

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.79/2008

Order Reserved on: 15.03.2016

Pronounced on:13.05.2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

HC Fateh Singh
PIS No.28900281
R/o House No.1/1420
Near Raghu Atta Chakki
Subhash Nagar, Bharat Pur, Rajasthan

..Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Govt. of NCT of Delhi through
Commissioner of Police
Police Head Quarters
IP Estate,
New Delhi
2. Jt. Commissioner of Police
Traffic, Police Headquarter
I P Estate,
New Delhi
3. Shri H P S Virk (DANIPS Cadre Group B)
Then DCP (Traffic / NR)
Through Commissioner of Police
PHQ, IP Estate,
New Delhi
4. DCP / Traffic (NR)
PHQ, IP Estate,
New Delhi

..Respondents

(By Advocate: Ms. Rashmi Chopra)

ORDER

Mr. K.N. Shrivastava, Member (A):

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for in the OA, read as under:

“1. To quash and set aside the impugned orders as mentioned in Para 1 of the O.A. and direct the respondents to restore to the applicant his original service with all consequential benefits including seniority/promotion and arrears of pay.

2. To award costs in favour of the applicant and pass any order or orders, which this Hon'ble Tribunal may deem just & equitable in the facts and circumstances of the case.”

2. The brief facts of this case are as under.

2.1 The applicant is a Head Constable in Delhi Police. On 04.03.2006, he was posted at Narela Traffic Circle and was detailed for duty at Singhu Border. He allegedly demanded a bribe of Rs.800/- from the occupant (Mohd. Anwar-ul-Haq) of a truck/trailer, bearing registration no. HR-47-1163 for allowing entry of the said vehicle in Delhi. Finally, after accepting a bribe of Rs.700/- he allowed the said vehicle to enter into Delhi. A PRG team of Delhi Police, in a private vehicle, watched this incident from a distance of about 500 meters. The team enquired about the incident from the occupant of that vehicle who was a mechanic. Shri Haq confirmed the incident. The PRG team took Sh. Haq to the place of the incident where he recognized the

applicant as the same person who had accepted the bribe from him. For the said misconduct of the applicant, he was charged under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980 (in short, the 1980 Rules) and accordingly, Annexure A-1 order dated 30.03.2006 was issued by his Disciplinary Authority (DA), i.e., Deputy Commissioner of Police, (Traffic/NR) Delhi which contained the following charge as well as the intent of the DA to start disciplinary enquiry (DE) against the applicant:

"It is alleged against HC Fateh Singh, No.421/T that on 04.03.06 while posted in Narela Traffic Circle and detailed for duty at Singhu Border was found involved in malpractice by demanding and accepting `700/- from the occupant of vehicle bearing registration number HR-47-1163.

On 04.03.06, the team comprising of Inspr. Satyabir Singh, Inspr. Makhan Singh, TI/PRG, Inspr. Sanjeev Tyagi, TI/PRG and SI Anil Kumar, ZO/PRG started moving in a private car, arranged by the PRG Team, in North-West District area and checked the traffic staff at various points discreetly. At about 1200 Noon, when the PRG team reached near Singhu Border in the area of Narela Traffic Circle, it was observed that one traffic police Head Constable had stopped a Truck/Trailer bearing registration Number HR-47-1163 and was also seen having some negotiations with occupants of the front cabin. Smelling some suspicion on the part of traffic Head Constable, PRG Team positioned itself at a distance of about 500 Mtrs. Ahead of them, towards Delhi and waited for the vehicle to be released by the traffic head Constable. After a short while, the traffic Head Constable released the vehicle, the PRG Team followed the vehicle and intercepted it after travelling some distance and made enquiry from the occupants in the front cabin.

