

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH:  
NEW DELHI**

O.A. NO.3090 of 2018

Orders reserved on : 23.07.2019

Orders pronounced on : 31.07.2019

**Hon'ble Ms. Nita Chowdhury, Member (A)**

Wazir Chand  
[Age 53 years, Desi. Assistant Sub Inspector, Group-C]  
S/o Late Sh. Surat Singh,  
R/o Village and PO Sandal Kalan,  
District Sonapat, Haryana.

....Applicant

(By Advocate : Shri R.K. Jain)

VERSUS

1. The Govt. of NCT OF Delhi,  
Through Commissioner of Police,  
I.P. Estate, New Delhi.
2. The Joint Commissioner of Police,  
Traffic [HQ],  
Police Headquarter,  
I.P. Estate, New Delhi.

.....Respondents

(By Advocate : Mrs. P.K. Gupta)

**ORDER**

By filing this OA, the applicant sought the following reliefs:-

- “I. To quash and set aside the order dated 26.12.2017, vide which the penalty of censure has been imposed upon the applicant and order dated 23.05.2018 vide which the appeal has been rejected and direct the respondents to grant the consequential benefits.
- II. cost of the proceedings may also be awarded to applicant;

III. any other relief which this Hon'ble Tribunal may also be passed in favour of the applicant."

2. The relevant facts of the case are that applicant while working as Assistant Sub Inspector in Delhi Police was issued a Show Cause Notice for censure dated 5.10.2017 on the following allegation :-

"It has been alleged by one Sh. Brijesh r/o H.No.112/15, 2<sup>nd</sup> Floor, Gali No.5, Phahr Ganj, Delhi, that traffic staff near New Delhi Railway Station took 700 Rs. from him. When he insisted to give him challan slip they threatened him of impounding of his case. He was forced to give Rs.700 Ts. Ts to them. He further alleged that the traffic staff deployed at that point had sticks/dandas in their hands. Amongst them one person who does not appeared to be a police man having stick in his hand stopping the vehicles and let the vehicles pass only after paying 100-200 Rs. to him. If someone refuses to pay, he takes him to the officer having one star on his dress who does not have name plates on his uniform. The persons failed to give money were threatened for impounding their vehicles.

In this regard, a surveillance was mounted on 24/08/2017 at about 05.00 AM towards Ajmeri Gate. It was noticed that ASI Wazir Chand, Const. Dinesh, Const. Jai Bhawan and Constable Sanjay were on morning checking duty, were found to be engaged in collecting illegal gratification from the vehicles.

A surveillance was conducted on the complaint on 24/08/2017 and took position towards Ajmeri Gate side for mounting surveillance at about 05.00 AM. From the enquiry conducted it has been found that ASI Wazir Chand No.2502/T, Const. Dinesh No.3157/T, Const. Jai Bhagwan No.4717/T & Const. Sanjay No.3415/T were on morning checking duty on 24/08/2017 and took Rs.200 from Mr. Rashid Mohd., driver of vehicle No/RJ-10-GA-5790. The allegation levelled by the complainant of adopting corrupt practice by the traffic staff found true.

The above act on the part of ASI Wazir Chand No.2502/T, Const. Dinesh No.3157/T, Const. Jai Bhagwan No.4717/T & Const. Sanjay No.3415/T

amounts to gross negligence, carelessness and dereliction in the discharge of their official duties.

ASI Wazir Chand No.2502/T, Const. Dinesh No.3157/T, Const. Jai Bhagwan No.4717/T & Const. Sanjay No.3415/T is, therefore, called upon to show cause as to why his above conduct should not be censured. His reply, if any, should reach this office within 15 days from the date of its receipt, failing which it will be presumed that he has nothing to say in his defence and the matter will be decided on its merit, ex-parte.”

3. The applicant submitted his reply to the said Show Cause Notice.

4. After considering the reply submitted by the applicant to the said Show Cause Notice, the disciplinary authority imposed a penalty of ‘Censure’ upon the applicant vide order dated 26.12.2017 (Annexure A-1). The relevant portion of the said order is reproduced below:-

“A surveillance was conducted on the complaint on 24/08/2017 and took position towards Ajmeri Gate side for mounting surveillance at about 05.00 AM. From the enquiry conducted it has been found that ASI Wazir Chand No.2502/T, Const. Dinesh No.3157/T, Const. Jai Bhawan No.4717/T & Constable Sanjay No.3415/T were on morning checking duty on 24/08/2017 and took Rs. 200 from Mr. Rashid Mohd., driver of vehicle No.RJ-10-GA-5790. Allegations w.r.t. operating of a civilian with the traffic staff could not be proved. Staff deployed on the duty was in proper dress having nameplates on the uniform. However, complainant could not be traced as the address given by him does not exist. The allegations levelled by the complainant of adopting corrupt practice by the traffic staff found true.

The undersigned has carefully gone through the written reply submitted by above said ASIs/Consts and material on record. They were also heard in OR on 15/12/2017. Their replies/submissions are not found satisfactory. Therefore, the SCN issued to them is

hereby confirmed and their conduct are Censured accordingly.

