

**Central Administrative Tribunal
Principal Bench**

OA No.2802/2013

New Delhi this the 2nd day of August, 2016

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

Constable Sanjay Kumar Dubey,
S/o Late Shri Ram Subash Dubey,
R/o G-353, Dal Mill Road,
Uttam Nagar,
New Delhi.

...applicant

(By Advocate : Shri R.K. Jain)

Versus

1. Commissioner of Police,
Police Headquarter,
I.P. Estate, New Delhi.
2. Spl. Commissioner of Police,
Armed Police, PHQ, ITO,
New Delhi.
3. Deputy Commissioner of Police,
1st Bn. DAP, Armed Police,
Kingsway Camp,
New Delhi.

...respondents

(By Advocate : Ms. Harvinder Oberoi)

ORDER (ORAL)

Mr. V.N. Gaur, Member (A) :-

The applicant who is a Constable in the Delhi Police (respondent No.1), was served with summary of allegations that reads as under :-

“It is alleged against you Ct. Sanjay Kumar Dubey No.956/SW (Now 1436/DAP), PIS No.28911401 (under suspension) that during the year-2005, while posted at

PS-Dabri, South-West Distt. New Delhi, you were found indulged in corrupt practices in an organized manner. In pursuance of Hon'ble High Court of Delhi's order in c/w Writ Petition No.1897/2005-Chetan Prakash Vs State, a Vigilance enquiry was conducted by the Vigilance Branch of Delhi Police in this matter. The vigilance enquiry revealed that you Ct. Sanjay Kumar Dubey, No.956/SW now 1436/DAP on 16.10.2005 was posted in PS-Dabri with Motor cycle No.DL-Isn-4046 and found indulged in corrupt practices of accepting bribe from bootleggers is visible in CD (Scene No.6) which was submitted by the complainant Sh. Chetan Prakash S/o Sh. Babu Ram before the Hon'ble High Court of Delhi in the above Writ Petition. Ct. Vijay Singh, No.1460/SW stated during the vigilance enquiry that he had viewed CD and identified you while accepting bribe from bootlegger.

You Ct. Sanjay Kumar Dubey, No.956/SW (now 1436/DAP) has been placed under suspension by Addl. DCP/SW District, New Delhi vide No.14983-15010/HAP-II/SWD dated 27.12.2005.

A case FIR No.383/07 dated 07.05.2007 u/s 7/13 (1) (D) (ii) POC Act, PS-Dabri, New Delhi was registered against you Ct. Sanjay Kumar Dubey, No.956/SW (now 1436/DAP).

The above act on the part of you Ct. Sanjay Kumar Dubey No.956/SW (now 1436/DAP) amounts to gross misconduct as you failed to maintain absolute integrity, devotion to duty and an act of unbecoming of police officer which renders you liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980, punishable under section 21 of DP Act."

2. The applicant was placed under suspension on 27.12.2005 and a case under FIR No.383/07 dated 07.05.2007 was also registered against him. He was reinstated by order dated 24.12.2010. As the applicant denied all the allegations, a Departmental Enquiry (DE) was conducted and the Enquiry Officer (EO) submitted his report that the charge framed against the applicant was proved. A copy of the enquiry report was served

upon the applicant and he made a representation. The Disciplinary Authority (DA) after considering his representation and giving him a personal hearing, passed order dated 22.11.2012, awarding the punishment of forfeiture of 10 years approved service permanently entailing proportionate reduction in his pay with immediate effect. His suspension period from 27.12.2005 to 23.12.2010 was also treated as period 'not spent on duty' for all intents and purposes which will not be regularised in any manner.

3. The applicant has filed this OA challenging the orders of Disciplinary Authority and Appellate Authority with the following prayers :-

- "i) The punishment order 22.11.2012 passed by the Disciplinary Authority quashed and set aside.
- ii) The Appellate Authority orders dated 27.06.2013, may kindly be quashed and set aside.
- iii) The enquiry report may kindly be quashed and set aside.
- iv) The respondents may be directed to give all consequential benefits;
- v) The period of suspension of 5 years may be treated as spent on duty for all intents and purposes and the suspension period may be treated as regularised for all purposes.
- vi) It may be held that the enquiry officer is not competent to decide the names of witnesses and relied upon documents in a departmental inquiry under the DP (P&A) Rules, 1980.
- vii) All consequential benefits may be granted to the Applicant.
- viii) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of

the case, may also be passed in favour of the applicant.

- ix) Cost of the proceedings be awarded in favour of the Applicant and against the Respondents.”

4. The applicant has challenged the impugned orders mainly on the following grounds :-

- (i) There was no eye witness of the demand and acceptance of the bribe by the applicant from the bootlegger.
- (ii) The bootlegger was not produced in the departmental enquiry. The CD allegedly prepared by the complainant Chetan Prakash was never produced or placed during the enquiry.
- (iii) The complainant Chetan Prakash was not produced in the disciplinary enquiry (DE) and the applicant did not get any opportunity to cross examine.
- (iv) Rule 16 of the Delhi Police (Punishment and Appeal) Rules, 1980 puts the EO in the role of a Presenting Officer as the EO prepares the summary of allegations, the list of prosecution witnesses as well as the list of documents on behalf of the department, which is essentially not his role and it compromises his impartiality.
- (v) The applicant challenges the *vires* of entire Rule 16.