Sh. Mohd.Anwar-Ul-Haq s/o Mohd.Rasheed r/o Vill Mohammed Pur, P.S. Tajpur, Distt. Samastipur Bihar, presently residing at House No.302/5 ICD Tuglakabad, New Delhi, on enquiries revealed that he is mechanic, employed by the owner of the truck/trailer bearing registration number HR-38-9889 got some mechanical fault at Karnal (Haryana). The loaded the faulty vehicle into the truck/trailer bearing

registration number HR-47-1163 and proceeded for Delhi. At the Singhu Border they paid toll tax and started for Delhi but their vehicle was stopped just after the toll plaza at the Singhu Border by the uniformed traffic Head Constable present there. Said Head Constable asked for the documents of the vehicle. They produced the documents of said vehicle before said traffic Head Constable. After verifying the same, Head Constable told them that the entry of the trailer in Delhi is banned. He requested the traffic Head Constable to allow them to go but he did not. After this, said head Constable demanded `800/- for this purpose but after negotiation he paid `700/- to him who after taking money allowed them to go to Delhi.

Sh. Mohd.Anwar-UL-Haq was brought back to the place where he was charged `700/- without prosecution. Sh.Anwar-UL-Haq rightly identified HC Fateh Singh, No.421/T and told that he is the same person who had demanded `800/- and accepted `700/- from him after negotiation. Insp. Satbir Singh asked HC Fateh Singh, No.421/T to produce `700/- taken by him from Sh.Mohd. Anwar-UL-Haq but he refused for the same. Statement of Sh.Anwar-UL-Haq was recorded and original toll- tax receipt of the vehicle in question was also obtained from him.

The above act on the part of HC Fateh Singh, No.421/T amount to grave misconduct, lack of integrity, indulge in corruption and dereliction in discharge of his official duty and unbecoming of a police officer which renders him liable for departmental action under the provision of Delhi Police (Punishment & Appeal) Rules 1980."

Therefore, I, H.P.S. Virk, Deputy Commissioner of Police, Traffic (NR), Delhi with the prior approval of Joint C.P./Traffic, Delhi under rule 15 (2) of Delhi Police (Punishment & Appeal) Rules, 1980 hereby order a regular departmental enquiry against Head Const. Fateh Singh No.421/T (PIS No.28900281) to be conducted by Insp. Nanak Chand, TI/VVC on day-to-day basis and submit his findings within three months. The E.O. will also submit a weekly progress report in the D.E. to the undersigned."

2.2 Accordingly, the Enquiry Officer (EO) was appointed who submitted his Annexure A-2 report on 09.06.2006 with the following finding:

"In view of the above detailed discussion in the light of evidence coming in the departmental enquiry in the form of deposition made by PWs/DW, Defence statement and the Exhibits produced, I found that the charge against HC Fateh Singh, No.421/T is proved only to the extent that he had allowed the truck to enter in the Delhi during no entry time."

2.3 Acting on the EO's report, the DA vide Annexure A-3 order dated 02.08.2006 imposed the punishment of forfeiture of two years' of approved service for a period of two years on the applicant. The operative part of the said order reads as under:

“award the punishment of forfeiture of two years approved service temporarily for a period of two years to the defaulter HC Fateh Singh, No.421-T (PIS No.28900281) entailing proportionate reduction in his pay. His suspension period from 4.3.2006 to 8.5.2006 is also decided as period not spent on duty for all intents and purposes.”

2.4 The applicant preferred an appeal before the departmental Appellate Authority (DA), i.e., Joint Commissioner of Police, Traffic, Delhi, who vide his Annexure A-4 order dated 10.09.2007 rejected the appeal.

2.5 Aggrieved by the impugned orders of the DA and AA the applicant came to this Tribunal and filed the present OA, which was disposed of on 17.08.2009, allowing the OA. The relevant portions of the said order are reproduced below:

“6. Rule 16 (ix) of Delhi Police (Punishment & Appeal) Rules, 1980 clearly provides that in case the different charge than what has been framed against the police officer is made out, it is incumbent upon the inquiry officer to include it in the charge and thereafter a reasonable opportunity to rebut effectively is to be given. As the aforesaid procedure has not been followed, applicant has been prejudiced and this methodology adopted by the respondents is not found favour with by the Apex Court in **M.V. Bijlani v. Union of India & others**, 2006 (3) SLR SC 105.

