

Central Administrative Tribunal, Principal Bench, New Delhi

C.A.No.460/2004

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

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

Head Constable Omprakash,
No.814/PCR, PCR Unit,
S/o late Shri Bhim Singh,
R/o House No.418, Viji Bawana,
Delhi-39

....Applicant

(By Advocate: Shri Bankey Bihari)

Versus

1. Delhi Police
Through Commissioner of Police,
Police Head Quarters,
I.T.O., New Delhi
2. The Additional Commissioner of Police,
Police Control Room & Communications,
Delhi

....Respondents

(By Advocate: Shri Ajesh Luthra)

Order(Oral)

Justice V.S. Aggarwal, Chairman

The applicant is a Head Constable in Delhi Police. He had been served with the following charge:

"I Rati Ram, Asstt. Commissioner of Police, South Zone/PCR charge you, ASI Om Prakash No.608/D (PIS No.28650117), Head Const. Om Prakash No.814/PCR (PIS No.28750854) and Const. Shailender Singh No.1821/PCR (PIS No.28850854) that while you were posted in North Zone PCR on the night intervening 7/8.3.02 you were detailed to perform duty at PCR Van S-63 from 8 PM to 8 AM. On 8.3.02 at 7.16 AM one complainant

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Sh.Om Prakash r/o 1047 Mukharji Nagar, 1st floor, near Batra Cinema, Delhi reported the Police Control Room through tel. No.7652293 that the staff of PCR Van No.DL-1V 3580 had misbehaved with him and taken his driving licence without challan at Burari Chowk. Upon this Insp. Surender Pal Singh, Central Zone PCR was directed by the command room for enquiry into the complaint. He contacted the complainant Sh.Om Prakash at his residence and recorded his statement. The complainant supported the contents of his complaint, that while he was on the way to his home via by pass after dropping his friend Sandeep Sachdeva and reached at Burari Chowk red light, the staff of PCR Van stopped his car and called him. He reached to them where the staff of PCR Van asked to show Regn. Certificate, Pollution Certificate and Driving Licence. But he had not Pollution Certificate with him which was left at his residence. The Constable of PCR staff directed him to keep pollution certificate with him and took his driving licence in his possession without challan. He came to his house and again reached at the spot, where he did not find PCR Van there. The complainant also alleged that the PCR staff had stopped 5/6 cars in his presence and collected money from the owners of the vehicles, but they did not take any money from him. The complainant had also identified the PCR staff of PCR Van S-63 as ASI Om Prakash No.608/D, HC Om Prakash No.814/PCR and Const. Shailender No.1821/PCR in the presence of Insp. Surender Pal Singh in the office of North-Zone PCR at 5 Sham Nath Marg, Delhi. He also pointed out the Constable Shailender Singh, who took his driving licence into his possession at Burari Chowk red light during the course of vehicle checking at 0605 AM.

During enquiry it revealed that ASI Om Prakash No.608/PCR, HC Om Prakash No.814/PCR had conducted illegal vehicle checking and violated the instructions of command room as well as the senior officers and collected money from the vehicle owners in the presence of complainant and they also seized the driving licence of the complainant illegally.

The above act on your part ASI Om Prakash No.608/D, HC Om Prakash No.814/PCR, Const. Shailender Singh No.1821/PCR the staff of PCR Van S-63 amounts to gross misconduct, negligence, dereliction and malafide intention in the performance of your official duties, which renders you liable to be punished under the provisions of Delhi Police (Punishment & Appeal) Rules - 1980."

2.The enquiry officer had been appointed. He returned the findings that the charge stood proved. Resultantly the disciplinary authority on 25.4.2003 imposed a penalty of forfeiture of one year's approved service temporarily. The applicant preferred an appeal which has since been dismissed.

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3. By virtue of the present application, the applicant seeks to assail the orders passed by the disciplinary as well as the appellate authority.

4. The petition is being contested.

5. We have heard the parties counsel and have seen the relevant record.

6. Learned counsel for the applicant has raised the following submissions –

- (a) there is no material against the applicant to hold that he derelicted in his duty with respect to the charge that has been framed; and
- (b) the defence witnesses produced by the applicant during the course of the enquiry were not cross examined and, therefore, their statements should have been accepted as correct and resultantly, the applicant should have been exonerated from the charge that has been framed.

7. We will take up the second argument in the first instance.

8. We do not dispute the proposition enunciated at the Bar that if a witness is not cross examined, necessarily in normal circumstances subject to scrutiny of ~~statement of the~~ the witness, his statement has to be accepted as correct.

9. In the present case, the applicant had examined four defence witnesses. The summary of the same would be that Muni Bhardwaj, D.W.-1 who is having the dairy business near the place of the incident, stated that he did not see any of the staff of the PCR taking money and the Car Driver while departing had stated "Main Tumhe Naukari Karna Sikha Doonga."

10. Rajender Singh, D.W.-2 had told the enquiry officer that on 8.3.2002 at 6.45 A.M., he saw a PCR Van and a slate-colour Santro Car. He found that PCR staff was checking the papers of the driver of the said car and had returned the

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same after checking. They had checked up his papers also. Ved Prakash Bhardwaj, D.W.-3 made almost a similar statement in tune with the statement made by Rajender Singh, D.W.-2. He also stated that the necessary papers had been returned to the complainant.

11. Harish, D.W.4 stated that he has a tea shop at Burari Chowk. On 8.3.2002, he had seen a slate-colour Santro Car which was stopped by the PCR Van. Their documents were checked and after the checking, the same were returned.

12. The statement of these witnesses necessarily has to be scrutinized and so far as D.W.-1 Muni Bhardwaj is concerned, he does not identify the complainant. The charge does not pertain to accepting of any illegal gratification from the complainant. The charge pertained to checking the driving licence of the complainant without a challan and conducting the said checking after the prescribed time. Therefore, the testimony of this witness will not improve upon the version of the applicant. As regards the statement of Rajender Singh, D.W.2, it is obvious that he reached the spot at 6.45 A.M. while the complainant had reached the said place at 4.45 A.M. It is difficult, therefore, to believe that he was present at the same time as the complainant. So far the other two defence witnesses are concerned, their testimony goes contrary to the record pertaining to the fact that the applicant had not taken the driving licence of the complainant. Therefore, this particular argument necessarily must fail.

13. Reverting back to the first plea that there is no evidence against the applicant, perusal of the record reveals that the complainant appeared as P.W.6

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before the enquiry officer. In unambiguous terms he testified that it was the Head Constable who had taken the driving licence from him and that after he had come back home, he had made the complaint by dialing the No.100 against the PCR staff pertaining to the said misbehaviour at Burari Chowk. It cannot, therefore, be stated that there is no evidence against the applicant to prompt us to interfere in judicial review of departmental proceedings. Furthermore, it is in evidence that the checking time for the PCR was from 4.00AM to 5.00AM while the applicant had indulged in checking of the same after the said hours after 6.00AM.

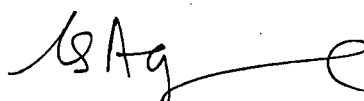
14. Once such findings have been so arrived and they are based on some evidence, it cannot be stated that the said findings are preposterous to prompt any interference.

15. No other argument has been advanced.

16. For the reasons recorded above, the O.A. being without merit must fail and is dismissed.


(S.K. Malhotra)
Member(A)

/dkm/


(V.S. Aggarwal)
Chairman