

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.513/2010

Order Reserved on :04.11.2015
Order Pronounced on: 17.12.2015

Hon'ble Mr. Justice B.P.Katakey, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Constable Raj Kumar, Age 60 years,
S/o Shri Chand Sharma,
R/o RZ 10/234, P-Block,
Dayal Park,
West Sagar Park,
Delhi.

.... Applicant

(By Advocate:Shri Saurabh Ahuja)

Versus

1. The Commissioner of Police,
Police Headquarters, I.P. Estate,
New Delhi.
2. The Joint Commissioner of Police,
Traffic,
Through Commissioner of Police,
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.
3. The Deputy Commissioner of Police,
Traffic,
Through Commissioner of Police,
Police Headquarters, I.P. Estate,
M.S.O. Building,
New Delhi.

... Respondents

(By Advocate: Shri N.K.Singh for Ms.Avnish Ahlawat)

ORDER

By Hon'ble Shir K.N.Shrivastava, M(A)

This OA has been filed under Section 19 of Administrative Tribunal Act, 1985 against the disagreement note No. 4244/HAP-T(D-I) dated 12.12.2006 issued by the disciplinary authority (Annexure A-1), order dated 12.07.2007 passed by the disciplinary authority (Annexure A-2) and order dated 05.08.2008 passed by the Appellate authority (Annexure A-3). The specific reliefs sought in the OA read as under:-

- “ (i) To direct the respondents to set aside the impugned orders from A-1 to A-3 and further restore the forfeited years of service of the applicant with all consequential benefits including Seniority and promotion & pay and allowances.*
- (ii) Any other or further relief which this Hon’ble Tribunal may deem fit and proper in the case.”*

2. The brief facts of the case are as under:-

The applicant was charged for conducting illegal checking and accepting bribes from bus and truck drivers and disciplinary proceedings against him was started vide

order dated 26.12.1996. The specific allegation made against the applicant reads as under:-

" It has been alleged against you Constable Raj Kumar No.927/T vide this office No.4840-85/HAP/T Dated 26.12.1996 on the allegation that on 18.11.1996 at about 12.40 PM a checking was conducted by Shri Manohar Singh. Inspr. PRG Traffic along with Constable Rajinder Singh No.558/T at Zakir Hussain Marg, C Hexagon Point, in front of Children Park to check the activities of a traffic Constable wearing sweater over his uniform and collecting Rs.100/- each from Red line buses along with a public person. They observed the activities there for about 15 minutes and noticed that the red lined buses coming from Tilak Marg side were signaled to stop at the above said point by Constable Raj Kumar No.927/T carrying a Hand set of wireless and was allowing the buses only after taking money illegally from them. He was of Rs.450/- (5 notes of Rs.50/- and 2 notes of Rs.100/-) were recovered from the public person Shri Udai Chand and Rs.120/- (one note of Rs.50/- and 7 notes of Rs.10/-) from Constable Raj Kumar No.927/T/. A written statement of Shri Udai Chand was recorded on the spot that this amount was handed over to him by Constable Raj Kumar. He verbally told that they money was collected illegally by the Constable by stopping the buses. The amount of Rs.570/- (i.e. 450/-+ 120/-), the wireless set and I-Card of the Constable were recovered through a seizure memo. The wireless set had been handed over to MHC/Pritpal Singh No.92/T of PTC. According to duty roster the Constable was detailed for duty at Red light Point- Zoo from 8 AM to 8 PM. He left his duty point with an ulterior motive and indulged in malpractices. The Constable had been placed under suspension with effect from 18.01.1996 for the above lapse.

The above act on the part of you Constable Raj Kumar No.927/T amounts to gross misconduct significance and dereliction in the discharge of their duties which renders you Constable Raj Kumar was it liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules 1980.

