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Central Administrative Tribunal
Principal Bench

OA No. 340/2004

New Delhi, this the 10th day of January, 2006

Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
Hon'ble Mr. Shanker Raju, Member (J)

Ranvir Singh

(By Advocate: Shri Shyam Babu)

-versus-

Govt. of NCT of Delhi & Ors.

(By Advocate: Shri Harvir Singh)

1. To be referred to the Reporters or ~~not~~? yes

2. To be circulated to outlying Benches? yes

S. Raju
(Shanker Raju)
Member (J)

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Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
Hon'ble Mr. Shanker Raju, Member (J)

Ranvir Singh
S/o Sh. Bali Singh,
Presently resident of
Block C, Gali No. 1,
House No. 16, Mangolpuri,
Delhi. ....Applicant

(By Advocate: Shri Shyam Babu)

-versus-

Govt. of NCT of Delhi through

1. Chief Secretary,
Players Building,
I.P. Estate,
New Delhi.

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

3. Joint commissioner of Police,
[Armed Police]
Police Head Quarters,
I.P. Estate,
New Delhi. ...Respondents

(By Advocate: Shri Harvir Singh)

O R D E R

By Mr. Shanker Raju, Member (J):

By virtue of the present Original Application, applicant, an ex-Constable in Delhi Police, has impugned order dated 4.8.2003 whereby after a departmental enquiry vide common

order, a penalty of dismissal from service has been inflicted upon the applicant. He has also assailed an order passed on 15.12.2003 in his appeal filed against dismissal, whereby punishment has been maintained.

2. Applicant, who was enrolled in Delhi Police on 31.5.1993, has been proceeded against in a departmental enquiry for the following charges:

> " You, ZO/SI Ram Dev Singh 3255/D, Ct. Ranbir Singh No. 3171/T, Ct,. Jai Kishan No. 2834/T and Ct. Raj Karan No. 1412/T are hereby charged that on 5.10.2000 while posted in Vasant Vihar Circle, you were found present on NH8 in front of Shiv Murti near New Delhi Haryana Border, (Rajokari) Delhi and found indulging in mal practice by collecting illegal money from commercial vehicles. About 12,.50 p.m. Ct. Ranvir Singh No. 3171/T and Ct. Jai Kishan No. 2843/T signalled to stop LPG Carrier No. HR-29/GA-0397. Ct. Raj Karan approached the truck and took driver Jagdish s/o Badan Singh resident of Jarelia PO Naujheel, district Mathur (UP) to ZO and demanding Rs. 200/- as entry money and took Rs. 200/- from him. The same was put in an empty cigarette packet (Gold Flake). The Ct. Raj Karan No. 1412/T was caught red handed on the spot by the PRG Team and illegal entry money amounting to Rs. 1200/- was recovered stuffed in any empty cigarette packet, collected illegally from commercial vehicles, which also included the 4 signed currency notes of Rs. 50/- denominations. ZO/SI Ram Dev Singh No. 3255/D along with above mentioned lower subordinates assembled at the spot with common malafide intention of collecting money from commercial vehicles.
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> The above act on the part of the ZO/SI Ram Dev Singh No. 3255/D, Ct. Ranbir Singh No. 3171/T, Ct. Jai Kishan No. 2843/T and Ct. Raj Karan No. 1412/T amounts to grave misconduct, negligence, malafide and dereliction in the discharge of their official

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duties, which renders them liable to be punished under the provision of Delhi Police (Punishment & Appeal) Rules, 1980."

3. Though the only public witness figured in the list has not supported prosecution, yet putting leading questions by assumption of role of prosecutor, enquiry officer has held the charge proved against the applicant and others on the ground that Constable Ranvir Singh, though stated to be not detailed with the ZO but being present at the spot was found indulging in illegal activities with other delinquents. The disciplinary authority, on the basis of the aforesaid findings of the enquiry officer holding that Constable Ranvir Singh, who was not shown on duty, the duty roster is irrelevant because all the defaulters have been caught in pursuance of the common malafide intention.

