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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.750/2004

New Delhi this the 8th day of October, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Bhoop Singh,

-Applicant

(By Advocate Shri Anil Singhal)

-Versus-

1. Govt. of NCT of Delhi
through Commissioner of Police,
Police Headquarter,
IP Estate, New Delhi & Others -Respondents

(By Advocate Shri Ajesh Luthra)

1. To be referred to the reporters or not? Yes
2. To be circulated to other Benches of the Tribunal or not? Yes

S. Raju
(Shanker Raju)
Member (J)



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Bhoop Singh,
HC (Dvr.) in Delhi Police,
(PIS No.28872154)
R/o S-1, Rajdhani Park,
Nangloi,
New Delhi-41.

-Applicant

(By Advocate Shri Anil Singhal)

-Versus-

1. Govt. of NCT of Delhi
through Commissioner of Police,
Police Headquarter,
IP Estate, New Delhi.
2. Joint Commissioner of Police,
PCR & Communication,
Police Headquarter,
IP Estate, New Delhi.
3. Deputy Commissioner of Police,
PCR, Police Head Quarter,
IP Estate, New Delhi.
4. Asstt. Commissioner of Police,
North West Zone PCR, Delhi,
Through Commissioner of Police,
PHQ, IP Estate, New Delhi.

-Respondents

(By Advocate Shri Ajesh Luthra)

ORDER

Mr. Shanker Raju, Member (J):

Applicant assails a major penalty of forfeiture of one year's permanent service entailing reduction in pay inflicted vide order dated 30.8.2003 as well as appellate order dated 16.1.2004, upholding the punishment.

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2. Applicant while working as Head Constable Driver and attached on a duty in PCR Van on 6.9.2002 while it was drizzling due to sudden flash of on coming vehicle ^h PCR Van collided with the road divider, resulting in damage to the vehicle and injuries to the staff.

3. An inspection was carried out by the ACP (Motor Transport Section), where a report was submitted on 11.9.2002 observing that the damage caused to the vehicle is due to rash and negligent driving of applicant.

4. The disciplinary authority (DA) having jurisdiction issued a show cause notice to applicant on 11.9.2002 proposing a minor penalty of censure. This has been represented to by applicant.

5. Vide an order dated 26.12.2002 the Deputy Commissioner of Police ordered a regular disciplinary enquiry (DE) against applicant for a major penalty on the grounds of negligence on the part of applicant, which resulted in damage to the vehicle and injuries to the staff.

6. The show cause notice issued was vacated on administrative grounds vide order dated 30.1.2003. Consequent upon a summary of allegation was served upon applicant for the following allegations:

"It is alleged that on 6.9.2002, Head Const. (Ex.) Ved Pal, 369/PCR, Const. Sharajneet Singh, 2002/PCR and HC (Dvr.) Bhoop Singh, 4129/PCR were detailed for duty from 8 P.M. to 8 AM on MPV-97, as I/C Van, Gunman and Driver respectively at about 12.15 AM, while they were proceeding to P.S. Samaipur Badli from its base, to take local police for night patrolling, the Govt. vehicle/MPV collided with the road divider resulting the accident and the staff detailed for duty on MPV sustained injuries and the Govt. vehicle damaged badly.

^h During inquiry/inspection of the spot, it is revealed that accident took place due to the negligence on the part of HC (Dvr.) Bhoop Singh, No.4129/PCR.

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Consequently the Govt. vehicle was badly damaged and staff deployed for duty thereon sustained injuries.

The above act on the part of you HC (Dvr.) Bhoop Singh, No.4129/PCR amounts to grave misconduct, dereliction and negligence in the discharge of your official duties making you liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

7. In all, seven prosecution witnesses (PWs) were examined in the enquiry and none of the witnesses established the negligence and rash driving of applicant. The enquiry officer (EO) on receipt of the defence statement of applicant with the following observations held the charge proved:

"I have gone through the statements of PWs and defence statement of the defaulter HC (Dvr.).

