CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1817/2004

New Delhi, this the **11th** day of February, **2005**

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

Head Constable Surender Singh
R/o 415, Sainik Vihar,
New Delhi. ... Applicant

(By Advocate: Sh. Sachin Chauhan)

Versus

1. Government of NCT of Delhi
Through its Chief Secretary
Sachivalaya, I.P. Estate,
New Delhi.

2. Commissioner of Police,Delhi
Police Headquarters, I.P. Estate,
M.S.O. Building,New Delhi

3. Addl. Commissioner of Police, Crime
Police Headquarters, I.P. Estate,
M.S.O. Building,New Delhi .... Respondents

(By Advocate: Sh. Rishi Prakash)

O R D E R(Oral)

By Mr. Justice V.S.Aggarwal:

The applicant is a Head Constable. 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 had imposed a penalty:

> "In view of the facts and circumstances of the case and also taking into consideration the evidence adduced during enquiry and records placed on the file, I am of the view that the ends of justice would be met by imposing one of the major penalties. Accordingly, I impose the punishment of permanent forfeiture of three years of approved service of

each of the delinquents entailing reduction in their pay proportionately. The order will be effective from the date of its issue. They are hereby reinstated from suspension with immediate effect and their suspension period w.e.f. 23.7.1992 to the date of reinstatement is hereby treated as not spent on duty for all intents and purposes. They will not draw anything more except that they had drawn in the form of subsistence allowance."

The applicant preferred an appeal which has also been dismissed.

2.We are not delving into the merits of the matter. This is for the reason that applicant's learned counsel contended that note of disagreement recorded was not a tentative note but a final finding arrived at and, therefore, further proceedings necessarily should be quashed.

3. Some other facts can also be mentioned to precipitate the said controversy.

4. When the matter went to the inquiry officer, he had given certain findings. A note of disagreement was recorded by the Additional Commissioner of Police which reads:

> "I have also gone through the defence evidence recorded by the E.O. and discussion on evidence. I agree that the first part of the charge that Inspr. Satbir Singh met Sajjan Ali in Shahdara Court on 8.7.92, is not proved. Similarly the visit of the defaulters to the house of the complainant on 12.7.92 is also not proved. During the D.E. this time, all PWs have not deposed against defaulters. PW Ladden Khan refused to have paid Rs.6,000/- to Sajjan Ali as consideration of sale of motor cycle which is alleged to have been given to defaulter Inspr. Satbir Singh. DW Shri D.S.Sandhu, ACP confirmed the permission granted by DCP/Narcotics to Inspr. Satbir Singh to develop information about Maqsood Ali in Mauj Pur area. R.C. No.47/92 registered against the defaulters has also been closed and order on closure is awaited from the court.

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However, after appreciating the evidence of prosecution and defence and the discussion on evidence by Enquiry Officer, I disagree partially on the following points:-

1. The statement of Sajjan Ali, who has since died, was brought on record as per the rules. It may suffer some infirmity on the ground that the copy of the statement made by Sajjan Ali to CBI on 22.7.92 was not provided to the defaulters before his examination as PW in the earlier D.E. However, both the defaulters Inspr. Satbir Singh and HC Surender Singh, availed opportunity and cross-examined him and that the statement was recorded in the presence of both the defaulters by the then DCP/D.E. Cell.

2. DW-4 Shri D.S. Sorari (retired DSP) CBI, who investigated CBI R.C. No.47/92 against Inspr. Satbir Singh and HC Surender Singh during D.E., has approved the report u/s 173 Cr. P.C. (closure report), which bears his signatures. This report gives the details of the incident as it happened on 23.7.1992, which cannot be overlooked.

3. Inspr. Satbir Singh and HC Surender Singh reached Mauj Pur Chowk on 23.7.92, where complainant Sajjan Ali did try to give the alleged demanded money, which led to raid by CBI though cash was not recovered from either of the defaulters but as lying on the floor of the restaurant."

5. On the strength of the same, it is being contended that it was not a tentative note of disagreement and, therefore, prejudice is caused to the applicant.

6. Strong reliance was placed on the decision of the Supreme Court in the case of **YOGINATH D. BAGDE** v. **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 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".

8. As one glances through the decision in the case of **Yogesh Gulati (supra)**, it is obvious that in the facts it was held that there was a sufficient compliance and it was a tentative note of disagreement.

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

10. 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 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 further 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.".

11. The Delhi High Court held that it was not a tentative note of disagreement and the order passed by this Tribunal was upheld.

12. As one glances through the present note of disagreement, it is also obvious that the disciplinary authority

recorded that he disagreed partially with the findings recorded by the inquiry officer. It is not a tentative note of disagreement and, therefore, the decisions in the case of **Pramod Kumar and Anr. (supra)** and **Yoginath D. Bagde (supra)** of the Delhi High Court and Supreme Court respectively come to the rescue of the applicant.

13. Almost similar controversy had arisen in the case of **TEEKA RAM** v. **THE LT. GOVERNOR, DELHI AND ORS.**, (O.A.No.2649/2001), decided on 1.5.2003 and again in the case of **MAHMOOD HASSAN AND ANR.** v. **GOVT. OF NCT OF DELHI AND ORS.**, (O.A.No.2373/2003), decided on 1.9.2004. A similar view was expressed. We find no reason to take a different view.

14. On this short ground, therefore, we quash the impugned order and direct that, if deemed appropriate, a fresh note of disagreement may be recorded and thereafter, the disciplinary proceedings may continue.

15. However, it goes without saying that already 12 years have elapsed, there is an inordinate delay in these proceedings and there has been repeated litigation. Therefore, if the authorities intend to initiate the disciplinary proceedings, it should be completed within three months of the receipt of the certified copy of the present order, subject to the applicant's cooperation in the same.

(S.A.Singh)
Member (A)

(V.S.Aggarwal)
Chairman

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