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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 20/2004

New Delhi, this the 3rd day of ~~August~~ Sept, 2004

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Gurdeep Singh
Assistant Sub-Inspector
Delhi Police No.3679/D, PIS No.28710145 .. Applicant

(Shri Ranjit Singh, Advocate, through proxy counsel Shri Sanjeev Singh)

versus

Union of India, through

1.Secretary
Ministry of Legal Affairs, New Delhi
2. Commissioner of Police
PoliceHeadquarters, ITO, NewDelhi
3. Deputy Commissioner of Police(Traffic)
Delhi .. Respondents

(Shri Ajesh Luthra, Advocate)

ORDER

Shri S.K. Naik

By order dated 12.9.2001, respondents-department ordered a joint departmental enquiry against the applicant and his co-defaulter (Constable Rajbir Singh) on the allegations that on 21.7.2001 while posted in Hauz Khas Traffic Circle they were found on MB Road about 1 KM from Saket/Neb Sarai Traffic "T" point opposite VIP Taxi stand, MB Road, Saket indulging in malpractice by collecting illegal money from commercial vehicles. At about 12.20 PM Const. Rajbir Singh signaled to stop Truck No.HR-38E-9439 coming from Lado Sarai side and going towards Badarpur side, approached the vehicle and asked the driver Shri Imtiyaz to get down and took him to the applicant. Applicant demanded and accepted Rs.150/- i.e.Rs..100 as challan money and Rs.50 as illegal 'entry' money which he gave to Rajbir Singh who was caught red handed by RPG team and illegal entry money of Rs.50 was recovered from him. Applicant and Rajbir Singh assembled at the spot with common malafide intention to collect illegal entry money from commercial vehicle. Applicant instead of restraining his subordinate from indulging in illegal activities , himself involved in the activity of collecting illegal entry money from commercial vehicle. Both of them were placed under suspension vide order dated 27.7.2001.

2. By an order dated 17.2.2002, the enquiry was entrusted to Shri K.S.Dalal, ACP, Delhi, who completed the enquiry proceedings and submitted his findings dated 27.6.2002 concluding therein that the charge against the applicant and his co-defaulter stood proved without any shadow of doubt. Agreeing with the findings of EO, a copy of the enquiry report was served on both the accused on 24.7.2002 who had submitted their representations on 8.8.2002, raising therein certain pleas, viz. the driver of the vehicle was not produced during the enquiry to enable them to cross-examine him, all the PWs admitted that they neither heard any demand by accused nor had seen any exchange of exces money, the currency note was planted by the PRG team and the depositions made by DWs clearly proved their innocence. Thereafter, the disciplinary authority after carefully going through the entire evidence brought on DE file, defense statements of the accused, findings of EO as well as written representations by the accused and after hearing them in OR held on 16.8.2002, imposed a punishment upon the applicant of reduction in rank from that of SI to ASI, vide order dated 6.9.2002. Applicant filed an appeal on 27.9.2002, which was dismissed by the appellate authority vide his order dated 24.7.2003, thus confirming the punishment imposed on the applicant. The applicant in the present OA has impugned these two orders.

3. The main grounds taken by the learned counsel for the applicant in assailing these orders are that PW-7 was a shadow witness who did not see the exchange of money but only deposed in his evidence that truck driver came to him and told him that he had paid Rs.100 for challan and Rs.50 as entry fee to the constable; PW-7 signalled the raiding party which was already waiting for the signal at a distance of about 250-300 meters as per plan of the raid; secondly the truck driver was not examined nor produced during the enquiry proceedings to enable the applicant to effectively cross-examine him and lastly that the currency note initialed was in fact planted by the RPG and mixed up with applicant's personal money to show recovery. The counsel has contended that recovery of money that too not from the person of the applicant but from the co-accused could not be taken as sufficient evidence to prove the charge against the applicant. Since the PWs did not testify to the effect that they had seen exchange of excess money taking place, respondents are relying on suspicions and conjectures which could not be treated as evidence to establish the charge against the applicant. The main material witness (Driver) not having been examined will vitiate the proceedings, the counsel contends. He has referred to a number of judgements, in particular to the cases of Ram Mehar Vs. Commissioner of Police (1993) 24 ATC 918; Suraj Mal Vs. State (1979) 4 SCC 725 and UOI Vs. H.C.Goel 1964 SC 364. He has also relied on the judgement of the Supreme Court in Hardwari Lal Vs.State of UP 1999 IXAD (SC) 11.

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4. On the other hand, learned counsel for the respondents has contended that the first ground of the applicant is irrelevant inasmuch as the fact remains that the applicant had demanded and accepted Rs.150 instead of Rs.100 from the complainant and extra money duly initialed was seized by the RPG raiding officer on the spot through seizure memo which also bears the signature of co-defaulter. As regards the second ground, he contended that the truck driver did not join the DE proceedings despite sincere efforts made by EO. He therefore dropped this PW as per provisions of Rule 16(iii) of the Delhi Police (Punishment & Appeal) Rules, 1980. As regards the third ground, he has contended that the members of RPG team are responsible officers and during the DE proceedings they deposed only what happened and as such there is no reason to disbelieve their testimony. The plea of the applicant is therefore an after thought and therefore all the grounds advanced by the applicant, which were also part of his representation and appeal and have already been taken care of by the disciplinary authority/appellate authority. Applicant has only repeated the same grounds which have already been considered and detailed and reasoned orders passed. He further contends that in the DE proceedings it is the pre-ponderence of probability and the Tribunal/Court cannot reappreciate the evidence adduced during the enquiry. In view of this position, he concludes that the OA has no merit and be dismissed.

5. We have carefully considered the arguments advanced by the learned counsel for the parties and also gone through the impugned orders. The contention of learned counsel for the applicant that PW-7 was the shadow witness who did not see exchange of money and therefore his deposition should be discarded, we are afraid, will not be tenable. His evidence has been considered by the disciplinary authority as well as the appellate authority in the total context of the charge against the applicant and the statements of other witnesses. It is not denied that tainted money was recovered from the co-accused. Testimony of the other witnesses who are members of the RPG cannot be discarded just because they form part of the raiding team, as it is part of their duty and responsibility to check such malpractices and their deposition was made on the basis of the facts witnessed by them as has been contended by the learned counsel for the respondents. Further non-production of the truck driver despite best efforts of the respondents will also not vitiate the proceedings as the disciplinary authority has dropped this witness as per provisions of Rule 16(iii) of Delhi Police (Punishment & Appeal) Rules, 1980.

6. In so far as the reliance placed by the applicant's counsel on the various judgements of the Tribunal and the apex court (supra) is concerned, we find that they would not come to rescue of the applicant as they could be distinguished on

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the facts of the respective cases. In the case of Ram Mehar (supra) the bribe giver retracted his earlier statement, whereas in Suraj Mal (supra), taking of bribe was not proved. In the case in hand, the tainted money has been recovered from the co-accused. In the case of Hardwari Lal (supra), the apex court had set aside the order of the High Court on the ground that no proper enquiry had been held by the authority and it was based on the facts of that case. In the case in hand, principles of natural justice have been duly observed and the impugned order has been passed after a proper enquiry into the matter and is based on pre-ponderence of probability. Since the charge was that the applicant along with the co-accused was involved in malpractice of collecting money illegally from commercial vehicles, the argument advanced by the learned counsel for the applicant that since the tainted money was not recovered from the person of the applicant and therefore it cannot be held against him, we are afraid, has to be rejected.

7. In view of the above position, we find no merit in this OA and the same is accordingly dismissed. No costs.

(S.K. Naik)
Member(A)

(V.S.Aggarwal)
Chairman

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