Central Administrative Tribunal
Principal Bench

OA No.1613/2004

New Delhi this the 13th day of January, 2006.

Hon'ble Mr. V.K. Majotra, Vice-Chairman (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl)

Const. Raj Karan -Applicant

(By Senior Advocate Shri G.D. Gupta with Shri S.K. Sinha, Advocate)

-Versus-

Govt. of N.C.T. of Delhi,
through the Lt. Governor,
Raj Niwas, New Delhi & Others -Respondents

1. To be referred to the Reporters or not? YES/~~NO~~

2. To be circulated to outlying Benches or not? YES/~~NO~~

S. Raju

(Shanker Raju)
Member (J)

85

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Const. Raj Karan,
No.142/T (Now 2776/DAP)
Delhi, Village Kalluwas,
P.O. Rewari,
Distt. Rewari,
Haryana. -Applicant

(By Senior Advocate Shri G.D. Gupta with Shri S.K. Sinha, Advocate)

-Versus-

1. Govt. of N.C.T. of Delhi,
through the Lt. Governor,
Raj Niwas, New Delhi.

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

3. The Joint Commissioner of Police,
Armed Police,
Delhi. -Respondents

(By Advocate Shri Harvir Singh)

O R D E R

Mr. Shanker Raju, Hon'ble Member (J):

Applicant, an ex-Constable, impugns respondents' order dated 4.8.2003, whereby he has been dismissed after holding a departmental enquiry (DE) as well as an order passed in appeal on 15.12.2003, confirming the punishment.

2. While posted in Vasant Vihar Circle, Delhi Police on 5.10.2000 applicant has been charged, along with others, to

have stopped a truck and received entry money of Rs.2,000/- from the truck driver, which was allegedly recovered from him by the PRG team. Though one of the drivers Satpal was not produced in the enquiry and was dropped, the other driver Jagdish had not supported the prosecution, yet the enquiry officer (EO) held applicant guilty of the charge, which on representation culminated into an order, dismissing him from service, being affirmed in appeal, gives rise to the present OA.

3. Learned Senior Counsel Shri G.D. Gupta took the following grounds to assail the order:

i) DE is vitiated as well as punishment for non-compliance of Rule 15 (2) of the Delhi Police (Punishment and Appeal) Rules, 1980;

ii) Applicant has been punished on 'no misconduct' and 'no evidence';

iii) Reliance on a previously recorded statement of driver Satpal, without examining him in the enquiry, is denial of reasonable opportunity.

iv) Mere recovery of money is not sufficient to hold guilty a constable for accepting bribe.

4. Shri Gupta relied upon the following cases to establish that mere recovery in a raid relating to charges of corruption, without any other evidence of the eye witness account

establishes either demand or acceptance and is not sufficient to hold applicant guilty of the charge:

i) ***Sita Ram v. State of Rajasthan***, AIR 1975 SC 1432;

ii) ***Suraj Mal v. The State (Delhi Admn.)*** AIR, 1979 SC 1408;

iii) ***Satyavir Singh v. Govt. of N.C.T. of Delhi***, (OA No.1779/2004, decided by the Principal Bench of the Tribunal on 3.8.2005).

5. Learned counsel would contend that none of the PRG team member had witnessed demand or acceptance of money by applicant. Rather Shri Jagdish while examined as PW-10 categorically stated that nobody had stopped the truck or demanded or accepted money from him and his signature had been taken on plain papers. On cross-examination by the EO he re-iterated the aforesaid. In the above backdrop it is stated that the conclusion of the EO as to holding applicant guilty of the charge of demand and accepting entry fee as a bribe has not been witnessed. Simple recovery of money without being corroborated to the extent of the amount is the same amount, which has been demanded or accepted is not legally admissible evidence. As such the conclusion of guilt is based on suspicion, surmises and 'no evidence'. According to Shri Gupta mere recovery is a surmise to hold applicant guilty of the charge.

6. It is in this context stated that the test at the touchstone of reasonable common prudent man the evidence does not qualify the same.

7. Shri Gupta further stated that on a complaint regarding alleged demand and acceptance of illegal entry money a PRG team was constituted and raided the spot. According to him, in the Full Bench decision in OA-340/2004 – ***Ranvir Singh v. Govt. of NCT of Delhi & Ors.,*** decided on 10.5.2005 by this Tribunal, the majority view, though a dissent was there by one of the members, after reproduction of the Standing Order No.102/94 regarding functioning of PG Cell, it has been observed that since the question of order passed in general by the Commissioner of Police in a PRG raid, which is deemed to be an order of PE, the question not formulated before the Bench, it would depend on the peculiar facts as to whether it is PE or not.

