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Central Administrative Tribunal
Principal Bench

OA No. 184/2004
With
OA No. 289/2004

New Delhi, this the 5th day of January, 2006

Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
Hon'ble Mr. Shanker Raju, Member (J)

Sohanbir & Ors.

(By Advocate: Shri Ashwani

-versus-

Govt. of NCT of Delhi & Ors.

(By Advocate: Shri Harvir Singh)

1. To be referred to the Reporters or ~~not~~? yes
2. To be circulated to outlying Benches? yes

S. Raju

(Shanker Raju)
Member (J)

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Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
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OA No. 184/2004

Sohanbir
Constable of Delhi Police
(PIS No. 28902265)
R/o F-40, Raj Puri Colony,
Pipe Line, Loni Border,
Gaziabad, U.P. ...Applicant

(By Advocate: Shri Anil Singhal)

-versus-

Govt. of NCT of Delhi through

1. Commissioner of Police,
Police Head Quarters,
I.P. Estate, New Delhi.

2. Jt. Commissioner of Police,
Traffic, PHQ,
I.P. Estate, New Delhi.

3. Deputy Commissioner of Police,
Traffic (NR), PHQ,
I.P. Estate, New Delhi. ...Respondents

(By Advocate: Shri Om Parkash)

OA No. 184/2004

Const. Pradeep Kumar No. 3695-T,
S/o Shri Jagdish Prasad,
R/o Village & Post Office Ristal,
P.S. Loni, Ghaziabad-201 009. ...Applicant

(By Advocate: Shri Ashwani Bhardwaj)

-versus-

Govt. of NCT of Delhi through

1. Commissioner of Police,
Police Head Quarters,
Indraprastha Estate,
New Delhi.

2. Joint Commissioner of Police,
Traffic : Delhi,
Police Head Quarters,
Indraprastha Estate,
New Delhi.

3. Deputy Commissioner of Police,
Traffic (NR), Delhi,
Police Head Quarters,
Indraprastha Estate,
New Delhi. ...Respondents

(By Advocate: Shri Harvir Singh)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

As cause of action in both the OAs emanates from common order involving identical question of law, these OAs are being disposed of by this common order.

2. Being aggrieved by an order dated 27.09.2002 passed by the disciplinary authority imposing upon applicants a major penalty of permanent forfeiture of two years approved service entailing reduction in pay and treatment of suspension period as not spent on duty and also the appellate order dated 3.10.2003, maintaining punishment, O.As are filed by the applicants and a dispute was raised as to non-application of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980, in so far as vigilance raid by the Public Grievances Cell (P.G. Cell) on an enquiry

disclosed alleged commission of a cognizable offence in discharge of duty in demanding and accepting of illegal money, the matter was referred to the Full Bench of the Tribunal on a reference as to reliance on earlier statement of a witness in the preliminary enquiry (PE) when he is not available in the departmental enquiry (DE) whether to be taken on record and also whether there should be an order to initiate PE on a dissent. The majority of the Full Bench answered the reference by holding that in anti corruption raids and vigilance enquiry would transform into a PE if on the facts and circumstances of each case there is an order to hold such an enquiry by the competent authority only then Rule 15 (2) of the Rules would have application.

3. Brief factual matrix suggests that applicants while posted in Ashok Vihar Traffic Circle were found by the P.G. Cell Team to be taking illegal money as entry fee with recovery from applicant Pradeep Kumar (OA-289/2004). The following charge has been framed after examination of 8 PWs:

> "I, R.N. Tamchon, ACP/T. North charge you that on 18.8.2001 ZO ASI Murari Lal No.822/D, Const. Pardeep Kumar No.3695/T & Constable Sohanbir Singh No.946/T, while posted in Ashok Vihar Traffic Circle were found present at Lawerence Road about 150 Meter towards Lawerence Road from Britannia Chowk Traffic Point in front of Modern Bread (Food) industries and found indulging in malpractices by collecting illegal money from commercial vehicles. At about 1.55 PM, Const. Sohanbir Singh and Constable Pardeep Kumar signaled to stop the vehicle No.UP-85-D-9259 and asked the driver Prem Pal S/o Raj Pal Singh

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R/o Village Nagaria, PS Tappal, Distt. Aligarh C/o NK Enterprises, Lawerence Road Delhi to get down and took him to ZO/ASI Muraris Lal demanded & Accepted Rs.150/- i.e. Rs.100/- as challan money and Rs.50/- as illegal entry money who further gave Rs.50/- illegal money to constable Pardeep Kumar No.3965/T. Constable Pardeep Kumar was red handed by PRG team and illegal entry money of Rs.50/- (Signed GC currency note) was recovered from his right pocket of trousers alongwith additional amount of Rs.380/- collected illegally and kept in haphazard manner.