I am not agree with the plea taken by the HC (Dvr) Bhoop Singh, No.4129/PCR with the reasons that:-

1. The delinquent HC (Dvr) is doing the job of driver from the beginning of his service as he has been enrolled in Delhi Police as 'Driver' and should have the knowledge of driving technique and obstacles came across to every driver during the driving. Every driver has to face the high head light on their eyes of opposite side coming vehicles.
2. The reason that at the time of accident the weather was not good and was also drizzling is not considerable as every driver is supposed to drive his vehicle irrespective of day, night and even in bad weather too, as well as he was not a only driver who was driving his vehicle in the bad weather. There will be thousand of drivers who were driving their vehicles in Delhi on that particulars date and time. Even the head lights of PCR Van Commander 97 were also in working condition.
3. His SCN was dropped on administrative grounds as the senior officers feel that it was a grave misconduct and carelessness on the part of the delinquent (HC) (Dvr) Bhoop Singh, NO.4129/PCR which caused major damaged to the Govt. vehicle and injuries to I/C Van and Gunman and to conduct a regular DE against him is necessary for seeking the justice. Moreover, no any punishment, Censure etc. has been awarded to him and the SCN was dropped on administrative grounds.
4. The road divider was also present on its place for the long time and the delinquent HC (Dvr) used to

drive his vehicle even many time during his duty and it was in his knowledge. These type of obstacles are remained in the mind of every efficient driver while driving his vehicle. Moreover, the divider was in between the roads and not in between the lane in which he was driving his vehicle. These all above circumstances sow that the delinquent HC (Dvr) although physically was present on steering, but mentally he was not even present on the road.

5. In view of the above discussion and evidence on record, I have come to the conclusion that the Charge framed against HC (Dvr) Bhoop Singh No.4129/PCR stand proved."

8. DA, on representation of applicant imposed upon a major penalty. This was assailed in an appeal where on upholding the punishment, the present OA is filed.

9. Learned counsel for applicant Shri Anil Singhal has taken several contentions to assail the impugned orders. At the outset, it is stated in paragraph 4.8 of the OA that the findings recorded by the EO is based on no evidence and applicant has been held guilty on the basis of surmises and conjectures. In this view of the matter it is stated that one cannot be punished without any misconduct and perverse finding which is rested on no evidence.

10. Learned counsel has further stated that the EO has acted as a prosecutor without any authority under the Rules, cross examined the prosecution witnesses by putting leading question which amounted to assumption of the role of a prosecutor and as enquiry is not conducted in an impartial manner a deemed bias is to be inferred which vitiates the enquiry and reliance has been placed on a decision of this Tribunal in OA-2827/2003 Sher Singh v. Govt. of NCT of Delhi decided on 7.7.2004.

11. On the other hand, respondents' counsel vehemently opposed the contentions. According to him, the EO after going through the statement and defence statements has proved the



charge, which is based on evidence and it does not lie within the jurisdiction of this Tribunal to reappraise the evidence or to substitute its own view.

12. The learned counsel has further stated that the EO is empowered to frame the question to clear ambiguity and test the veracity of the witnesses and as such putting question to the prosecution witnesses is not an illegality.

13. We have carefully considered the rival contentions of the parties and perused the material on record.

14. It is trite law that in the matter of appreciation of evidence there cannot be an interference in a judicial review by the Tribunal. However, it is also trite that if on perusal of the evidence brought on record the conclusion arrived at by the EO is rested on suspicion and surmises and on no evidence and the allegations do not constitute misconduct then adopting the test of a common reasonable prudent man, the findings can be set aside.

15. Before we dwell upon the evidence recorded in the enquiry the observations of the Apex Court in **Sher Bahadur v. Union of India**, 2002 SCC (L&S) 1028 is relevant to be reproduced:

“7. It may be observed that the expression ‘sufficiency of evidence’ postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, “in view of oral, documentary and circumstantial evidence as adduced in the enquiry”, would not in principle satisfy the rule of sufficiency of evidence. Though the disciplinary authority cited one witness Sh. R.A. Vashist, Ex-CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-I, referred to in the enquiry report and adverted to by the High Court is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him

with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May, 1978 and November, 1979 in different phases. Indeed, the statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion is erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside."

16. In **Kuldeep Singh v. The Commissioner of Police & Ors.**,

JT 1998 (8) SC 603 the following observations have been made:

"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority."

.....

"9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny."

