

13

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

O.A. NO.1779/2004

This the 3<sup>rd</sup> day of August, 2005.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)**

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Satyavir Singh,  
Head Constable, Delhi Police  
(PIS No.28780411),  
R/O VPO Kharkhoda,  
Distt. Meerut, U.P.

... Applicant

( By Shri Anil Singal, Advocate )

versus

1. Govt. of N.C.T. of Delhi through  
Commissioner of Police,  
Police Headquarters,  
I.P.Estate, New Delhi.
2. Joint Commissioner of Police Traffic,  
PHQ, I.P. Estate,  
New Delhi.
3. Deputy Commissioner of Police Traffic,  
PHQ, I.P.Estate,  
New Delhi.

... Respondents

( By Ms. Simran for Mrs. Avnish Ahlawat, Advocate )

**ORDER**

**Hon'ble Shri V.K.Majotra, Vice-Chairman (A):**

Applicant, Shri Satyavir Singh, Head Constable, has challenged punishment of forfeiture of two years approved service entailing reduction in pay from Rs.4390/- to Rs.4220/- with immediate effect, in departmental enquiry against him. It had been alleged that around 4.30 p.m. on 6.9.2002 applicant along with ASI Hare Ram Singh and Constables Sanjeev Kumar and Ashwani Kumar was caught red-handed demanding and accepting illegal entry money from one Jai Bhagwan, conductor of blue line bus No. DL 1P 5739.

16

19

2. The learned counsel of applicant stated that nothing was recovered from applicant nor was any demand/acceptance of money on the part of applicant established in the disciplinary enquiry against him. He stated that charges have been wrongly established against applicant in violation of the principles of natural justice and misreading of evidence. He raised the following contentions:

- (1) The departmental enquiry is vitiated on the ground of violation of rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980. While the allegations leveled against applicant amounted to commission of a cognizable offence by applicant in official discharge of his duties, no prior approval of the Additional Commissioner of Police as mandated by rule 15(2) *ibid* was obtained before ordering the departmental enquiry. He particularly stated that the number and date of any such order granting approval has not been cited in order dated 27.9.2002 whereby departmental enquiry was instituted against applicant. In this connection, the learned counsel relied on order dated 22.9.2004 in OA No.3021/2003 : ***Krishan Kumar v Govt. of NCT of Delhi & Ors.***, which in turn relying on the Division Bench decision of the Delhi High Court in the case of ***Commissioner of Police v R.C.Shekharan*** (CW-1553/2003) decided on 30.4.2003 held that there has to be an application of mind by the Additional Commissioner of Police in terms of rule 15(2) *ibid* whether the concerned person is to be dealt with departmentally or a criminal case should be registered, pointing out that in the present case no such decision had been taken at the level of the Additional Commissioner of Police in terms of rule 15(2). As such, the disciplinary proceedings against applicant would stand vitiated.
- (2) The learned counsel then stated that no PW had stated to have seen Shri Jai Bhagwan PW-9, giving money to applicant or others nor had they heard anything about demand and acceptance of entry money. In support,

bb

15

he relied on Delhi High Court's decision in *Kundan Lal v Delhi Administration, Delhi & Ors.*, 1976 (1) SLR 133 to contend that recovery of money from applicant, assuming that it had been received, as alleged, could not by itself, without more evidence, establish that applicant had received a bribe. Evidence on record has to establish that applicant had received the amount as bribe, which has not been established by any supporting evidence. He further contended that even PW-9 had stated that his signatures had been taken on a plain paper by the officials of the PRG and as such he had not made any statement earlier to the PRG team. The learned counsel stated even the enquiry officer had stated that PW Jai Bhagwan had denied in his statement, "he had ever been the member of a raiding party.... The prosecution story appears to be vague.... They have neither heard the demand nor seen the acceptance.... The bus conductor has totally denied the prosecution story.... He has only accepted that he had signed on the blank papers on the request of traffic staff... which clearly creates doubts about the prosecution story.... There were passengers sitting in the bus at the time of raid but none was asked to join the raiding party or was asked to sign the memo which is the biggest lapse on the part of the PRG team.... No statement of PW-9, the conductor of the bus was recorded before the raid whereas the complaint must be reduced into writing before conducting raid and their personal search. This lapse proves that the raid was full of lacunae." The learned counsel stated that money was recovered but applicant had stated that that was his own money. Thus, the learned counsel maintained that the statement of PWs other than PW-9 cannot be relied upon and the finding of guilt as recorded by respondents is liable to be set aside/quashed.