3. The applicant was placed under suspension w.e.f. 18.01.1996 vide DD No.15 PTC and order No.4231-50/HAP-T dated 19.1.1996 for the above allegation. Shri O.D.Yadav Traffic Inspector was appointment as Inquiry Officer. Inquiry Officer following the procedure laid down under Delhi Police (Punishment and Appeal) Rules, 1980, conducted the disciplinary enquiry and submitted his report to the disciplinary authority in which he has concluded as under:-

" The charges against the delinquent Constable Raj Kumar No.927/T are not at all substantiated beyond shadow of doubt as suspicion, however, strong can't replace proof as has been contended by the delinquent in his defence statement in which a number of rulings/judgments have been cited."

4. The Disciplinary authority did not accept the report submitted by the Inquiry Officer and issued the impugned disagreement note No.14244/HAP-T(D-I) dated 12.12.2006 in which the disciplinary authority viz. Dy. Commissioner of Police, Traffic (HQ) Delhi had given the reasons of

disagreement with the findings of the Inquiry Officer and had asked the applicant to show cause as to why his suspension period from 18.11.1996 to 20.10.2007 should not be treated as period not spent on duty. Pursuant to the said disagreement note issued by the disciplinary authority, the applicant filed a detailed explanation on 03.01.2007. After giving due consideration to the reply furnished by the applicant, the disciplinary authority namely, Dy. Commissioner of Police, Traffic (HQ) passed the impugned order No.XVI/299/04/6623-40/HAP/T(D-I)(HQ) dated 17.05.2007 in which he has imposed the punishment of forfeiture of 2 years approved service permanently upon the applicant entailing in reduction of his pay from Rs.3575/- to Rs.3425/- p.m. Aggrieved by the impugned order dated 17.05.2007 passed by the disciplinary authority, the applicant filed statutory appeal before the departmental appellate authority, namely, Addl. Commissioner of Police Traffic. The said appeal has been dismissed by the appellate authority vide order No.1616-21/S.O./Addl.CP/Traffic, dated 05.08.2008. Aggrieved by the action of disciplinary authority and appellate authority, the applicant has filed the instant the OA.

5. Pertinent to mention here that the disciplinary authority had issued disagreement note No.10402/HAP-T dated 17.10.1997 earlier in which the applicant was called upon to show cause as to why 2 years approved service should not be forfeited permanently for a period of 2 years entailing proportionate reduction in his pay as his suspension from 18.11.1996 onwards should not be treated as not spent on duty. In the said disagreement note, the disciplinary authority has given the reasons for not agreeing with the findings of the Inquiry Officer which read as under:-

- " 1. The statement of Inspr. PRG Shri Manohar Singh (PW-5) and statement of Constable Rajender Singh (PW-3) cannot be overlooked as they are the main PWs/Eye Witnesses. They have seen Constable Raj Kumar, No.927/T while watching the activities, stopping buses, collecting money and passing over to a publicman Shri Udai Chand (PW-1) who has been won-over by the Constable which clearly prove his indulgence in malpractices.*
- 2. From the statement of PW-3 & 5 it is clear that the Constable was actually wearing sweater over his uniform. The PW-1 and DW-4 are the cousin brother of the Constable Raj Kumar, as per their statements and have given their versions to save the Constable from the misconduct which he had actually done.*
- 3. The DW-1 i.e. Dr. O.P. Gupta in his statement has deposed that the Constable was suffering from Diarrhoea and suggested him medicines on the slip Ex-DW-1/A on*

17.11.96. The medical slip produced by the DW-1 has been manipulated only to save the Constable. In case, the Constable was actually suffering from Diarrhoea/Dysentery the doctor should have advised him for medical rest.

4. *The P.W.-2 MHC/TMC has stated in his statement that the Constable was detailed for duty from 8.00 a.m. to 8.00 p.m. at light point Zoo according to duty roster. But as per the statements of PWs-3 & 5 the Eye Witnesses, the Constable was found present at C-Hexagon-Zakir Hussain Marg, stopping buses, collecting money and passing over to PW-1 the publicman Shri Uday Chand cannot be overlooked and clearly shows his indulgence in malpractices."*

6. The applicant had replied to the said disagreement note on 02.11.1997. After considering the reply of the applicant, the disciplinary authority had passed the order of penalty No.977/100/HAP-I dated 06.02.1998. The operative part of the said order is extracted below:-

" In view of the above, I am not convinced with his reply to the show cause notice submitted by the Const. The reply is not satisfactory. Therefore, the punishment proposed in the show cause notice is confirmed. I order that two years approved service of Const. Raj Kumar No.927/T.(PIS No.28862145) is forfeited permanently for a period of two years entailing proportionate reduction in his pay with immediate effect. His pay is reduced from Rs.3575/- p.m. to Rs.3425/- p.m. in the time scale of pay. He will not earn increment of pay during the reduction period and on expiry of this period the reduction will have the effect of postponing his future increments of pay. His suspension period from 18.11.96 to

26.10.97 is treated as period not spent on duty for all intents and purposed."

