

12

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.NO.91/2004

NEW DELHI, this the 13th day of AUGUST, 2004

**HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER(A)**

Mange Ram Sharma
S/o Shri Bal Krishan
Aged about 46 years
R/o House No.A-4/177
Panchbati Colony, Loni Border
Ghaziabad (U.P.) Applicant

(By Advocate: Sh. A.K.Behera)

Versus

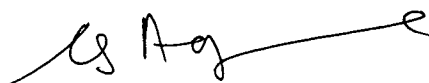
1. Commissioner of Police
Police Headquarters
I.P.Estate, New Delhi-110 002.
2. Joint Commissioner of Police
Armed Police, Delhi,
Police Headquarters, I.P.Estate
New Delhi – 110 002.
3. Deputy Commissioner of Police
5th Battalion, Delhi Armed Police
New Police Lines, Kingsway Camp
Delhi. Respondents

(By Advocate: Sh. Harvir Singh)

ORDER

Justice V.S.Aggarwal , Chairman

Applicant (Mange Ram Sharma) was an Assistant Sub-Inspector in Delhi Police. By virtue of the application, he assails the order passed by the disciplinary as well as the appellate authorities. The disciplinary authority had dismissed the applicant from service and his appeal had also failed.



2. The relevant facts are that a regular joint departmental enquiry was initiated against the applicant on the allegations that he while posted in Seema Puri Traffic Circle, Delhi, was found present at Mandoli Chungi Red Light Point Wazirbad Road along with two Constables, namely, Rambir Singh and Vinod Kumar and one private person Devender Kumar Aggarwal was also there. All the three traffic Constables and Home Guards were standing on Central Verge. They signaled to stop a truck. Constable Sanjeev Kumar approached near the truck and asked the driver Mohd. Ahtegsham to come down from the truck and took him to the applicant. The applicant challaned him and demanded Rs.150/-, i.e. Rs.100/- for the compounding amount and Rs.50/- as entry fee. Head Constable Veer Pal Singh was also standing with the applicant near traffic booth. At that time, the PRG team of the traffic unit caught them red-handed on the spot. The signed currency note of Rs.50/- denomination was recovered from the right side uniform shirt of the applicant. The applicant had kept along with Rs.2800/- obtained as compounding fee. The other signed currency note of Rs.100/- denomination was recovered from the right side pant pocket of Shri Devender Kumar Aggarwal. It had been given to him by the staff who had collected illegal money from commercial vehicles.

3. The inquiry officer after recording of the evidence had framed the following charge against the applicant:

"CHARGE"

"You, ASI Mange Ram Sharma No.3446/D, HC Veer Pal Singh, No.296/T Sanjeev Kumar 3475/T, Ct. Yashvir Singh No.3014/T and Ct. Dinesh Kumar No.7047 are hereby charged that while posted in Seemapuri Traffic Circle Delhi on 3/12/2000 you were found present at Mandoli Chungi Red Light point Wazirabad Road alongwith two DHG constable namely Rambir Singh, No.7826/DHG and Vinod Kumar No.7829/DHG and one private person namely Devender Kumar Agarwal s/o Sh. Jai Parkash Agarwal c/o Sh.

ls Ag

Vinod Singhal, 20 Foota Road Partap Nagar, Siboli, Nand Nagri, Delhi. All you three constables with the DHG were standing on Central Verge. They signaled truck No.HR-37-3475 to stop at about 12 noon. You Ct. Sanjeev Kumar approached the truck and asked the driver Mohd. Ahtegsham s/o Basir Ahmed r/o Vill: Ganga Khari P.O. Guna Distt. Sharanpur (UP) to come down from the truck and took him to the Z.O. You Z.O. ASI Mange Ram Sharma challaned him vide challan No.L-907835 u/s 29RRR.177 MV Act and demanded Rs.150/- (Rs.100/- for compounding amount and Rs.50/- entry fee). You HC Veer Pal Singh who were also standing with the ZO near traffic booth, obtained the said amount from the truck driver and handed over Rs.50/- to the ZO and Rs.100/- to the aforesaid Mr. Devender for safe custody to avoid recovery from their person in the event of Raid. The PRG team caught all of you red handed on the spot. Signed GC note of Rs.50/- denomination was recovered from the right side pocket of shirt of you ZO Mange Ram which was kept alongwith Rs.2800/- found in your person. On further enquiry it was established that you ZO had challaned a certain number of vehicles during the last 2 days and cash amount should have been Rs.2900/-. But here the amount was Rs.2800/- plus signed note of Rs.50/- denomination. An amount of Rs.1780/- including signed GC note of Rs.100/- denomination was recovered from the right side pant pocket of Sh. Devender Kumar stuffed in an haphazard and in disorderly manner from which it could be included that the amount had been given to him by you above mentioned traffic staff by collecting illegally from commercial vehicles. You ZO ASI Mange Ram alongwith above traffic staff, DHG constables and private person Mr.Devender Kumar had assembled at the spot with common malafide intention of collecting illegal entry money from the commercial vehicles.

Further, you ASI Mange Ram had threatened the truck driver Mohd. Ahtegsham of dire consequences if he deposed against all of you. Overawed by the threat, the said truck driver did not turn up to depose against you during the enquiry proceedings.