- (3) The learned counsel next took exception to respondents' taking into consideration the earlier statement of PW-9 recorded during the PE in

b

16

preference to what he stated in the DE. He contended that as per the provisions contained in rules 15(3) and 16(iii) of the Rules *ibid*, the statement during the PE can be brought on record and considered only when the witnesses are no longer available and not when they are examined in DE. Thus reliance of the statement of PW-9 recorded in PE in preference to the statement recorded during DE is in violation of the aforesaid rules.

3. The learned counsel of respondents opposed the contentions made on behalf of applicant. He has also produced the related DE file in support of his contentions.

4. As regards prior approval of the Additional Commissioner of Police in terms of rule 15(2) *ibid*, the learned counsel stated that the Joint Commissioner of Police (Traffic) had kept in mind the provisions of rule 15(2) and directed that regular DE be initiated against applicant and his co-defaulters.

5. Next the learned counsel stated that the mere non-examination of the bus conductor or the passengers will not vitiate the enquiry. In a departmental enquiry the probability of evidence is required to be seen. The manner in which the currency was recovered from the person of applicant and his co-defaulters and the statements of other prosecution witnesses clearly established the charge against applicant. He stated that a sum of Rs.1150/- collected illegally from commercial vehicles was recovered from the possession of applicant. This amount was kept in a haphazard manner and was recovered through a seizure memo bearing signatures of applicant. He further stated that even if the earlier statement is not taken into consideration for proving the charge against applicant there is sufficient circumstantial evidence and material that proves the charge against applicant. Applicant had signaled to stop the blue line bus without any reason and

Ob

directed the conductor to go to the ZO/ASI Hare Ram Singh, a co-defaulter of applicant.

6. We have considered the respective contentions of parties and also carefully perused the record produced by respondents.

7. For proper adjudication in this case, it would be appropriate to extract the provisions of rules 15(2) and 16(iii) of the Delhi Police (Punishment & Appeal) rules, 1980 -

**“15. Preliminary enquiries. – (1) xxx xxx**

(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.”

**“16. Procedure in departmental enquiries –** The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where *prima facie* the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer:

(i) xxx xxx

(ii) xxx xxx

(iii) If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and records so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any

lb

NB

questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements of documents thus brought on record.”

8. It is observed that the order Annexure A-1 dated 27.9.2002 whereby departmental enquiry was instituted against applicant among others, states that “prior approval of Joint C.P./Traffic, Delhi” for ordering a joint departmental enquiry had been obtained. The departmental file indicates that while a note was submitted to the Joint Commissioner of Police, Traffic pertaining to the act of applicant along with others also stating that the concerned staff were placed under suspension, it is not established from the record that there was any consideration as to whether a criminal case should be registered against applicant and the alleged co-defaulters or not. In terms of rule 15(2) *ibid* departmental action could be ordered after the approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered or departmental enquiry should be held. This provision specifically requires an application of mind by the Additional Commissioner of Police to make a choice between registration of a criminal case and institution of a departmental enquiry. This is a positive act on the part of the Additional Commissioner of Police rather than a mere procedural requirement. In the present case, the departmental record does not indicate application of mind on the part of the Additional Commissioner of Police/Joint Commissioner of Police, Traffic in terms of the provisions of rule 15(2). Obviously, the legal requirement as stated above has not been complied with. The ratio *deci dendi* of the case of *Krishan Kumar* (supra) is certainly applicable to the facts of the present case.

9. While it has been contended on behalf of applicant that the present is a case of no evidence, respondents have contended that the preponderance of probability and evidence as well as material on record proves the charge against applicant. The learned counsel of respondents also contended that even if the

U

19

earlier statement of PW-9 was not taken into consideration, there was good amount of evidence to establish the guilt against applicant. He stated that applicant had signaled the bus to stop without any reason and directed the conductor to go to the ZO/ASI Hare Ram Singh, a co-defaulter of applicant. He further stated that in accordance with the seizure memo which bears the signatures of applicant, an amount of Rs.1150/- in a haphazard manner had been recovered from the possession of applicant which was not explained by applicant.

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

6

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.

11. In result, having regard to the above discussion, we allow the present OA quashing and setting aside the impugned orders of punishment in question. Applicant shall be entitled to consequential benefits, such as restoration of original pay, arrears, seniority, consideration for promotion, if any. No costs.

S. Raju  
(Shanker Raju)  
Member (J)

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

3.8.05

/as/