8. In the above backdrop it is stated that as per Standing Order No.102/94 the Commissioner of Police on 19.11.1994 authorized and had set up a PG Cell headed by an ACP to pay special attention to the allegation of public regarding corruption by the Delhi Police and in that view of the matter one of the functions and authorization was to attend complaint and conduct enquiry and on the basis of this enquiry follow up action is taken. By referring to the aforesaid and drawing our attention to the raid conducted by the PRG on 5.10.2000 it is stated that the aforesaid report

was submitted to the disciplinary authority (DA) for an appropriate action, which culminated into a DE against applicant.

9. In the above backdrop it is stated that in the enquiry which is conducted preceding the DE, which has collected evidence, identified the defaulters, quantified the misconduct, to facilitate a regular DE the standing order No.102/94 and delegation to the ACP by the Commissioner of Police is a deemed general order for holding a regular PE in case of complaint of corruption or otherwise the allegations come to the notice of PRG Cell would be a deemed order of a PE.

10. By referring to the above it is stated that in such an event as the alleged charges pertained and disclosed a cognizable offence of demand of bribe by a police officer in discharge of his duties in relation with public it is mandatory upon the Joint Commissioner of Police to order an enquiry under Rule 15 (2) of the Rules, according to which the authority has to give reasons for either holding an enquiry or the allegations to be investigated and registration of a criminal case. For want of non-compliance it is stated that the enquiry is vitiated and in support of his contention relied upon a decision of the Delhi High Court in ***Union of India v. Ravinder Singh***, WP (C) No.2964/2005 decided on 23.3.2005.

11. Learned counsel would also contend that mere recovery without being connected with any iota of evidence and corrupt motive, i.e., demand and acceptance would not either be a misconduct and punishment of applicant on 'no evidence' and on merely surmises cannot be sustained in the light of the decision of the Apex Court in ***Union of India v. H.C. Goel***, AIR 1964 SC 364.

12. Learned counsel would contend that whereas one Satpal, truck driver, who had been allegedly present on the spot and complained about taking of illegal entry money from him by applicant was itself dropped, as such his statement as per Rule 16 (iii) of the Rules cannot be relied upon in any manner to hold applicant guilty, as he has been denied an opportunity of effective cross examination, which, in turn, is a deprivation of reasonable opportunity to defend, which is infraction to the principles of natural justice.

13. On the other hand, Shri Harvir Singh, learned counsel appearing for respondents, has vehemently opposed the contentions and stated that as per Rule 15 (2) of the Rules it is the discretion of the authorities and as one Inspector was associated, as a defaulter, Joint Commissioner of Police ordered the enquiry. It is also stated that there is sufficient evidence and PWs have fully supported the prosecution evidence. PW-10 has been won over and as such his testimony has been discarded.

14. Learned counsel would contend that applicant along with others as a team collectively indulged in corrupt practices and the evidence has been linked at all stations forming a chain of circumstantial evidence which is admissible in DE and this Court has no jurisdiction to act as an appellate authority over the findings recorded by the competent departmental authorities.

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

16. It is trite law that in a disciplinary proceeding and especially in a judicial review by the Tribunal the sufficiency and re-appreciation of evidence is not permissible. But in the light of the decision of the Apex Court in ***Kuldeep Singh v. Commissioner of Police***, JT 1998 (8) SC 603 what is permissible is interference in case of 'no evidence', finding based on 'suspicion' and 'surmises' and 'inadmissible evidence' and also when the findings and conclusions arrived at by the departmental authorities do not pass the test of a common reasonable prudent man, the findings can be set aside. In a recent decision the Andhra Pradesh High Court in ***Union of India v. G. Krishna***, 2005 (3) ATJ 359 made the following observations:

> "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."

17. In the above context and a clear concept of law the mere recovery in a trap case uncorroborated with any

evidence directly on the issue of either demand or acceptance would not be sufficient to hold the guilt.