ZO ASI Murari Lal & Constable Pardeep Kumar No.3965/T, Constable Sohanbir Singh No.946/T had assembled at the spot with common malafides intention to collect illegal entry money from commercial vehicle. ZO ASI Murari Lal instead of restraining his subordinates from indulging in illegal activities he himself involved actively in collection of illegal entry money from commercial vehicle.

The above acts on the part of the ASI Murari Lal No.822/D, Const. Pardeep Kumar No.3965/T & Constable Sohanbir Singh No.946/T had assembled at the spot with common malafides intention to collect illegal entry money from Commercial Vehicle. ZO ASI Murari Lal instead of restraining his subordinates from indulging in illegal activities he himself involved actively in collection of illegal entry money from Commercial Vehicle."

4. The public witness, i.e., driver of the truck, to whom signed currency notes were given, has not supported the prosecution and on cross-examination by the Enquiry Officer (EO) leading questions had been put to him. Thereupon, on examination of two DWs, the EO has made the following discussion and conclusions:

"None of the PWs has stated that he/they had seen ASI Murari Lal the ZO accepting a sum of Rs.50/- and giving it to Const. Pardeep Kumar. Even PW4 SI Brijesh Mishra who was made to sit with the driver did not say so. Even the driver the decoy driver (PW8) denied this in his

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deposition. Whatever had been stated by the PWs, i.e., Inspector of PRG team was that the driver had given Rs.50/- to Constable Pardeep Kumar under the direction of the ZO which is not proved by any evidence on record. No money was recovered from the ASI except the compounding money, i.e., Rs.4400/- for the 44 challans.

It has been stated by the member of the PRG team including the Inspectors that no commercial vehicle was found at the spot. No enquiry, at all, was made by the team from the drivers of the trucks/vehicles about the alleged malpractices of the ZO & the staff nor any number of commercial vehicle was taken down. This has been stated of PWs Insp. J.L. Sethi, Insp. V.P. Dahiya.

A total of Rs.380/- which was personal money of Constable Pardeep Kumar (later returned) was recovered. The charge that illegal money, i.e., entry fee was being collected falls to ground as nothing had been recovered nor any commercial vehicle was found. The charges against ASI Murari remains unsubstantiated.

Constable Pardeep Kumar's allegation that he was beaten up by the PRG team members is after thought. Had it been so, he would have ledged a report with the Senior officers. Though PW8 the driver had denied giving Rs.50/- to Pardeep Kumar, yet the recovery of Rs.50/- allegedly given by the driver to him lends credence to the fact that he did accept Rs.50/-. The allegation leveled by the defaulter that the money was put in his pocket is after thought, as the PRG officer had no enemity with him and no reliance can be placed on the testimony of the DWS. Had the money been, planted, he would have lodged a compliant to the higher officer. The very fact that no such complaint was lodged proves that the defence evidence adduced on record is a tissue of white lies. Flat lies do not win the case. The charge of recovery of Rs.50/- accepted by him is proved. However, the charge that the Constable was collecting "illegal entry fee" from the commercial vehicle is not proved as no commercial vehicle was spotted at the alleged place of occurrence.

As regard, Constable Sohanbir Singh, it is on record that he and Constable Pardeep Kumar had stopped the truck bearing No.UP-85-D

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9259 (Tata) for blowing up pressure horn for which the driver was taken to the ZO ASI Murari Lal. Further he (Constable Sohanbir) was supposed to be at the Mahendra Park T-point which was situated at a distance of 1-1/2 km. From the alleged place of occurrence. His presence at the spot, when he was supposed to be at his own point, proves his malafides intention. It is in evidence that he was found out the scenes of occurrence. Further it is highly improbable that he could have come for lunch in the scorching heat of month of August. The plea taken by the constable that he was roughed up by a report to Senior officer immediately about the alleged roughing up. Though nothing has been recovered from him. Yet his complicity/collaboration with Constable Pardeep is proved from the very fact that he left his place of duty without permission of the TI (as stated by PWI) and had actively associated with Constable Pardeep Kumar in stopping the trucks. The charge in so far as it relates to his complicity is proved."

5. The disciplinary authority, on the basis of the aforesaid, imposed a major penalty against applicant Pradeep Kumar, Constable by presuming his culpability on account of recovery of signed currency note of Rs.50/- and against Constable Sohanbir (applicant in OA-184/2004) as per the conclusion of his involvement in the misdeed.