4. The appellate authority too reiterated the aforesaid pleas by ruling that the applicant was part of the caucus.

5. Shri Shyam Babu, learned counsel for the applicant has projected his case on `no misconduct' and `no evidence' and stated that there is no evidence as to either stoppage of truck, demand of money or acceptance and recovery thereof. As per PW-2, the applicant was on circle duty but as no iota of evidence has come forth to indicate or establish, in any manner, common malafide intention, yet without any recovery and demand of money, the charge against the applicant has been established simply being at the spot without any over tact

on merely suspicion, surmises, conjectures and no evidence, which cannot be sustained in law.

6. Another contention put forth is cross examination of one of the prosecution witnesses especially PW-10 the truck driver who had not supported the prosecution, yet without any jurisdiction, putting leading questions had been an attempt on the part of the Enquiry Officer to fill up the gaps in the enquiry, which makes the enquiry as farce and role of enquiry officer as biased.

7. Learned counsel would further contend that as per rule 16(3) of the Delhi Police (Punishment & Appeal) Rules, 1980, if a witness makes a statement during the course of departmental enquiry, his earlier statement cannot be brought on record in any manner. As the same has been relied upon in the present case, the same would be in violation of the dicta laid down in the matter of ***Kuldeep Singh vs. Commissioner of Police***, JT 1998 (8) SC 603 by the Apex Court.

8. Another legal infirmity pointed out is non-application of mind and non-recording of reasons by the Joint Commissioner of Police in the wake of disclosure of cognizable offence of the applicant in discharge of his duties, which is violative of Rule 15(2) of the Delhi Police Rules ibid.

9. On the other hand Shri Harvir Singh, learned counsel for the respondents vehemently opposed the contentions and stated that once the applicant was present and the other

Constable had taken bribe, which is recovered in the form of signed currency notes, there is presumption as to common malafides intention and involvement of the applicant in mal practice.

10. Learned counsel stated that there is no infirmity in the procedure and on the basis of evidence, charge against the applicant has been proved.

11. Learned counsel maintained that earlier statement of S/Shri Satpal and Jagdish had been taken into consideration in para 5(d) of the reply and the punishment awarded is commensurate with the misconduct.

12. Learned counsel would contend that statement of PW-10 was in favour of the applicant because he has been won over but seizer memo clearly shows demand of illegal money by another Constable and, therefore, there is no violation of 15(2) of the Rules ibid.

13. On careful consideration of the rival contentions of the parties and perusal of the record, the charge against the applicant framed in the enquiry was on the basis of summary of allegations, which clearly shows that the applicant along with others assembled at the spot with common malafide intention for collecting money from commercial vehicles.

14. In the disciplinary proceedings, the rule is of preponderance of probability where the concept of "hear-say" and circumstantial evidence is admissible. However, rule 20 of

the Delhi Police Rules ibid clearly provides that the enquiry officer is not bound to follow the provisions of Code of Criminal Procedure or Indian Evidence Act. Any evidence may be admissible as per the discretion of the enquiry officer and if it is found irrelevant to the charge and is noticed merely to prejudice the opposite party or to cloud the issues, would be declared irrelevant.

15. The concept in the disciplinary proceedings as to the quantum of evidence and its quality is not the domain of the Tribunal. Re-appreciation of the evidence is beyond its purview. However, in a judicial review what is permissible for the court is to judge whether any inadmissible evidence has been brought on record, which is not legally tenable or the conclusion is so perverse based on `no evidence' and `surmises' and does not pass the test of common reasonable prudent man. In this context, the High Court of Andhra Pradesh in ***Union of India & Ors. vs. G. Krishna,*** 2005 (3) ATJ 359, held as follows:

> "11. In NAND KISHORE V. STATE OF BIHAR AIR 1978 SC 1277, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusion on the basis of some evidence, that is to say, such evidence which, and, that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty

as in that event, the findings recorded by the Enquiry Officer would be perverse.

