.2000 is hereby withdrawn on administrative grounds.”

4. Thereafter, the Deputy Commissioner of Police after obtaining the prior approval of the Additional Commissioner of



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Police under Sub-Rule (2) to Rule 15 had directed that departmental action should be initiated against the applicant. The said order reads:

"It is alleged against ASI Babu Lal, No.935/D (PIS No.29670126) and HC (Dvr.) Narender Kumar No.3852/PCR (PIS No.28862268) that while posted at NWZ/PCR they were detailed to perform duty at PCR Van C-59 as I/C Van and driver respectively on 3.8.2000 from 8.00 A.M. to 8.00 P.M. A complaint was received in Flying Squad Vigilance Branch/PHQ vide DD No.18 dated 3.8.2000 from one Shri Ritesh Malik r/o H.No.14, Hadsan Lane, Kings Way Camp, Delhi alleging therein that the staff of PCR Van-312/96 ASI Babu Lal and HC (Dvr.) Narender Kumar, demanded money otherwise they will shoot him dead and the (same complaint alongwith report of DCP/North-West Distt., issued vide letter No.5575/Compt. (NW) dated 21.10.2000 was received in this office vide DCP/Vigilance Delhi's memo. No.F.24(16)/PCR/2008/36296/Vig. HA-AU, dated 8.11.2000.

On receipt of complaint from Vigilance Branch/PHQ, Insp. Jawahar Singh of NWA/PCR enquired into the matter and examined Sh. Joginder Kumar s/o Sh. Sant Ram, Ritesh Malik s/o Joginder Kumar, Sh. Sant Ram all the residents of 14-H, Hadsan Lane, Kings Way Camp, Delhi and Sh. Siri Ram Batra s/o Late Sh. Tej Singh Batra r/o Shop No.27, Hadsan Lane, Kings Way Camp, Delhi. Shri Sant Ram also submitted a photo copy of complaint addressed to SHO Mukherji Nagar against the alleged PCR staff by hand in which the complaint has alleged that he was constructing a shop No.14 Main Bazar Hadsan Lane, Kings Way Camp according to the map approved by D.D.A. At 11.30 A.M. an ASI and a Const. alongwith Police Gypsy came at the shop. They threatened to pay the money otherwise they will stop the construction. After enquiry, Insp. Jawahar Singh submitted a report dated 18.11.2000 concluding therein that the allegation Narender Kumar, No.3852/PCR is proved.

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The above act on the part of ASI Babu Lal, No.935/D and HC (Dvr.) Narender Kumar No.3852/PCR amounts to gross misconduct, indulging in corrupt activities is an act of unbecoming the member of disciplined force for which they are liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.

Therefore, I, Dr. M.Ponnaian, IPS, DCP/PCR, Delhi after obtaining the prior approval of Addl. CP/PCR & Commn., Delhi conveyed vide U.O. No.415/I/C/Appeal/Addl. C.P./PCR & Commn., dated 2.2.2001 under rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980, hereby order to conduct a regular departmental enquiry against ASI Babu Lal, No.935/D and HC (Dvr.) Narender Singh, No.3852/PCR. The DE is entrusted to Sh. S.D.Sharma, ACP/NA/PCR for conducting its proceedings on day to day basis and to submit its findings expeditiously. The E.O. will also submit the weekly progress report of the D.E. on every Friday to the undersigned."

5. By and large, the summary of allegations was similar which need not be reproduced. But suffice to say that what was contemplated was to initiate major penalty proceedings. The inquiry officer returned the findings stating that the charge stood proved. In pursuance thereto, the Deputy Commissioner of Police had passed the order, to which we have referred to above, and the appeal has since been dismissed.

6. In the reply filed, the respondents plead that the departmental action had been initiated against the applicant on the allegation that while posted at North West Zone in the Police Control Room (PCR), the applicant and others were detailed for performing the duties at the PCR Van. A complaint was received in Flying Squad Vigilance Branch from one Sh. Ritesh Malik alleging

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that the staff of PCR Van had demanded money otherwise they will shoot him dead. On receipt of a complaint from Vigilance Branch, Inspector Jawahar Singh enquired into the matter and recorded the statements. He reported that the allegations were proved. It is thereafter that the departmental proceedings had been initiated. Respondents contend that the procedure had been followed. There is no procedural flaw therein nor there is any ground to set aside the departmental action.

7. We have heard the parties' counsel and have seen the relevant record.

8. Mainstay of the argument of the applicant was that earlier a show cause notice was served with minor penalty to censure the conduct of the applicant but the said notice had been withdrawn without reserving right to take further action and, therefore, the second notice deserves to be quashed. In support of his argument, he relied upon a decision of the Principal Bench of this Tribunal in the case of **AMAR CHAND AND ORS. v. JOINT COMMISSIONER OF POLICE AND ORS.**, OA No.2176/1998, decided on 13.9.2000.