6. The appeals filed by applicants were also turned down by a common order.

7. Learned counsel of applicants Shri Anil Singhal and Shri Ashwani Bhardwaj assailed non-compliance of Rule 15 (2) of the Rules by contending that as per Standing Order No.102/94 issued by Commissioner of Police, a P.G. Cell is created to be headed by an ACP in each district which deals with the complaint filed by public and in this course, a

general order is implied as to conduct enquiry into the complaint, where prima facie evidence of corruption is found and to submit enquiry reports. In the above backdrop it is stated that in the raid conducted by the P.G. Cell, an order of the competent authority is to be deemed by virtue of the Standing Order, as such, if the enquiry is conducted, which has all the ingredients of Rule 15 (1) ibid where quantum of default, evidence and documents are collected in case of disclosure of cognizable offence allegedly by a police official in discharge of his duties, prior approval of the Additional Commissioner of Police concerned when not given, vitiates the enquiry. A reliance has been placed on a decision of the High Court in WP (c) No.2965/2005 dated 23.3.2005 in the matter of ***Union of India v. Ravinder Singh***, where non-compliance of Rule 15 (2) of the Rules, punishment was set aside.

8. Shri Ashwani Bhardwaj contended that the case is of 'no evidence' and 'no misconduct' and during the course of enquiry PW-8, i.e., the truck driver has not stated any thing incriminating to indicate any demand or acceptance of bribe by Constable Pradeep Kumar but the EO assumed the role of a prosecutor and without any jurisdiction put leading questions to the prosecution witnesses, which is not permissible.

9. Shri Bhardwaj would contend that the alleged currency notes of Rs.100/- and 50/- were never produced and

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exhibited in DE and for such non-exhibition, no legal evidence has come-forth to substantiate the charge and to fortify this plea a decision of the Division Bench of this Tribunal in OA-329/2002 – ***Suraj Bhan v. The Govt. of NCT of Delhi through its Chief Secretary & Ors.*** decided on 23.10.2002 has been relied upon.

10. Learned counsel Shri Bhardwaj stated that whereas the charge against applicant is of recovery of currency notes of Rs.50/- as illegal entry fee charged from the truck driver, yet the EO while concluding did not prove the charge of collection of illegal entry fee, as such what has been recovered has not been established to be a bribe money as illegal entry fee and in that event holding applicant guilty is without any misconduct attributed to him and on 'no evidence'. Learned counsel would contend that whereas the charge of collection of illegal entry fee has not been established by the EO, yet the disciplinary authority in his finding established the charge against applicant constable Pradeep Kumar of collection of illegal money from commercial vehicles is on a dissent and disagreement where due process of law has not been followed, which amount to denial of a reasonable opportunity to applicant in contravention of principles of natural justice.

11. Whereas Shri Anil Singhal relied upon the decision of the Madhya Pradesh High Court in **Union of India v. Mohd. Naseem Siddique**, 2005 (1) ATJ 147 to contend that in a disciplinary proceeding, the EO apart from seeking

clarification cannot, by way of cross-examination, put leading question to the witnesses which will be in the form of filling up the gaps and the enquiry is not fair as EO had assumed the role of a prosecutor.

12. Shri Singhal stated that decision of the Division Bench in OA-2827/2003 – ***ASI Sher Singh v. Govt. NCT of Delhi & Ors.***, decided by the Tribunal on 7.7.2004, covers the aforesaid issue.

13. Learned counsel by placing reliance on a decision in OA-1779/2004 **– *Satyavir Singh v. Govt. of NCT of Delhi through Commissioner of Police & Ors.*** by a Division Bench of this Tribunal decided on 3.8.2005 contended that mere recovery of money would not be a legal evidence to indicate it to be a bribe money, as such placing reliance on a decision of the Delhi High Court in ***Kundan Lal v. Delhi Administration, Delhi & Ors.***, 1976 (1) SLR 133, it is stated that applicant Sohanbir has been punished on surmises.

14. Shri Singhal stated that whereas the EO without any charge framed as to presence of applicant at different place from his duty place has not been alleged, yet the same has been established against applicant. Moreover, mere presence of applicant without any over-tact as to either demand or acceptance of bribe merely on common intention cannot form the basis of either finding of guilt or punishment. As such, in nut shell what has been reflected is that applicant

has been punished on 'no evidence' merely on suspicion and surmises, which is not correct in the light of the decision of the High Court of Andhra Pradesh in ***Union of India v. G. Krishna***, 2005 (3) ATJ 359.

15. On the other hand respondents' counsel Shri Om Prakash and Shri Harveer Singh have vehemently opposed the contentions and stated that applicants are punished as per the procedure laid down and there is no legal infirmity in the procedure. It is also stated that there is sufficient evidence to establish the guilt of applicants and in the matter of review, the Tribunal cannot assume the role of an appellate authority to re-apprise the evidence. Shri Harveer Singh has also taken almost identical pleas and stated that doubtful integrity is on the basis of punishment and all the contentions raised by applicants before the appellate authority were taken note of and as the charge was grave, the punishment imposed is commensurate with the misconduct.