The above act/acts on the part of you ASI Mange Ram No.3446/D, you HC Veer Pal Singh No.296/T, you Ct. Yashvir Singh No.3014/T, you Ct. Sanjeev Kumar, No.3475/T and you Ct. Dinesh Kumar No.704/T amount to gross misconduct, negligence, mala fide and dereliction in the discharge of your official duties which render you liable to be punished under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

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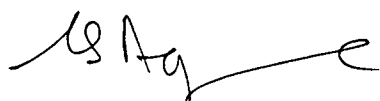
4. Thereafter, the inquiry officer recorded a finding holding that the charges stood proved. While recording his conclusions, it was found by him:

“Shri Ahtesham, the driver of the truck and one of prosecution witnesses could not join the D.E. proceedings due to the threats extended to him by ASI Mange Ram and this PW has also given in writing to this effect. The plea of three Constables that they were performing their duty on the direction of ZO can not absolve them of their hand in glove with the Z.O. in the collection of illegal money from the innocent drivers of commercial vehicles. The deposition of two civilian produced as DWs by the delinquents is not trustworthy as such witnesses can easily be managed. Whatever deposed by the 3rd DW produced by the delinquents during D.E. proceeding is a matter of record.

5. Needless to state that the petition has been contested.

6. Learned counsel for the applicant raised certain pleas pertaining to the main controversy about acceptance of illegal gratification amount. He also contended that Shri Ahtesham, the driver of the truck had not been examined and, therefore, one part of the charge, namely, that the applicant had threatened the said driver of the truck of dire consequences, was not proved. This is one of the misconduct attributed to the applicant. According to the learned counsel, there is no material in this regard.

7. Article 311 of the Constitution in clear terms prescribe that a reasonable opportunity has to be given to contest the matter to the alleged delinquent. In one of the earliest cases decided by the Supreme Court pertaining to the same controversy as to what is reasonable opportunity, in the matter of KHEM CHAND v. UNION



OF INDIA AND OTHERS, AIR 1958 SC 300, it was explained that


reasonable opportunity envisages amongst others. It held:

“(19) To summarise: the reasonable opportunity envisaged by the provision under consideration includes;

- a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;
- b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally;
- c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.

In short the substance of the protection provided by rules, like R.55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in S.240 (3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and has now been incorporated in Art.311 (2) so as to convert the protection into a constitutional safeguard.”

8. We know from the decision of the Supreme Court in the case of **CENTRAL BANK OF INDIA LTD. v. PRAKASH CHAND JAIN**, AIR 1969 SC 983 that this Tribunal can disagree the findings of the inquiry officer if they are perverse or if they are not based on evidence or no reasonable person would come to such a conclusion.

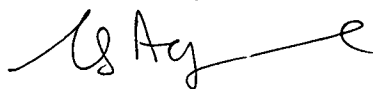


9. Similar was the conclusion arrived at by the Supreme Court in the case of **KULDEEP SINGH v. THE COMMISSIONER OF POLICE & OTHERS**, JT 1998(8) SC 603. It was held that if there is no evidence to support the findings or no reasonable person or ordinary prudent man would come to such a conclusion, the same can be set aside.

10. It is on the strength of the same that it has been urged that in the absence of Mohd. Ahtegsham, it cannot be held that there was a threat given by the applicant to him.

11. Our attention was drawn by the learned counsel for the respondents to the departmental file in which there is a letter written by Mohd. Ahtegsham dated 8.5.2001 about the pressure being exhorted on him to depose in applicant's favour. The said letter had never formed part of the disciplinary proceedings in terms that it was not proved to be in the hand of Mohd. Ahtegsham by any person even if the said witness was not available. Therefore, it cannot be termed that the said part of the charge that the applicant had threatened dire consequences to Mohd Ahtegsham cannot be held to be proved because in this regard, no reasonable opportunity had been granted nor any evidence was on the record.


12. We hasten to add, at this stage, that this finding has been arrived at pertaining to a specific charge and not with respect to the interpretation of Sub-Rule (3) to Rule 16 and Sub-Rule (3) to Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980. That part of the charge necessarily, therefore, deserves to be quashed.



13. It is well settled that awarding the penalty falls within the domain of the disciplinary authority. In this regard, scope for interference would be limited. It is not for this Tribunal to award the penalty. When a part of the charge is being quashed, it would be proper that the disciplinary authority applies its mind and pass a fresh order in this regard. Pertaining to the other aspects of the charge, we make it clear that it is for the disciplinary authority to take totality of the facts and pass such an order as may be deemed appropriate.

14. Resultantly, we dispose of the present application and direct:

- (a) The part of the charge pertaining to threatening Mohd. Ahtegsham is quashed.
- (b) Disciplinary authority in the light of the aforesaid may pass a fresh order in this regard.
- (c) We are not expressing anything, at this stage, on the other aspects of the merits and nothing said herein should be taken as an expression of opinion in that regard.
- (d) If the applicant was under suspension, he will continue to be so till the fresh order is passed.


(S. A. SINGH)
MEMBER (A)

/N SN/


(V. S. AGGARWAL)
CHAIRMAN