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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 369/2004

New Delhi this the 25th th day of October , 2004

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

Sunil Kumar,
Constable of Delhi Police
(PIS No. 28931315)
R/o C-21, Roshan Vihar,
Nazafgarh, New Delhi-43. ... Applicant.

(By Advocate Shri Anil Singhal)

Versus

1. Govt. of N.C.T. of Delhi
through Commissioner of Police,
Police Headquarters,
IP Estate, New Delhi.

2. Jt. Commissioner of Police,
Traffic, PHQ,
IP Estate, New Delhi.

3. Deputy Commissioner of Police,
Traffic, PHQ,
IP Estate, New Delhi. .... Respondents.

(By Advocate Shri Ajesh Luthra)

O R D E R

Justice V.S. Aggarwal:

The applicant, Sunil Kumar, is a constable in Delhi Police. Disciplinary proceedings had been initiated against the applicant, on the assertions that on 29.4.2000, a traffic PRG team was on surveillance in the area of Najafgarh to verify certain complaints received regarding mal practices and corruption on the part of the traffic staff. It was informed that at Chhawla Road near Police Station Najafgarh, the policemen, including the applicant demanded an illegal gratification. The PRG team

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further looked into the matter and it was found that vehicles were stopped illegally. Another truck driver Subeg Singh informed that the traffic policemen were demanding illegal "entry fee". Inspector H.M. Bakshi gave some signed currency notes to give it to the policemen on further demand. At 6.00 PM, this truck was stopped by Sub-Inspector Jassa Singh and the applicant and in the raid that followed, tainted money was recovered by Inspr. Bakshi from the applicant. It was asserted that the money was passed on to the applicant on his demand. On perusal of documents, it revealed that the truck driver had been prosecuted and an amount of Rs.50/- had been taken extra from him.

2. The Inquiry Officer had held that the charge against the applicant was not proved. However, the disciplinary authority recorded a note of disagreement, operative part of which reads:

> "I have carefully gone through the DE File, findings submitted by the Enquiry Officer and relevant record. I disagree with the findings submitted by the E.O. Either the PW-6 (Sh. Subeg Singh S/o Kashmir Singh R/o J-544, Sec. 16, Rohini, Delhi did not support their version during DE proceedings that the traffic staff demanded/accepted the illegal bribe, but he stated in his statement given at the time of PRG raid that Rs.50 (5 notes of Rs.10/- each) was given as entry fee. Similarly PW-3 (Ram Dass s/o Sate Ram R/o G-2, Lawrence Road, Delhi.) has stated in his statement given at the time of PRG raid that he paid Rs.250/- and ZO challaned for Rs.200/- only, but he did not support his earlier statement during DE proceedings since there are contradictions in their statements and seems to be won over these PWs, by defaulters which shows their guilt and malafide intention.
>
> Therefore, a copy of findings of the E.O. is being given to them free of cost for making representation against the contents of this disagreement note. They are called upon to show cause as to why their suspension period from 29.04.2000 to 28.03.2001 should not be treated as not spent on duty. Their reply, if any, should reach the undersigned within 15 days from the receipt of this letter, failing which it will be presumed that they have nothing to say in their defence and the DE will be decided on merits".
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> (Emphasis added)

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3. After considering the reply of the applicant, the penalty of withholding of annual increment temporarily for a period of two years was awarded to the applicant. He preferred an appeal which has since been dismissed.

4. Resultantly, the present application has been filed seeking quashing of the orders passed by the disciplinary as well as the appellate authority.

5. The application is being contested.

6. Learned counsel for the applicant at the outset urged that in the present case before us, sub-rule (2) to Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 has been violated. According to the learned counsel, approval of the Additional Commissioner of Police has not been obtained before starting the disciplinary proceedings and resultantly the disciplinary proceedings should be quashed.

7. According to him, a preliminary enquiry had been held which discloses the commission of a congnizable offence.

8. To appreciate the said argument, we reproduce sub-rule (2) to Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 which reads:

> "(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.".

