

**Central Administrative Tribunal, Principal Bench, New Delhi**

O.A.No.299/2004

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

New Delhi, this the 26th day of October, 2004

ASI Murari Lal, No.822-D,  
S/o Shri Dhani Ram,  
R/o E-109, Laxmi Park,  
Near Saini Public School,  
Nangloi, Delhi-110041

...Applicant

(By Advocate: Shri Saurabh Ahuja, proxy for Shri Ashwani Bhardwaj)

Versus

1. Commissioner of Police,  
Police Headquarters,  
Indraprastha Estate,  
New Delhi
2. Joint Commissioner of Police,  
Traffic : Delhi,  
Police Headquarters,  
Indraprastha Estate,  
New Delhi
3. Dy. Commissioner of Police,  
Traffic Delhi,  
Police Head Quarter,  
Indraprastha Estate,  
New Delhi

....Respondents

(By Advocate: Mrs.P.K. Gupta)

Order(Oral)Justice V.S. Aggarwal, Chairman

The applicant Murari Lal is an Assistant Sub-Inspector in Delhi Police. By virtue of the present application, he seeks to assail the orders passed by the disciplinary as well as the appellate authority. The disciplinary authority vide the impugned order had awarded the penalty of forfeiture of two years approved service entailing reduction in his pay from Rs.5100/- to Rs.4900/-. The appeal had been dismissed on 3.10.2003.

2. Some of the relevant facts are that the applicant while posted at Ashok Vihar Traffic Circle is alleged to have found indulging in malpractice by collecting illegal money from commercial vehicles. At 1.55 P.M., Constable Sohanbir Singh and Constable Pardeep Kumar signalled to stop the vehicle No.UP-85-D-9259 and asked the driver to get down. He was taken to the applicant. The applicant is alleged to have demanded and accepted Rs.150/- (i.e. Rs.100/- as challan money and Rs.50/- as illegal entry money) who further gave Rs.50/- as illegal money to Constable Pardeep Kumar. Constable Pardeep Kumar was caught red handed. The said illegal money was recovered with some other amount.

3. The enquiry officer had framed the following charge:

"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

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posted in Ashok Vihar Traffic Circle were found present at Lawrence Road about 150 Meter towards Lawrence 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 R/o Village Nagaria, PS Tappal, Distt. Aligarh C/o NK Enterprises, Lawrence Road Delhi to get down and took him to ZO/ASI Murari Lal demanded and 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 caught 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 malafide 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 malafide 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 ZO ASI Murari Lal No.822/D, Const.Pardeep Kumar No.3965/D, Const. Pardeep Kumar No.3965/T & Constable Sohanbir Singh No.946/T amounts to gross misconduct, malafide, negligence & dereliction in the discharge of official duty which render him liable for punishment as envisaged u/s 21 DP Act 1978."

4.After considering the entire evidence, the enquiry officer held that the charge against the applicant stood unsubstantiated. The

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disciplinary authority recorded a note of disagreement and it is thereafter that the impugned orders referred to above were passed. The note of disagreement reads:

"I have gone through the entire evidence brought on D.E. file, defence statement of delinquents and findings of the E.O. I agree with the conclusion drawn by the E.O. against Const. Pardeep Kumar, No.3965-T and Const. Sohanbir Singh, No.946-T but do not agree with the conclusion drawn in favour of ASI Murari Lal, No.822-D for the reasons that at the time of PRG raid on 18.08.2001, ASI Murari Lal, No.822-D was very well present at the spot when the currency note of Rs.50/- duly initialled by raiding officer was recovered from Const.Pardeep Kumar, No.3865-T. The ASI had failed to restrain his subordinate from indulging in malpractice of illegal collection of entry money from commercial vehicles, rather he himself was found indulged in malpractices with common malafide. This also indicates his supervisory lapse. As per deposition of PW-8 it is crystal clear that he had accompanied the raiding party but had resiled from his earlier statement in order to favour the delinquents.

Therefore, a copy of findings of E.O. is being given to Const.Pardeep Kumar, No.3965-T and Const. Sohanbir Singh, No.946-T for making their representation, if any, within 15 days from the date of receipt of this U.O. A copy of findings of E.O. is also given to ASI Murari Lal, No.822-D to make his representation, if any, against the above contents of disagreement within 15 days from the date of its receipt.

ASI Murari Lal, No.822-D, Const.Pardeep Kumar, No.3965-T and Const.Sohanbir Singh, No.946-T were placed under suspension vide D.D. No.23/AVC dated 18.08.2001 read with order No.8016-45/HAP-T(D-I) dated 28.08.2001. They are also called upon to show cause as to why their suspension period should not be treated as period not spent on duty within 15 days from the date of receipt of this U.O. failing which it will be presumed that they have nothing to say in their defence and the decision in the matter will be taken ex-parte, on merits."

5.We make it clear that we are not expressing ourselves on the other aspects of the matter. This is for the reason that on behalf of the

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applicant, it has been contended that the note of disagreement recorded was not a tentative note of disagreement and, therefore, when final findings have been recorded, calling of the explanation of the applicant by itself would become illegal.

6. Learned counsel for the applicant has strongly relied upon the decision of the Supreme Court in the case of **Yoginath D. Bagde Vs. State of Maharashtra and Anr.** (JT 1999 (6) SC 62). The Supreme Court in unambiguous terms held that when there is a note of disagreement, it should relate only with the findings of the Inquiry Officer. The findings of the Supreme Court in this regard are:

“...The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the “TENTATIVE” reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of “not guilty” already recorded by the Inquiring Authority was not liable to be interfered with”.