5. The learned counsel for the applicant during the arguments submitted that there were two other delinquents in the same incident, namely, Head Constable Driver Satbir Singh and Constable Driver Surender Singh, against whom joint enquiry proceedings were initiated and finally punished by the disciplinary authority. Thus, delinquents challenged the punishment imposed upon them in OA No.1067/2012. Vide order dated 22.05.2013, this Tribunal allowed the OA mainly on two grounds that (i) not a single prosecution witness has stated anything connected with the allegations made against them. (ii) The maker of the CD – Chetan Prakash was never produced and subjected to cross examination by the applicants and a recorded statement of prosecution witness Chetan Prakash which was relied upon by the Enquiry Officer was not made available to the applicants. In the present case also, the CD was never screened during the enquiry and the FSL report was also not provided to the applicant. He further referred to the judgment of learned Special Judge (PC Act)-05, (ACB), (Central), Tis Hazari Courts, Delhi dated 12.08.2015, whereby it was held that there was no incriminating material produced against the accused persons, that included the applicant and all the accused persons were acquitted. The applicant, therefore, on the basis of the same evidence cannot be held guilty by the Enquiry Officer, besides the anomalies in conducting the enquiry.

6. The learned counsel for the respondents denied all the allegations made by the applicant and submitted that the department had conducted the enquiry in accordance with the Delhi Police (Punishment & Appeal) Rules, 1980. He had also been provided with all the documents relied on by the EO as also additional documents demanded by him for his defence. The opportunities were provided to him to submit representations on the report of the EO as well as to the Appellate Authority, including a personal hearing by the DE fulfilling all the requirements of the principles of natural justice. The Appellate Authority even moderated the punishment from forfeiture of 10 years of approved service permanently entailing proportionate reduction in his pay with immediate effect to forfeiture of two years service temporarily for a period of two years entailing proportionate reduction in his pay for all intents and purposes. Thus, it cannot be said that there was a non application of mind or there was any violation of Delhi Police (P&A) Rules, 1980 or principles of natural justice. The presence of the applicant at the time of corrupt practice of taking bribe was proved by some constable Vijay Singh who identified the applicant in the scene No.6 of the CD. The EO had called the complainant Chetan Prakash many times, but he did not attend the proceedings and, therefore, the question of cross examining the complainant did not arise.

7. We have heard the learned counsels for the parties and perused the record. The main defence taken by the applicant is that the CD which was the basis of initiating the disciplinary action against the applicant was never produced in the departmental enquiry in the DE. The presence of the applicant on the spot allegedly demanding bribe has also been sought to be proved by the statement of some Constable Vijay Singh. Even the complainant has not been produced in the enquiry to prove veracity of the CD and also to give opportunity to cross examine him by the applicant.

8. We find that similar question had been raised in the same incident in OA No.1067/2012 (supra). The relevant part of that order is reproduced below :-

“17. We have heard the learned counsel for the Applicant, Shri Arun Bhardwaj and learned counsel for the Respondents, Mrs. Sumedha Sharma. The charge against the Applicants were that while they were on duty, they indulged in corrupt activities and those activities were videographed by one Chetan Sharma. Based on that videograph FIR No.383/07 u/s 7/13(i) D(ii) was registered on 07.05.2007 and the investigation in the said case was being carried out by the Crime Branch. As the allegations against the Applicants revolve around the said Chetan Sharma and his videograph about the applicants, he was made the main prosecution witness and he was supposed to prove that he had recorded the alleged illegal action of the Applicants and on his aforesaid complaint, the FIR was registered. It is quite strange that the said complainant in the said FIR and the prime witness in the departmental enquiry could not be produced by the prosecution in the enquiry proceedings. As rightly relied upon by the Applicants counsel, the case of the Applicants is squarely covered by the judgment of the Apex Court in Hardwari Lals case (supra). In the said case also the respondents failed to examine the complainant in the departmental enquiry and the Apex Court held that his non-examination has greatly

prejudiced his case. Further, the Apex Court held that his examination would have revealed the veracity of the complaint. On this ground alone, the Enquiry Officers report and the order of the Disciplinary Authority based on it are liable to be set aside.

18. Further, we observe that the report of the Enquiry Officer is quite perverse. Not a single PW has stated anything connected with the allegations made against the Applicant. Still the Enquiry Officer held that the charge was proved on the basis of the previously recorded statement of the PW Chetan Sharma who has never been produced in the enquiry and subjected to cross examination by the Applicant. Even otherwise, the said statement was not even a listed document in the enquiry proceedings. Another aspect of the enquiry held against the Applicant is that the Enquiry Officer did not make available any of the material documents relied upon by him. The previously recorded statement of Shri Chetan Sharma was never supplied to him on the specific plea that if they are provided, it would influence the investigation of the case. In that case, what the Respondents could do was not to hold any departmental enquiry while the criminal case is going on. Again, another equally important document is the alleged videograph supplied by Shri Chetan Sharma. The Applicants have sought its production also but the Respondents refuse to produce it for the same reason.”