7. Against the order No.977/100/HAP-I dated 06.02.1998, of the disciplinary authority, the applicant filed OA No.1266/2004 before this Tribunal which was disposed of on 26.07.2006 with the following observation/directions:-

"6. After hearing the learned counsel for the parties and on perusal of the order of punishment imposed by the Disciplinary Authority, we find that the Disciplinary Authority has recorded the following reasons:-

"Hence, Constable Raj Kumar, No.927/T, is hereby, called upon to show cause as to why his two years approved service should not be forfeited permanently for a period of two years entailing proportionate reduction in his pay and his suspension period from 18.11.96 and onward should not be treated as not spent on duty. His reply/representation, if any, against the contents mentioned above should reach this office within 15 days from the date of receipt of this notice, failing which it will be presumed that he has nothing to say in his defence and the decision will be taken on its merit."

7. From, a bare perusal of above, it is indicated that it was not the tentative reasons but he has taken a final decision to impose forfeiture of two years approved service without affording a reasonable opportunity to the applicant. Accordingly, we hereby quash the order of punishment imposed by the Disciplinary Authority for disposal of the proceedings in accordance with law. Resultantly, the disagreement note dated 17.10.1997 is also hereby set aside.

8. *With the above observations, the present Original application is disposed of."*

8. Pursuant to the notice issued, respondents entered appearance and filed their reply. The applicant has also filed his rejoinder. As the pleadings were complete the matter was taken up for final hearing on 04.11.2015.

9. Shri Surabh Ahuja learned counsel for the applicant and Shri N.K.Singh learned counsel appearing for the respondents argued the case.

10. Learned counsel for the applicant besides highlighting issues raised in the OA and the rejoinder, submitted that no prior permission of Addl. Commissioner of Police was taken before starting departmental enquiry which is violative Sub-rule (2) of Rule, 15 of Delhi Police (Punishment and Appeals) Rules, 1980. It is also submitted that no bus driver/helper/conductor or bus owner has made any complaint regarding alleged illegal collection made by the applicant from them. It was also submitted that there is a contradiction between the statement of PW-3 Const. Rajender Singh and PW-5 Inspector Manohar Singh to the effect that PW-3 says that the seizure memo was prepared in the office of PRG/Traffic whereas PW-5 says that it was prepared on

the spot itself. Further, PW-3 says that the alleged act of the applicant was watched by them 20-25 minutes during which 2 buses were stopped by the applicant whereas PW-5 says that they watched only for 15 minutes in which 4 buses were stopped by the applicant.

11. It was further submitted that disciplinary authority has made the remark in its impugned order stating that PW-1, Sh. Udai Chand and PW-4 Sh. Ram Niwas were cousin brother of applicant and hence they have given such a evidence which could save the applicant. But the fact is that Sh.Udai Chand is not the cousin brother of the applicant, he and the applicant happen to come from same village. Learned counsel further stated that the applicant was not at the allocated duty point as he was suffering from dysentery for which he has taken medicine from a medical practitioner, Dr.O.P.Gupta who resides closer to the residence of the applicant and that Dr. Gupta as DW-1 has corroborated to that effect and said that on 17.11.1996, he had examined the applicant and found him to be suffering from Diarrhoea for which he had prescribed him some medicine. Learned counsel further added that on 18.11.96 (the date of incident) Shri Udai Chand had gone to the applicant to discuss the arrangements relating to marriage of his sister and that he

had taken a loan of Rs.400/- from one Sh. Ram Niwas and that out of the Rs.450/- seized from him by PW-3 and PW-5, Rs.400 was meant to be given back to Sh. Ram Niwas for repayment of the loan. Concluding the arguments, learned counsel submitted that the applicant has been wrongly framed and that the enquiry officer has also come to the conclusion that the charges against the applicant are not proved and as such the prayer made in the OA may be allowed.