9. Before venturing into the ratio deci dendi of the above said decision, it would be necessary to mention that on 28.4.1993, the Delhi Police had issued a Circular that reasons should be mentioned in withdrawing the departmental action on administrative grounds. The same is:

"It is, therefore emphasised upon all the disciplinary authorities to take care that clear and appropriate reasons are mentioned in the orders withdrawing or dropping action in a disciplinary matter of show cause notice. Such



orders must also clearly mention that the disciplinary proceedings or show cause notice is being dropped without any prejudice to further disciplinary action which could be subsequently taken in the matter.”

10. In almost similar terms are the instructions that had been issued by the Government of India vide DG, P&T's Letter No.114/324/78-Disc. II, dated 5.7.1979. It reads:

**“(9) Reasons for cancellation of original charge-sheet to be mentioned if for issuing a charge-sheet.** – It is clarified that once the proceedings initiated under Rule 14 or Rule 16 of the CCS (CCA) Rules, 1965 are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the Delinquent Officers unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, important that when the intention is to issue a subsequent fresh charge-sheet, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges the same was based on.”

11. However, before the said instructions become applicable, it has to be remembered that facts of each case have to be examined in the light of what has transpired. In the case of **Amar Chand and Ors. (supra)**, the same authority, after issuing the notice for censure of the conduct, had not reserved a right to take other departmental action and thereafter, another show cause notice was issued. The same is not the position herein. In the present case before us, we have already given the sequence of

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events. At the risk of repetition, we mention that under Rule 6 of the Delhi Police (Punishment & Appeal) Rules, 1980, Assistant Commissioner of Police is competent to impose the minor penalty of censure. The first notice had been issued on 21.8.2000 for censuring the conduct of the applicant which was subsequently withdrawn. It appears that when the complaint was received, the matter had been referred to the Vigilance Branch and Inspector Jawahar Singh had looked into the same. He had submitted the report only on 18.11.2000. In other words, before the report of the Vigilance Officer could be received and the disciplinary authority could apply its mind for major penalty, the Assistant Commissioner of Police seemingly had issued the notice to show cause. The present action, therefore, is totally based on subsequent report that had since been received. Not only that, as is apparent from the Sub-Rule (2) to Rule 15 of Delhi Police (Punishment & Appeal) Rules, when a preliminary inquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental action can only be initiated after obtaining the prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental inquiry should be held.

12. Earlier show cause notice, which we have referred to above, had been issued before the preliminary inquiry report had been received. The compliance of Sub-Rule (2) to Rule 15 had never been made. The summary of allegations shows that

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applicant had demanded an illegal gratification. Therefore, the notice that was otherwise issued was *non est* and departmental action, when such was the position, could not be taken.

13. On behalf of the respondents, reliance was placed on the decision in the case of **STATE OF ANDHRA PRADESH v. N. RADHAKISHAN**, (1998) 4 SCC 154. However, in the cited case, the notice had not been withdrawn and after that another notice had been served. The Supreme Court held that in this backdrop, no prejudice was caused. That is not the position herein, therefore, this decision is distinguishable.

14. Taking stock of the totality of the said facts, it must be stated that the decision in the case of **Amar Chand and Ors. (supra)** is totally on different facts.

15. In that event, it was urged that it is a case of no evidence. The learned counsel for the applicant took pains to read to us the statements particularly of PW-5, Shri Joginder to contend that he did not support the case of the Department and that the statement of Shri Sant Ram, PW-3 should not be believed.

16. We do not dispute that if it is a case of 'no evidence', this Tribunal should not hesitate to quash the proceedings. But the Tribunal will not sit as a Court of appeal over the decision of the administrative authorities. The scope for interference would be limited. Where there is 'no evidence' on the record or no reasonable person can come to such a conclusion, the Tribunal will interfere.

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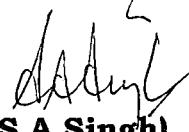
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17. In the present case, Shri Sant Ram, PW-3 before the inquiry officer specifically identified the applicant and another, who had come to his shop and asked as to why the construction was carried in the shop and further they had demanded a bottle and a dabbi to be given to them. As such, the findings therefore, cannot be stated to be based on no evidence. Thus, we would not interfere in the facts of the present case.

18. In that event, the last submission was that the disciplinary authority has not applied the mind and the learned counsel referred to the fact that the disciplinary authority had recorded that he had **tentatively agreed** with the findings of the inquiry officer. However, one line cannot be read in isolation of the rest. The order should be read as a whole. It is obvious from the order of the disciplinary authority that he had found himself in agreement with the inquiry officer. Thereafter, the disciplinary authority, after discussing the facts, had imposed penalty.

19. No other arguments have been raised.

20. For these reasons, the Original Application being without merit must fail and is dismissed.

  
(S.A.Singh)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

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