18. The Apex Court in ***Sita Ram's*** case held as follows:

> "9. On the point of payment of money by complainant Mohan Lal to the appellant the evidence of the former was of no help to the prosecution. The High Court found this fact established, as stated above, on the evidence of P.W.2 Mukundsingh and P.W.9 Sugansingh. Learned counsel for the appellant rightly pointed out that the former on being further cross-examined had stated "When Mohan Lal gave currency notes to Sitaram I did not see it." The attention of the High Court does not seem to have been drawn to the above statement of P.w.2 in cross-examination. That makes his evidence hearsay on the point of acceptance of gratification by the appellant from Mohan Lal. So many jerks and jolts seem to have been given to the prosecution case by contradictory and hostile statements of the witnesses that a good part of it had to be rejected by the High Court. In the background of the High Court's findings that it had not been proved that the appellant had demanded any bribe from Mohan Lal. We do not consider it safe to sustain its finding on the point of payment of the bribe by the complainant to the appellant on the on the testimony of P.W.9 alone when the evidence of P.W. 2 is not admissible on the point. The result is that not only the story of demand of bribe by appellant from the complainant is not proved but even the story of payment of the money by the complainant is not established beyond reasonable doubt. That being so the rule of presumption engrafted in Section 4 (1) cannot be made use of for convicting the appellant."

19. In **Suraj Mal's** case (supra) the following is the observation of the Apex Court:

> "In our opinion, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Moreover, the appellant in his statement under S.342 has denied the recovery of the money and has stated that he had been falsely implicated. The High Court was wrong in holding that the appellant had admitted either the payment of money or recovery of the same as this fact is specifically denied by the appellant in his statement under S.342 Cr. P.C. Thus mere recovery by itself cannot prove the charge of the prosecution against the appellant, in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money. For these reasons, therefore, we are satisfied that the prosecution has not been able to prove the case against the appellant beyond reasonable doubt. We, therefore, allow the appeal set aside the conviction and sentences passed against the appellant. The appellant will now be discharged from his bail bonds."

20. A Division Bench of this Tribunal in ***S.K. Jain v. Union of India & Ors.***, 1989 (4) SLJ CAT 953 by relying uon the decision in ***Suraj Mal's*** *case (supra)* held that the evidence of the trap witnesses when does not corroborate the charge of acceptance of bribe, mere recovery itself cannot prove the charge and would not be a legally admissible evidence against the defaulter.

21. In **Satyavir Singh's** case (supra) this Tribunal made the following observations:

> "10. Admittedly, the bus conductor and the passengers of the bus were not examined at all. The enquiry officer has himself stated that the prosecution story appeared to be vague. The witnesses had neither heard applicant demanding

money nor had then seen him accepting the money. The bus conductor in his statement denied the prosecution story. According to the enquiry officer he had only accepted that he had signed on the blank papers on the request of the traffic staff. The enquiry officer had stated that the prosecution story is doubtful. The statement of PW-9, i.e., the conductor of the bus, was not recorded before the raid and that the raid was full of lacunae. While in a departmental enquiry sufficiency of evidence is not the criterion to bring home the charge, some evidence must be there in support of the charge. In the present case even the enquiry officer has stated that the prosecution story is vague; witnesses had neither heard about the demand nor seen the acceptance of money as bribe. According to the enquiry officer the bus conductor has denied the prosecution story and he had only accepted that he had only signed blank papers on the request of the traffic staff. Such a statement recorded at a later stage over the signatures obtained on a blank paper cannot be relied upon at all in preference to the statement made by the witness before the enquiry officer. This is absolutely prohibited in terms of rule 16(iii) *ibid*. The earlier statement could be taken on record by the enquiry officer in case the presence of such a witness could not be procured "without undue delay, inconvenience or expense". Such has not been the case presently. The bus conductor Shri Jai Bhagwan had appeared before the enquiry officer. His statement had been recorded by the enquiry officer. The earlier statement of this witness was inadmissible in terms of rule 16(iii). The contention of the learned counsel of respondents is that even if earlier statement of this witness is not taken into account, there is evidence to establish the charge against applicant. No such evidence has been pointed out by the learned counsel of respondents. Mere recovery of a sum of Rs.1150/- from the possession of applicant without a little supporting evidence cannot be said to have established that applicant had received a bribe. Stopping a vehicle

> or recovery of money from the possession of applicant without linking it with the money paid in bribe would not suffice to bring home the charge against applicant. There must be overt act to the act of stopping the vehicle or recovery of money from the possession of applicant. For this view we draw support from the case of ***Kundan Lal*** (supra). In our view, there is no iota of evidence in the present case regarding demand/acceptance of money on the part of applicant."

22. If one has regard to the above, in the present case the driver Jagdish had not supported the prosecution and he has stated categorically that neither his truck was stopped nor anybody demanded or accepted the amount. He went on saying that the policemen when insisted he returned the signed currency notes to them, though he was cross-examined by the EO but nothing fruitful has come-forth.