17. Keeping in mind the above, we find that the allegations against applicant are that while driving, the vehicle met with an accident, collided with the divider, which caused damage to the vehicle and injuries to the occupants. This has been prima facie established from the inspection of the spot and enquiry conducted



by the CPMT where keeping in view the damage to the vehicle and injuries to the occupants, rash and negligence driving of applicant was inferred. However, we find that this enquiry is in the form of a PE to ascertain the material, evidence, quantum of misconduct and default to facilitate a regular enquiry. The aforesaid PE report and the material collected therein cannot be relied upon in the departmental enquiry and cannot be the basis of finding of guilt against applicant. As per Rule 16 (3) of the Delhi Police (Punishment & Appeal) Rules, 1980 the evidence brought on record in the form of examination of witnesses is the material before the EO, which can form basis of his finding.

18. Rule 16 (3) of the Rules provides that in case of examination of witnesses an authority to the EO to examine the witnesses but nowhere it permits the EO to cross examine the witnesses. The only provision for examination by the EO pertains to defence witnesses produced by the delinquent official under Rule 16 (5) *ibid*. Moreover, it is established principle of law and an inbuilt safeguard under the provisions of principles of natural justice that an EO who has been appointed by the DA should be unbiased and impartial. Whatever the evidence comes on record he has to draw his conclusion from it. Any attempt made by him to cross examine the PWs without any authority under the Delhi Police Rules *ibid* whereby an attempt is being made to bring in evidence against the delinquent in order to fill up the gaps the same would not be a model role from the EO and rather makes the enquiry officer as a prosecutor. The Division Bench of this Court in Sher Singh's case (*supra*) has already upheld this point of view, to which we respectfully agree.

19. Having regard to the cross examination by PW-I who has not imputed any thing against applicant, the lengthy cross-examination clearly shows that the same has been with a view to fill up the gaps in the enquiry and the EO has assumed the role of a prosecutor without any authority put questions to the PWs. The enquiry conducted cannot be observed to be in an impartial or fair manner.

20. We have also deliberated upon the evidence of those occupants who were injured during this accident. The consistent testimony of these witnesses shows that at that time it was drizzling and the wiper of the vehicle was out of order due to sharp light of unknown vehicle this accident has taken place. No evidence at all has indicated or pointed out towards rash and negligent driving of applicant. No evidence has come-forth which has linked applicant with the alleged misconduct of rash and negligence driving, resulting in an accident. The EO merely on surmises and conjectures that applicant had been performing the job of a driver and has been driving consistently on the route irrespective of day, night and bad weather, held applicant guilty on the ground that though he was present physically on the steering but not present on the road has imputed his own personal knowledge and brought extraneous matter on record to hold applicant guilty of the charge.

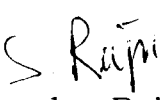
21. We also find that merely because the vehicle has been damaged and the occupants have sustained injuries cannot be an evidence to pin point rash and negligent driving of applicant. The evidence of the witnesses clearly shows that it was on account of highly flash and bad weather the accident has taken place when the wiper of applicant was out of order. No whisper or statement

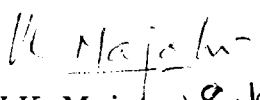
has come on record by the occupants who sustained injuries and were present in the vehicle that it was due to rash and negligent act of driving of applicant that accident has taken place.

22. Though we know our constraints not to interfere in the matter of evidence and reappraise it, we are not doing so or substituting our own views, rather on application of a test of reasonable prudent man and his point of view on the allegations we are sure that this accident does not involve any negligence or rashness on the part of applicant. Moreover, non-registration of a case against applicant under Section 279-A and 337/338 of IPC fortifies our views. In nut shell, we find the present case a case of 'no misconduct' and 'no evidence. The EO has on surmises and no evidence held applicant guilty of the charge. The order passed by the disciplinary authority is also not on a better footing. He has mechanically agreed with the findings of the EO. As such these orders cannot sustain in law.

23. The other legal pleas raised by applicant are not adjudicated.

24. In the result, for the foregoing reasons, OA is allowed. The orders passed by the respondents are set aside. Applicant shall be entitled to all consequential benefits. No costs.


(Shanker Raju)
Member (J)


(V.K. Majotra) 8.10.09
Vice-Chairman(A)

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