

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA-3762/2013

New Delhi, this the 04th day of December, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Praveen Mahajan, Member (A)**

Const. Bikram,
Age-45 years,
S/o Sh. Prabhu Singh,
R/o-B-20/157, Type-II,
Police Colony Pitampura, Delhi-34. ... Applicant
(through Sh. Sachin Chauhan)

Versus

1. Govt. of NCTD through
The Commissioner of Police,
PHQ, IP Estate, New Delhi.
2. The Addl. Commissioner of Police,
Traffic, through Commissioner of Police (AP),
PHQ, IP Estate, New Delhi.
3. The Dy. Commissioner of Police,
Traffic (NR) through
Commissioner of Police (AP),
PHQ, IP Estate, New Delhi.
4. The Dy. Commissioner of Police,
Vigilance through Commissioner of Police (AP)
PHQ, IP Estate, New Delhi. ... Respondents
(through Sh. Vijay Pandita)

ORDER(ORAL)**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman**

The applicant is a Constable in Delhi Police. The Deputy Commissioner of Police, Traffic (NR), passed an order dated 08.09.2011. It is to the affect that one Sh. Ashok Kumar Dabas owner of a commercial vehicle complained to PRG Cell of the Traffic that one ASI Tejinder Singh No. 2074/T/, Bawana Circle is demanding money for permitting entry of the vehicles. On that compliant, Inspector Manoj Kumar, TI/PRG along with constable Rajneesh, is said to have accompanied Sh. Ashok Kumar Dabas on 06.07.2011 and on a call made by Ashok Kumar, ASI Tejinder Singh came to an already decided spot. The ASI is said to have received two notes of five hundred rupees denomination by making a demand and thereafter, he handed over the notes to the applicant herein.

2. On this allegation, the DCP ordered disciplinary proceedings against the applicant. A charge memo was issued to the applicant and he denied the charge. An Inquiry Officer was appointed and in his report the Inquiry Officer held the charge as proved. Taking the same into account, the disciplinary authority passed an order dated 14.08.2012 imposing punishment of forfeiture of one year of approved

service permanently entailing subsequent deduction in pay. The period of suspension was directed to be treated as not spent on duty. Appeal preferred by the applicant was rejected. Hence, this OA. The applicant challenged the order dated 08.09.2011 and all other subsequent proceedings.

3. The applicant contends that when there was not even an allegation that he made a demand of money, there was absolutely no basis for initiating proceedings. It is also pleaded that in the inquiry, Sh. A.K. Dabas categorically stated that though he made an attempt to pay the money to Sh. Tejinder Singh as desired by inspector Manoj Kumar, the same did not materialise and that the notes were returned to Sh. Manoj Kumar and still, the finding was recorded against him. It is contended that the Inquiry Officer misread the evidence. Other grounds also urged.

4. The respondents filed counter affidavit. According to them, though there was no allegation of demand of money by the applicant herein, subsequent events disclosed that he was the person from whom identified notes were discovered, and that his punishment was imposed commensurate with the gravity of the charges proved against the applicant.

5. We heard Sh. Sachin Chauhan, learned counsel for the applicant and Sh. Vijay Pandita, learned counsel for the respondents.

6. The applicant herein came to be implicated in the whole episode in peculiar circumstances. The order dated 08.09.2011 that gave rise to initiation of disciplinary proceedings furnished the preamble, which reads as under:

"It is alleged that one Shri Ashok Kumar Dabas S/o Shri Om Prakash Dabas R/o 67, Chowk Main, Village Chandpur, Delhi-81, a transporter complained in PRG Cell/Traffic that ASI/ZO Tejinder Singh, No. 2074/T Bawana Circle has demanded entry money for plying his commercial vehicles. On 6.7.2011, Insp. Manoj Kumar TI/ PRG along with Const. Rajneesh, No. 5968-T/PRG-Cell/Traffic and Shri Ashok Kumar Dabas (Complainant) went to the spot already decided by Shri Ashok Kumar Dabas and ASI/ZO Tejinder Singh, No. 2074-T. The complainant gave two notes of Rs. 500/- denomination to ASI/ZO Tejinder Singh on demand as entry money and the same were handed over to Const. Bikram Singh, No. 5166-T as revealed by the complainant. On search, the same two notes of Rs. 500/- denomination were recovered from the possession of Const. Bikram Singh, No. 5166-T.