23. As regards other witnesses, PW-2 Inspector Jagat Singh had deposed only to the effect that driver was handed over signed currency notes but it is stated that driver had gone to applicant and thereafter on his signal they recovered the amount from applicant. Accordingly, SI Sikandar Rai, PW-4 and Inspector Y.S. Negi have deposed the same. The statement of Naveen Kumar also re-iterated the same.

24. It is clear from the aforesaid testimony that nobody had in fact seen applicant either demanding or accepting the money. Merely because the currency notes were signed and found allegedly from his possession would not be sufficient to hold his guilt, as there is no other evidence to connect

applicant. The EO discarded the testimony of PW-10 holding that the driver has been won over by the PW but the EO had offered no suggestions to this effect to the witness and on his *ipsi dixit* the aforesaid conclusion has been arrived at. Moreover, discarding the evidence probably as not trustworthy is a surmise. The charge is concluded in a very slip shot manner without a credible conclusion, after weighing the defence evidence and the explanation tendered by applicant. As per Rule 16 (9) the EO has recorded reasons after meticulously evaluating the prosecution and defence evidence. Calling the defence witness as tutored one without any basis when the EO had all the opportunities to test the demeanor of the witnesses is also a presumptive conclusion. Be that as it may, the fact that the only evidence against applicant is recovery of signed currency notes and this has not been established that applicant had demanded and accepted the same amount as an illegal entry fee. As such, relying upon a decision of the Apex Court this piece of evidence cannot be sustained to establish the charge and form basis of punishment against applicant.

25. No doubt, corruption among the disciplined force is a menace and has to be rooted out of the system, yet before awarding the punishment of dismissal upon a police officer, which is just like a death sentence in a criminal trial, at least opportunity to rebut, in consonance with the principles of natural justice, is to be accorded and it is to be seen that whether the charge has been established on legally

admissible evidence and is not an outcome of suspicion, surmises and conjectures. In order to sustain a clean image of Delhi Police among the society and before the public it is not legally permissible to make a delinquent a scapegoat. One's guilt has to be brought and proved in a DE but not the 'surmises' and 'no evidence' and assumption connecting the delinquent with the charge.

26. *Hear-say* evidence, circumstantial evidence forming a chain is admissible in DE, where the rule is of preponderance of probabilities, but in order to ascertain as a case of 'no evidence' and 'perverse finding' the test of a common reasonable prudent man is always intrinsically applicable. Applying the aforesaid test when the driver has not deposed any thing against applicant and other witnesses have not deposed as to witness the demand and acceptance of the alleged illegal entry fee, yet recovery of the amount, i.e., the signed currency notes is not such an evidence to conclusively point towards guilt of applicant. In our considered view, the evidence brought against applicant in the enquiry and relied upon by the disciplinary authority is not legally admissible and rather the present is a case of 'no evidence' and the punishment is rested on suspicion against applicant established on surmises and conjectures, which cannot be countenanced in law.

27. As regards violation of Rule 15 (2) of the Rules, having passed a general order by the Commissioner of Police,

authorizing the ACP, PRG Cell, and enquiry in the present case is an authorized enquiry on a deemed general order passed, as the enquiry revealed the quantum of default, collection of evidence and identifying defaulters and default the same partakes the character of a PE under Rule 15 (1) of the Rules and for want of any reasons recorded by the Joint Commissioner of Police as to holding of an enquiry or registering a case, which is a mandate in case cognizable office is disclosed against a police officer, which is applicable in the present case. Non-compliance of Rule 15 (2) has not only vitiated the order of enquiry but also subsequent punishment. In this view of ours we are fortified by the decision of the Delhi High Court in ***Ravinder Singh's*** case (supra).

28. As regards relying upon the PE statement of driver Satpal to hold applicant guilty of the charge, Rule 15 (3) allows any other document except statement from the PE to be brought on record of the DE but a condition precedent is laid down under Rule 16 (iii) of the Rules when the witnesses are no longer available despite efforts made and would cause inconvenience or expenses, the authorities have not made sincere efforts to find out the address of driver Satpal and by dropping him from the proceedings and not relying upon his statement, the act of the disciplinary authority to rely upon the same is consideration of an extraneous matter, which violates the rules ibid and vitiates the order itself.

29. Leaving other grounds open, this OA is allowed. Impugned orders are set aside. Respondents are directed to forthwith re-instate applicant in service and in that event he would be entitled to all consequential benefits, which would be operated in terms of FR-53. The respondents are further directed to comply with the aforesaid directions as expeditiously as possible but preferably within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra 13.1.06

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

'San.'