The necessary ingredients are:

(a) A preliminary inquiry should be held;

(b) It should disclose the commission of a cognizable offence;

(c) It should be by a police officer of subordinate rank in his official relations with the public;

(d) The prior approval of the Addl. Commissioner of Police is necessary as to whether a criminal case or a departmental enquiry can be started.

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9. The stress was that preliminary inquiry in the present case had been held.

10. Learned counsel for the applicant urged that the respondents even referred to the fact that there was a preliminary inquiry.

11. So far as this particular aspect is concerned, it has to be stated to be rejected. A fact which is erroneously taken cannot be taken to be an admission. As would be noticed hereinafter, there was no preliminary inquiry that had, in fact, been held.

12. This question had been considered by this Tribunal in the case of **Krishan Lal, ASI Vs. Govt. of NCT of Delhi and Ors.** (OA 2071/2003), decided on 14.7.2004 when a similar argument was advanced. It was repelled holding:

> "12. The decision of this Tribunal proceeds on the premise that certain statements had been recorded to complete the formalities. However, preliminary enquiry is defined under sub-rule 1 to rule 15 of the Rules referred to above. The same unfolds itself in the following words:
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> "15(1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter (s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above-mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally proceed a departmental enquiry".
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> 13. It clearly shows that preliminary enquiry is a fact finding enquiry to establish the nature of the charge, identity of the defaulters and to judge the quantum of default. It must be made clear that preliminary enquiry is different from investigation. After the raid, if certain proceedings are taken on the spot, that is a part of the investigation. At the risk of repetition, we state that investigation is different from preliminary enquiry...".

13. Reliance on behalf of the applicant in that event had been placed on the decision of this Tribunal in the case of **R.C. Shekharan Vs. Govt. of NCT, Delhi** (O.A.2126/2001), decided on 12.8.2002. In that case, the respondents had denied that any preliminary inquiry had been conducted and had contended that it was a fact finding inquiry. It was in this backdrop that the Tribunal returned the findings that under sub-rule (2) to Rule 15, referred to above, it was mandatory to obtain the

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approval of the Addl. Commissioner of Police. The question as to when there is a raid conducted and in that event any proceedings done at the spot would not be preliminary inquiry was not considered in the case of **R.C. Shekharan (supra)**. Resultantly, the decision, therefore, is patently distinguishable. The plea must fail.

14. In that event, learned counsel contended that the note of disagreement was not a tentative note of disagreement but was a finding given and, therefore, prejudice is caused to the applicant. He 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".

15. 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

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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.

16. 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.

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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.".

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

18. When we compare the note of disagreement in the present case with the note of disagreement in the case of Constable Pramod Kumar, it is obvious that the reasoning was the same. Like in the case of Constable Pramod Kumar, the disciplinary authority specifically recorded:

> " I disagree with the findings submitted by the E.O..."

and further recorded that witnesses "seems to be won over these PWs, by defaulters which shows their guilt and malafide intention".

19. Identical almost were the findings recorded in the case of Constable Pramod Kumar. In that case, the disciplinary authority specifically mentioned that he does not agree with the conclusion of the E.O. and further recorded that the totality of the facts and circumstances of the case and evidence on record lends credence to the allegations made and the charge stood proved. No different are the findings herein.

20. On parity of reasoning in the case of Yoginath D. Bagade and in the case of Pramod Kumar, we have least hesitation in concluding that it was not a tentative note of disagreement but an expression of final opinion.

21. Almost 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 again 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. The similar view was expressed. We find no reason to take a different view.

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22. Therefore, on this short ground, we quash the impugned order and direct that, if deemed appropriate, a fresh note of disagreement may be served on the applicant and from that stage, the disciplinary authority may proceed.

23. In face of the findings above, we are not expressing any opinion on other questions which may only be embarrassing for either parties.

(S.K. Naik)
Member (A)

(V.S. Aggarwal)
Chairman

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