12. Per contra, learned counsel for the respondents submitted that on 18.11.96 (the date of incident), the applicant was found collecting Rs.100 each from the buses and was passing on the same to Sh. Udai Chand. His activities were watched by Sh. Manohar Singh, PW-5 Inspector Traffic PRG along with and PW-3, Const. Rajender Singh and that they found that the buses were being allowed to pass by the applicant only after collecting illegal money from them. The statement of Udai Chand was recorded on the spot in which he has confirmed about the illegal collections. The amount collected was recovered through a seizure memo. It was also submitted that the applicant had been detailed for duty on that date at the Zoo - red light point from 8.00 a.m. to 8.00 p.m. and that he had left his

duty point and went to the place of incident i.e. in front of Children Park at Hexagon point. It was further submitted that the inquiry officer has nowhere mentioned in his report that PW-1 i.e. Sh.Udai Chand and DW-4 i.e. Sh.Ram Niwas have given their statements just to save the applicant from misconduct. Learned counsel further submitted that the very fact that the applicant was not present at his duty point, he was at the place of incident along with a private person Shri Udai Chand, PW-3 and PW-5 had no personal animus against the applicant, PW-1 in his statement recorded on the spot has also confirmed the charge that the applicant was collecting money from the buses would go to prove that the applicant in fact had indulged into malpractice for which he has been rightly punished by the disciplinary authority and the appellate authority. Learned counsel concluded his arguments by saying that the OA was devoid of merit and thus liable to be rejected.

13. We have considered the arguments of learned counsel for the parties and also perused the pleadings and document annexed thereto. Undisputedly, on 18.11.1996 the applicant was allotted duty at Zoo - red light point from 8.00 a.m. to 8.00 p.m. He was not at his duty point when the alleged incident took place. His contention that he was suffering

from Dysentery for which he had taken medicine from DW-1, Dr.O.P.Gupta has to be taken with a pinch of salt. If his physical condition was so fragile, he ought to have taken leave for sufficient period to recover from the said disease. His presence at the place of incident not being his allotted duty point certainly raises some doubt about his conduct. Further, the presence of an acquaintance of his namely, Shri Udai Chand at the spot with him again raises some doubt. The minor discrepancies pointed out by the learned counsel for the applicant qua evidence given by PW-3 and PW-5 regarding the period of their observation of the conduct of the applicant and the number of buses stopped during that period cannot come to the rescue of the applicant. After all, they could not be having stop watches to record the actual period of their observation. By and large what comes out from their evidence is that the applicant was stopping buses and collecting money from them and was passing the amount collected to Sh. Udai Chand.

14. Another aspect which we would like to mention here is that the scope of judicial intervention in the matter of disciplinary proceedings is limited. The courts primarily are required to examine whether the procedure laid down for the conduct of disciplinary enquiry has been followed or not. In

the instant case, we find that all laid down procedure for conduct of disciplinary enquiry has indeed been followed and even the applicant has not disputed it. Hence, it is held that the disciplinary proceedings have been conducted in a proper manner. Impugned order dated 12.07.2007 passed by the disciplinary authority contains the reasons for not agreeing with the findings of the enquiry officer. A disagreement note dated 12.12.2006 was issued by the disciplinary authority for not agreeing with the findings of the enquiry officer to which the representation of the applicant was invited and the same was considered. The applicant had made an appeal against the order of the disciplinary authority before the appellate authority, who vide its order dated 05.08.2008 dismissed the said appeal.

15. We are, therefore, of the view, that the punishment inflicted on the applicant vide the impugned orders is fully justified and does not require any interference from this Tribunal. As such, we find the OA is bereft of merits and the same is accordingly dismissed. No order as to costs.

(K.N.Shrivastava)
Member(A)

(Justice B.P.Katakey)
Member(J)

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