12. The High Court in cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate Court/authority. The jurisdiction of the High Court in such cases is very limited, for instance where it is found that the domestic enquiry is vitiated because of the non-observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence and/or the punishment is totally disproportionate to the proved misconduct of an employee. (See. INDIAN OIL CORPORATION Vs. ASHOK KUMAR ARORA (AIR 1997 SC 1030).

13. A broad distinction has to be maintained between the decision which is perverse and those, which are not. If a decision is arrived at on no evidence or it is thoroughly unreliable or no reasonable person can act on it, the Order would be perverse. But, if there is some evidence on record, which is acceptable and which could be relied upon, how so ever compendious it may be the conclusion would not be treated as perverse and the findings would not be interfered with (See: KULDIP SINGH Vs. COMMISSIONER OF POLICE (AIR 1999 SC 677).

14. It is clear from the aforesaid decisions that in departmental proceedings, the disciplinary authority is the sole Judge of a fact and in case an appeal is presented to the appellate authority, the appellate authority has also the powers of a Judge and jurisdiction to re-appreciate the evidence and come to its own conclusion on facts being the sole fact finding authority. Once finding of fact based on evidence is recorded, the High Court in writ jurisdiction may not normally interfere with the proceedings, unless it finds that the recorded findings were based either on no evidence or that the findings are wholly perverse and which are legally untenable. The adequacy or inadequacy is no permitted to be canvassed before the High Court, since High Court does not set as an appellate

authority over the factual finding recorded in departmental proceedings. While exercising the power of the judicial review, the High Court cannot, normally speaking, substitute its own conclusion with regard to the guilt of the delinquent for the departmental authorities. Even so far as the imposition of the penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary authority is either impermissible or such that it shocks the conscience of High Court, it should not normally substitute its own opinion and imposed some other punishment or penalty. Even though, the power of judicial review of being expected to be flexible and its dimension not closed, yet the Court in exercise of the power of its judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those Orders are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. The disciplinary enquiry is not a criminal trial. The Standard of proof required to be proved is preponderance of probabilities and not proof beyond reasonable doubt. It has to be remembered that the judicial review is directed not against the decision, but is confined to the examination of the decision making process. In the words of Lord Haltom in Chief Constable of the North Wales Police v. Evans (1982) 3 All ER 141, it was observed: -

> "The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the "Court."

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16. In the light of the above, the documents and evidence brought on record clearly establish that the applicant was posted in the circle duty and as per the PRG Team and also the evidence of one of the Drivers i.e. PW-10 Jagdish, there is no iota of evidence against the applicant of either stopping the truck or demanding any illegal entry fee or acceptance thereof as no recovery had been effected from the applicant. Merely because the applicant was at the spot without any over tact would not be sufficient to hold the applicant involved in any manner, even with a common intention of collecting money from commercial vehicles.

17. Assuming common intention, which is a concept of criminal law laid down under Section 34 of IPC, for which the pre-requisite is pre-concert of mind between the defaulters. No evidence has come forth in the enquiry that the applicant along with others had pre-concert of mind with others. Even in furtherance, he was present at the spot, one can be charged for misconduct of his individual acts and omissions but the acts of others cannot be imputed on the applicant, as vicarious liability has no concept and applicability in administrative law. Applicant's conduct of remaining present at the spot without any over tact or allegations of any corrupt motive certainly is `no misconduct' and as there is `no evidence' on record to establish, in any manner, that the applicant was involved in any corrupt motive, conclusion drawn by the enquiry officer is rested on `suspicion', `surmises', `conjectures' and `no evidence' which shall not take place of proof as per the decision

of the Apex Court in ***Union of India vs. H.C. Goel***, AIR 1964 (SC) 364.

18. Though there are other legal infirmities also, yet leaving other grounds open, the present Original Application succeeds only on the grounds of `no evidence' and `no misconduct`.

19. Accordingly, for the reasons recorded above, Original Application is allowed. Impugned orders are set aside. Respondents are directed to forthwith reinstate the applicant in service. He would be granted all the consequential benefits as per FR 53, within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

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

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