The above act on the part of ASI Tejinder Singh, No. 2074-T and Ct. Bikram Singh, No. 5166-T amounts to grave misconduct, negligence, dereliction in the discharge of his official duties and involvement in corrupt practices which render them liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules, 1980."

From this it becomes very clear that there was no allegation of demand against the applicant and the only thing attributable to him was that Sh. Tejinder Singh received

the money from Sh. Ashok Kumar Dabas and thereafter passed on the same to the applicant.

7. Notwithstanding the technicalities involved in the matter, if it is established that there was any role played by the applicant in the whole episode of payment of illegal gratification, the action taken by the respondents cannot be interfered with.

8. In the inquiry, Sh. A.K. Dabas was examined as PW2. The gist of his evidence is furnished by the Inquiry Officer as under:

"PW-2 Shri Ashok Kumar Dabas s/o Shri Om Prakash Dabas r/o 67 Chowk Main, Chand Pur Village, Delhi 110081-Age about 43 years.

He stated that he is residing at the above address and is a transporter. He has 04 tempos and plying in Delhi around Bawana Industrial Area. The drivers told him that one ZO Sardarji challaned the vehicles and demanding money. On this he made a complaint to PRG. On this Insp. Manoj Kumar and one constable met him at Balmiki Hospital Pooth Khurd. Insp. Gave him two currency notes of Rs.500/- denomination each after noting down the number of notes and told him to give the notes to ZO ASI Tejinder Singh. He (Ashok Kumar) telephoned ZO ASI Tejinder Singh and the ZO told him to meet at Dahiya Stock, Narela Road. In this he alongwith Inspector Manoj Kumar and constable went to Dahiya Stock office Narela Road. He as per the direction of Insp. Constable went to Dahiya Stock office Narely Road. He as per the direction of Insp. Manoj Kumar went to Dahiya Stock to hand over the notes to ASI Tejinder Singh where ASI Tejinder Singh and his staff was sitting and one/two private person were also present. He tried to give the notes to ASI Tejinder Singh but he refused to accept the same. He returned back to Insp., who was sitting in his car and told that ASI Tejinder has refused to accept the notes. On this he gave the notes to Inspector and Insp. Went to Dahiya Stock along with him and his constable, there he wrote in English and he got his signature on that. Insp. Manoj told that he has made an arrangement that ZO will not harass you in

future. Later he went to PRG office, Toda Pur on the request of Insp. Where Insp. PRG directed him to write his statement and he signed the statement."

From this it becomes clear that the very foundation on which the disciplinary proceedings were initiated, i.e., order dated 08.09.2011, collapses. In clear and categorical terms, Sh. A.K. Dabas stated that it was Inspector Manoj Kumar who gave him two notes of five hundred rupees for being paid to Sh. Tejinder Singh and an attempt made by him to pay to Sh. Tejinder Singh did not materialize. Nothing to the contrary was elicited from that witness. Therefore, the allegation, that amount was paid to Sh. Tejinder Singh remains unproved. If it is not proved that Sh. Tejinder Singh received the amount, the question of it being passed on to the applicant does not arise. Thus, it becomes a case of no evidence, vis-a-vis the applicant.

9. Report of the Inquiry Officer discloses that he has himself cross examined PW-2. That was totally impermissible in law. The finding against the applicant is totally untenable and is one of no evidence. Therefore, the very basis for imposing any penalty against the applicant ceases to exist.

10. We, accordingly, allow the OA and set aside the order of punishment. The period of suspension shall be treated as spent on duty and he shall be paid all the amounts due to

him, within a period of three months from the date of receipt of a certified copy of this order. All consequential steps that have flown from the initiation of proceedings against the applicant shall stand set aside. There shall be no order as to costs.

(Praveen Mahajan)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/ns/