9. The legal position is well settled that the standard of proof required in a criminal proceeding is of much higher order than in the departmental proceedings. The preponderance of probability is sufficient to come to a conclusion with regard to the guilt of the delinquent. The general principles of the Evidence Act cannot be dispensed with. The involvement of the applicant has been proved by the EO only on the basis of the statement of prosecution witness who had allegedly seen the CD and identified the applicant demanding the bribe. The CD itself was never proved, which is the conclusion arrived at by the Special Judge (PC Act), Tis Hazari

Courts, Delhi vide order dated 12.08.2015. Relying on the Hon'ble Supreme Court judgment in the case of **Anwar P.V. Versus P.K. Basheer** reported as Manu/SC/0834/2014, the learned Special Judge concluded that the CD was inadmissible as a secondary evidence as well. The relevant part of that order is reproduced below :-

“7.1.1 Formal witness, examined, can be categorised in 3 categories. PW-3 & PW-12 to PW-17, PW-21 & PW-22 have merely identified the pictures of accused persons in video cassette Ex.P-1. The other category of witnesses, are (PW-8, PW-9, PW-10 & PW-20) who had granted sanction for prosecution against the accused persons. The third category of witnesses are witnesses (PW-2, PW-5 & PW-6) to seizure & safe custody of video cassette Ex.P-1.

7.1.2 Chetan Sharma (PW-4) & Dr. S.K. Jain (PW-11) can be said to be the only material witnesses, who have supported the prosecution case. Testimony of Chetan Sharma is totally inadmissible, being hearsay evidence of Daya Shankar's alleged version and also because he has merely narrated the contents video cassette, which in itself is inadmissible. The testimony of Dr. S.K. Jain (PW-11) or the report submitted by him is apparently incomplete as he has not given any opinion whether the contents in cassette Ex.P-1 were original recording. He has also not opined regarding the compatibility of HI-8 cassette with the recording device. His findings/opinion expressed in the report that there is no addition, deletion & tempering with the video footage is also patently wrong. A perusal of the testimony of Chetan Sharma (PW-4), as recorded on 18.04.2015 indicates that the sequence at Srl. No.-10 displays the starting time of recording as 19.22 Hours and concluding time as 19.42 Hours. It was observed by the court that the sequence had jumped time from 19.27.23 Hours to 19.28.02 Hours and 19.30 Hours to 19.36 Hours. Meaning thereby, either the recording was stopped in between the sequence, or, some portion has been deleted, after the recording had been done. The FSL report being silent as regards this sequence; in my opinion, the same is not a complete & correct report. Similarly, the FSL report has not noticed and opined about a TV clip of ETC channel, in between the alleged recordings of corrupt activity.

7.2 However, in the absence of proof of actual demand of bribe, it can be held that there is any incriminating material against the accused persons. Mere identification of their pictures in cassette Ex.P-1 can not be said to be incriminating as cassette Ex.P-1 itself is inadmissible in evidence. The video footage contained in Ex.P-1 has not been opined by FSL to be the original recording. It has been demonstrated by the ld. defence counsels that the video cassette contains clippings of ETC Channel in between the alleged incriminating clips, which demonstrates that the cassette is not original recording. It was copied on a pre-recorded cassette. It has also not been brought on record that the recording device had the provisions of making direct recording on the cassette or it first recorded on a memory stick and then transferred the contents of cassette. The recording device was admittedly not sent to FSL for analysis. Thus, there is no evidence that video recording contained in cassette Ex.P-1 is original recording and, thus, Primary Evidence admissible u/sec.-62 of the Indian Evidence Act. In the absence of certificate u/sec.-65/B of the Indian Evidence Act, the cassette Ex.P-1 is apparently inadmissible as Secondary Evidence, as well. View taken by the Hon'ble Supreme Court of India in **Anwar P.V. Vs. P.K. Basheer** reported as **Manu/SC/0834/2014**'s case is as under :-

“Any documentary evidence by way of an electronic record under the [Evidence Act](#), in view of [Sections 59 and 65A](#), can be proved only in accordance with the procedure prescribed under [Section 65B](#). [Section 65B](#) deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the [Evidence Act](#), any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub- Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under [Section 65B\(2\)](#). Following are the specified conditions under [Section 65B\(2\)](#) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to

store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

Under [Section 65B\(4\)](#) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under [Section 65B\(2\)](#) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.”

10. In such a situation, when the CD itself was not admissible as an evidence, a tertiary evidence of the PW that he had seen the applicant accepting bribe in one of the scenes of the CD, cannot be the basis for concluding that the applicant was guilty.

11. In the circumstances and for the reasons stated, the OA is allowed. The report of the EO and the orders of Disciplinary Authority and Appellate Authority are quashed. The applicant will be entitled to all consequential benefits including the treatment of the period of suspension from 27.12.2005 to 23.12.2010, as a period spent on duty, but without back wages. The order shall be implemented within a period of three months from the date of receipt of a certified copy of this order. No costs.

(V.N. Gaur)
Member (A)

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

2nd August, 2016

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