7. On limited grounds, leaving other grounds open, OA is allowed. Impugned orders are set aside. Consequences to follow as per law. Compliance be done within three months from the date of receipt of a copy of this order. No costs.”

2.6 The respondents challenged the ibid order of the Tribunal in W.P. (C) no.7726/2010 before the Hon’ble High Court of Delhi who on 31.01.2013 remanding the matter to the Tribunal for reconsideration. The operative part of the ibid order of the Hon’ble High Court reads as under:

“8. We find that in the charge framed it has specifically been listed against respondent as under:-

"After verifying the same, you Head Constable told them that the entry of the trailer in Delhi is banned. He requested to you traffic Head Constable to allow them to go but you did not. After this, you head Constable demanded `800/- for this purpose but after negotiation he paid `700/- to you and after taking money you allowed them to go to Delhi".

9. Suffice would it be to highlight that in the summary of allegations as also the charge it was a limb of the charge that when the trailer truck was permitted entry in Delhi it was at a point of time when entry of trailers in Delhi was banned. Thus, ex-facie the view taken by the Tribunal as per para 6 of the impugned decision is incorrect.”

3. The case was taken up for hearing the arguments of the parties on 15.03.2016. Shri Anil Singhal, learned counsel for the applicant and Mrs. Rashmi Chopra, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant submitted that as per Rule 15 (2) of the 1980 Rules, it is the Additional Commissioner, who is authorized to give permission for starting of the DE against the applicant and that in the

instant case permission has been granted by the Joint C.P. which is against the Rule. It was also submitted that even if it is assumed that the truck/trailer driver was allowed illegally by the applicant to enter into the city when the entry of trucks was banned, during the relevant hours, as per the law the Chief of the PRG team Inspector Satyaveer Singh ought to have challaned the said truck driver, which has not been done. The learned counsel further stated that the respondents have failed to appreciate that no misconduct can be alleged against the applicant since there is no evidence to prove the illegal entry of the truck; on the other hand PW-1 Shri Haq has categorically deposed during the enquiry that the applicant stopped their vehicle and did not allow them to go towards Tuglakabad, Delhi and then they turned back. The learned counsel further submitted that the DE has been started on the orders of Shri H.P.S. Virk, the then DCP (Traffic/NR), who was a DANIPS Group 'B' officer and that the applicant has been appointed by an IPS officer belonging to Group 'A' and as such, Shri Virk was not empowered to act as a DA in the case of the applicant. In this regard the learned counsel placed reliance on the judgment of a Coordinate Bench of this Tribunal in the case **Suresh Kumar v. C.P. & Ors.** in OA No.1818/2001, order dated 18.07.2002. The learned

counsel further submitted that the very fact that the PRG team did not turn away the said truck/trailer and allowed it to enter into Delhi would go to show that the entry of truck was not banned during those hours. He argued that by not turning the truck back, the PRG team itself has violated the 'No Entry' restrictions and thus they have committed a grave misconduct. The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Govt. of A.P. and Others v. A. Venkata Raidu**, [(2007) 1 SCC 338], wherein it has been held that the DE proceedings cannot be held against a government servant if the charges are vague. Concluding his arguments, the learned counsel submitted that for the reasons put-forth by him during the course of arguments, as well as detailed in the OA, the prayers made in the OA may be granted and the OA may be allowed.

5. Per contra, the learned counsel for the respondents submitted that para-6 of the Tribunal's order, which contains the main ground that persuaded the Tribunal to allow the OA, has been held to be incorrect by the Hon'ble High Court of Delhi. She also disputed the averments made in the OA and that the orders of the DA and AA are cryptic and non-speaking. She emphatically stated that the DA order is quite elaborate giving comprehensive reasons as to

why the applicant has been found guilty. The DA order gives the rationale for awarding the indicated punishment to the applicant. She said that even the AA's order is a speaking order. She said that PW-1 Sh. Haq had admitted, during the course of enquiry that Exhibit PW-1/A which was presented by the department before the EO to prove the charge, that the said Exhibit bears his signature. She vehemently argued that the evidence of PW-1 and Exhibit PW-1/A would prove preponderance of probability of the charge being fully proved against the applicant. Regarding the entry time, the learned counsel produced a copy of Notification no.11009-11199/TE(D-II)/Traffic, dated 21.02.2005, which clearly indicates that at the relevant hour when the incident took place, the entry of trucks/trailers was indeed banned into Delhi city. Concluding her arguments, she said that the OA is devoid of merit and as such it should be dismissed.

6. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. The Hon'ble High Court of Delhi has not agreed with the opinion of this Tribunal contained in para-6 of the order dated 17.08.2009, which reads as under:

“6. Rule 16 (ix) of Delhi Police (Punishment & Appeal) Rules, 1980 clearly provides that in case the different charge than what has been framed against the police officer is made out, it is incumbent upon the inquiry officer to include it in the charge and thereafter a reasonable opportunity to rebut effectively is to be given. As the aforesaid procedure has not been followed, applicant has been prejudiced and this methodology adopted by the respondents is not found favour with by the Apex Court in **M.V. Bijlani v. Union of India & others**, 2006 (3) SLR SC 105.”

7. The Hon’ble High Court had observed that the summary of allegation as also the charge is a limb of the charge that when the truck was permitted entry in Delhi it was a point of time when the entry of trucks/trailers was banned. Thus, the view taken by the Tribunal in para-6 of its order is not correct. From the Notification no.11009-11199/TE(D-II)/Traffic, dated 21.02.2005 it is quite clear that entry of trucks was indeed banned into the city at the relevant hour.

8. We do not agree with the contention of the learned counsel for the applicant that Shri Virk, the then DCP (Traffic/NR) was not empowered to act as a DA for the applicant and that the applicant’s DA ought to have been an IPS officer, as Shri Virk belongs to DANIPS Service, which is a Group ‘B’ service. We would like to observe that it is the post held by him and not the service to which he belonged would be relevant to decide as to whether the incumbent was authorized to act as a DA or not.

Obviously, there is no denial to the fact that the DA for the applicant would be a DCP. Shri Virk was holding the position of DCP (Traffic) at the relevant point of time and as such we hold that he was the proper DA for the applicant and thus was authorized to order DE against him.

9. The other contention of the learned counsel for the applicant that as per Rule 15 of the 1980 Rules only the Additional Commissioner of Police is authorized to order starting of the DE against the applicant and not the Joint C.P. Needless to mention that Joint C.P. is an officer senior to Additional C.P, as such we hold that the approval of Joint C.P. was good enough to start DE proceedings against the applicant.

10. The argument of the learned counsel that if the entry of the truck was banned during the relevant hours, the PRG team ought to have turned back the truck and not allowed it to go to Tuglakabad and as such the team should be charged for misconduct is a fallacious argument not warranting any comments from us. What was important for the PRG team at that point of time was to collect the evidence to prove the charge against the applicant.

11. We have gone through the judgment of the Hon'ble Supreme Court in the case of **A. Venkata Raidu** (supra).

We hold that the charge against the applicant is not at all vague and as such the ratio of law laid down by the Hon'ble Apex Court in the said judgment would not apply to this case.

12. We find that PW-1 Shri Haq was the most crucial witness in this case. He had given his evidence and had also identified the applicant during the course of preliminary enquiry and had also confirmed his signature on the Exhibit PW-1/A during the main enquiry. As such, we are of the opinion that there was preponderance of evidence and the respondents were fully within their powers to act against the applicant by way of starting the DE proceedings. The EO had also confirmed, in his report, the complicity of the applicant in allowing the truck/trailer to enter the city during 'No Entry' hours. The Notification no.11009-11199/TE(D-II)/Traffic, dated 21.02.2005 confirms that during the relevant hours the entry of the trucks was indeed banned.

13. From the foregoing discussions, we are of the opinion that the applicant has been correctly punished by the respondents for his misconduct and no interference is required from this Tribunal in the impugned orders at Annexure A-1, A-3 and A-4. The OA is found to be devoid of

substance and merit and the same is accordingly
dismissed.

14. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice M.S. Sullar)
Member (J)

‘San.’