7. However, respondents' learned counsel contended that herein a notice to show cause had been given which was answered and thereafter the findings had been recorded which cannot be taken to be a note of disagreement which is not tentative. He relied upon the decision of this Tribunal in O.A. 3473/2001 in the matter of **Yogesh Gulati Vs. Govt. of NCT of Delhi and Ors.**, decided on 15.1.2003. Perusal of the cited decision clearly shows that in the peculiar facts of that case, this

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Tribunal concluded that it was a tentative note of disagreement. The findings of this Tribunal were:

"31. In the result we find that the disciplinary authority on the basis of the EO report has tentatively recorded his reasons and had given a reasonable opportunity to applicants to represent and thereafter on receipt of their replies a final decision was taken. What has been laid down by the Apex Court in Yogi Nath D. Bagde v. State of Maharashtra, JT 1999 (7) SC 62 has been followed in the cases before us by recording tentative reasons. Nowhere in the disagreement Note a final conclusion has been drawn proving the charge against applicants. As such the decision quoted of the High Court of Delhi in Pramod Kumar's case (supra) would be distinguishable and have no application to the present cases as therein the disciplinary authority while giving show cause notice instead of recording tentative reasons concluded the charge showing pre-determination, whereas in the cases in hand a tentative conclusion is drawn. What has been mandated by the Apex Court is not exactly the word mentioning tentative but if from the perusal of the show cause notice it is found that the disciplinary authority has not made up its mind to pre-judge the issue and while disagreeing recorded reasons and indicated to take a final action on receipt of the reply the same would be tentative conclusion on reasons recorded. As such, we do not find any infirmity in the show cause notice issued disagreeing with the findings".

Therefore, the findings of this Tribunal in the case of **Yogesh Gulati** (supra) would be confined to the peculiar facts of that case.

8. In fact, the case of **Yoginath D. Bagade** had been considered by a Division Bench of the Delhi High Court in the decision rendered in the matter of **Commissioner of Police Vs. Constable Pramod Kumar and Anr.** (Civil Writ Petition Nos. 2665/2002 and 4593/2001), decided on 12.9.2002. Therein, the note of disagreement was to the following effect:

"I have carefully considered the evidence on record and the findings submitted by the Enquiry Officer. I do not agree with

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the conclusion of the E.O. that the charge does not stand proved against defaulters Inspr. Dal Chand No. D/1865, Consts. Jag Parvesh No. 1573 / E and Parmod No. 1394 / E. From the evidence on record, the sequence of events, which took place related to the charge is quite clear. The testimony of PW-3, DW-2, DW-3 and DW-5, all electrical Contractors, clearly indicates that the electrical engineers were operating as a matter of routine outside the DESU Office, Karkardooma. This activity continued unchecked by the local police. It is evident from the statement of PW-3, which has not been disputed, that in Dec. 1995, a scheme was launched by DESU, which permitted additional load, which resulted in increased activity at and outside DESU office. This again does not seem to have resulted in any police action. If what the electrical engineers were doing was illegal or if the manner in which they were doing their duties was illegal, then appropriate action should have been taken as prescribed under the law. More so, since Inspr. Dal Chand has alleged at point -5 / K of his written defence statement that PW-3 was in a habit of making complaints against DESU/Police Officers when "his illegal activities are checked". If, indeed, the activities of PW-3 were illegal, then, what prevented the police from taking appropriate legal action against him? Since no action was taken against PW-3 and the other electrical engineers operating outside DESU office, it is evident that they were nothing illegal about their activities.

He concluded:

"The totality of the facts and circumstances of the case and evidence on record lends credence to the allegations made. This aspect of the charge, therefore, also stand proved against the Inspr."

9.The Delhi High Court held that it was a tentative note of disagreement and the order passed by this Tribunal was upheld.

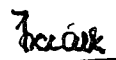
10.When we compare the note of disagreement recorded in the present case with the note of disagreement in the case of Constable Parmod Kumar (supra), we find that the reasoning is the same. In the case of Constable Parmod Kumar, the disciplinary authority had

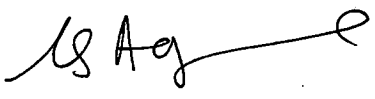
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recorded "I disagree with the findings submitted by the E.O.....". Identical is the position herein. In the present case, the disciplinary authority specifically mentioned that he does not agree with the conclusion of the enquiry officer. It was not a tentative note of disagreement. On parity of reasoning as in the case of Yoginath D. Bagde and in the case of Constable Parmod Kumar (supra), we have no hesitation in concluding that it is not a case of tentative note of disagreement but a final finding arrived at.

11. Similar controversy arose before this Tribunal in the case of Teeka Ram vs. The Lt. Governor, Delhi and Ors. (O.A.2649/2001) decided on 1.5.2003 and in the case of Mahmood Hassan and Anr. Vs. Govt. of NCT of Delhi and Ors. (O.A.2373/2003) decided on 1.9.2004. Similar view was expressed. We find no reason to take a different view.

12. Therefore on this short ground, we allow the present application and quash the impugned orders. We direct that if deemed appropriate, a fresh note of disagreement may be recorded and served on the applicant and from that stage, the departmental proceedings may proceed.

  
( S.K. Naik )  
Member(A)

  
( V.S. Aggarwal )  
Chairman

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