16. We have carefully considered the rival contentions of the parties and perused the material on record.

17. In the matter of disciplinary proceedings the settled principle of law is not appreciation of evidence but what is permissible is to see that the case is of 'no evidence', finding based on suspicion and surmises, extraneous matter and whether the finding recorded passes the test of a common reasonable prudent man. Any evidence not admissible in law

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is to be discarded. We fortify our conclusion by a decision of the Apex Court in ***Kuldip Singh v. Commissioner of Police***, JT 1998 (8) SC 603.

18. In a recent decision of the A.P. High Court in ***G. Krishna's*** case (supra) 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).
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> 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 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

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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."

19. In the above conspectus, in case of Sohanbir, what has been established by the EO is his presence at the scene of occurrence leaving his place of duty and his collaboration with Constable Pradeep Kumar in stopping the trucks. The disciplinary authority punished him also being a party to the misdeed as co-defaulter with Constable Pradeep. However, in the charge framed against applicant there is no reference to his having left the place of duty and found present at the spot, rather what has been alleged is assembly at the spot with common malafides intention to collect illegal entry fee from the commercial vehicles. It is trite law that unless a charge is framed against a delinquent and after a reasonable opportunity to defend the same is extended and on its proof whether can be punished, but if the charge is not framed, same cannot be established and formed basis of guilt in imposition of punishment. The EO without framing the charge held the same established and the disciplinary authority imposed the punishment, which is a punishment on extraneous matter and the same cannot sustain in law. Moreover, in the wake of the fact that the EO himself had not

proved the charge of collecting illegal entry fee from commercial vehicle, as no commercial vehicle was stopped at the alleged place of occurrence and also the fact that neither any demand nor acceptance of any money has either been alleged or established against applicant, from the scan of evidence recorded, we do not find any overt act made by applicant in furtherance of collection of illegal amount. As such, on mere suspicion, surmises and conjectures one cannot be punished.

20. In so far as Constable Pradeep Kumar is concerned, he has been alleged to have received illegal money of Rs.50/- from driver Prempal, which has been found in the form of signed currency note from his possession, the allegation of the P.R.G. team was collection of illegal entry fee from the trucks. During the course of enquiry driver Prempal did not support his earlier statement and as per Rule 16 (3) of the Rules ibid what is admissible is the statement recorded during the course of enquiry where no allegation of demand and acceptance of currency note of Rs.50/- by Pradeep Kumar has been alleged. Mere recovery of Rs.50/- when this note has not been corroborated and connected to be a bribe money cannot form basis of either finding of guilt or punishment against applicant as held in **Kundan Lal's** case (supra) by the High Court that even if there is a presumption of recovery of money could not itself be without any more evidence transform into the character of bribe.

21. In the above backdrop, once the EO has held that Constable was not collecting any illegal entry fee from the commercial vehicle, as no commercial vehicle was spotted at the place of occurrence, the very basis of charge of illegal entry fee goes as not substantiated by the EO itself, yet holding applicant guilty on the basis that Rs.50/- currency note has been recovered from him is itself not a legal evidence to hold him guilty. In DE, a perverse finding is judged on the touchstone of criteria of a common reasonable prudent man. Even applying the said test, no prudent man would have come to the conclusion of involvement of applicant in any illegal transaction. The disciplinary authority punished applicant merely on suspicion and surmises and to maintain the image of police in the eyes of public, which cannot be countenanced.

22. We have no hesitation to hold that in respect of both applicants, the cases are of both 'no misconduct' and 'no evidence'.

23. Another infirmity, which has vitiated the orders, is that though under Rule 16 (3) of the Rules there is no authority or jurisdiction upon the EO to cross-examine in any manner the prosecution witnesses, yet PW-8 the truck driver, who has not stated any thing against applicant, has been put leading questions by way of cross-examination by the EO to fill up the gaps in the enquiry and has thus assumed the role of a prosecutor which, in absence of a presenting officer, act

of the EO leaves no doubt in the mind that he was biased and the enquiry proceedings are vitiated. The above conclusion is fortified by the decision of the Tribunal in ***Sher Singh's*** case (supra) as well as decision of the Division Bench of the M.P. High Court in ***Mohd. Naseem's*** case (supra).

24. Leaving other grounds open, these OAs succeed on this limited ground alone. Impugned orders are set aside. Applicants are entitled to all consequential benefits, including removal of their names from the secret list. No costs.

25. Let a copy of this order be kept in files of both the OAs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra 5.1.06
(V.K. Majotra)
Vice-Chairman(A)

'San.'