Let a copy of this order be given to them free of cost. They can file an appeal against the above said punishment to the appellate authority within 30 days from the date of its receipt on a non judicial stamp paper by enclosing a copy of this order, if they so desire.”

The Applicant preferred an appeal. The appellate authority after considering his appeal rejected the same vide order dated 23.5.2018. The relevant portion of the appellate authority is extracted below:

“I have duly carefully considered the submissions of the appellant in his appeal in the light of facts and circumstances of the case, relevant material available on record and he was also heard in the Orderly Room on 4.5.2018. The mandatory opportunity of oral/written submissions was given to the appellant by the Disciplinary Authority.

The appellant has admitted that he was deployed for morning checking duty at Ajmeri Gate Chowk on 24.8.2017 from 4.00 a.m. to 6.00 a.m. The PRG team on receipt of complaint from one Shri Brijesh regarding allegation of taking Rs.700/- from him mounted surveillance and found that during morning checking, the applicant along with other co-delinquents took Rs.200/- from one Mr. Rashid Mohd., a driver of vehicle No.RJ-10 GA-5790 without issuing the challan to him. As such, the allegation of taking illegal gratification from the driver of vehicle during their morning checking duty was found true. There is no reason to disbelieve on the report of PRG/Traffic even though the complainant was not found residing at the given address.

The appellant having his long service tenure was performing duty along with his three subordinate Constables. As such being supervisory officer, it was his prime duty and responsibility to keep close watch over the activities of his subordinate staff, but he failed on this aspect. He was expected neither to get himself nor to allow any of his subordinate staff to get involved in corrupt practices. He opted to keep his eyes closed in

the above matter due to the reason best known to him and now taking various pleas to save his skin. Traffic unit of Delhi Police interacts with general public directly, and as such the activities of collecting illegal money from traffic rule violators on road without issuing challan brings a bad name to the department, and can not be tolerated. The prime duty of traffic police staff is to regulate traffic in a smooth manner and prosecute offenders as per law and established rules, but the act of appellant as well as his subordinates was found unprofessional and unbecoming of police officers.

On perusal of written as well as oral submissions of the appellant and relevant material available on record, I find that the pleas of the applicant are bereft of merit and have no substance. Under these circumstances, I have no reason to interfere with the punishment order passed by the Disciplinary Authority. Hence, the appeal of the appellant is, hereby, rejected being devoid of merit and substance.”

5. Learned counsel for the applicant vehemently submitted that the impugned penalty order as well as appellate authority's order are illegal, arbitrary, unjustified, unreasonable, and also in violation of principles of natural justice. He further submitted that impugned orders have been issued by the respondents without properly considering the contention of the applicant in his reply and the appeal and that no recovery of alleged taking of money has been effect upon the applicant and the appellate authority has rejected the appeal of the applicant by taking into consideration extraneous material and also on the allegation, which was not a part of the show cause notice and even the PRG team did not got the applicant identified for taking Rs.200/- from one Rashid Mohd. Driver of Vehicle No.RJ 10

GA 5790 before proving such a severe allegation against the applicant. Further the PRG team did not even specify in report that who had taken the illegal gratification from Mr. Rashid Mohd. Hence, the allegations have been held to be proved against the applicant without any evidence on record.

6. Counsel for the respondents by referring to their counter affidavit submitted that impugned orders are legally valid in the eyes of law as there is no infirmity in passing the same.

7. Heard learned counsel for the parties and perused the pleadings on record. With regard to the scope of judicial review to be exercised by the Tribunal in so far as the departmental enquiries are concerned, the Hon'ble Supreme Court has laid down the law in several cases, some of which have been enumerated below:

In the case of ***K.L.Shinde Vs. State of Mysore*** (1976) 3 SCC 76), the Hon'ble Supreme Court in para 9 observed as under:-

“9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made

by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada - bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in *State of Mysore v. Shivabasappa*, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same

when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

Again in the case of ***B.C.Chaturvedi Vs. UOI & Others*** (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion



or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H. C. Goel* (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued”.

Further, in the case of ***Union of India and Others Vs.***

***P.Gunasekaran*** (2015 (2) SCC 610), the Hon’ble Supreme

Court has observed as under:-

“Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no.I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.”

8. The respondents have produced the relevant file of this case which this Tribunal perused very carefully. So far as aforesaid contentions of the applicant are concerned, it is observed that there is no violation of principles of natural justice and contents of the reply as well as appeal submitted by the applicant have been duly considered by the respondents before passing the aforesaid impugned orders. So far as contention of the applicant that no recovery of alleged taking of money has been effected upon the applicant is concerned, in the report submitted by the Surveillance Team, it has specifically mentioned that “Thereafter we stopped one vehicle bearing Regn No. RJ 10 GA 5790 Tata Tempo coming from Ajmeri Gate towards Pahar Ganj side. We enquired him whether his vehicle was checked by the traffic staff. The driver revealed his name as Rashid Mohd. s/o Yasin Khan r/o Ward No.12 near Gaushala, Tara Nagar, Distt –

Churu, Rajasthan, aged 45 years. He told that his vehicle was stopped by the traffic staff at Ajmeri Gate near the foot of the flyover and was let off only after paying 200 rupees to the traffic staff though he was having all the documents with him. His statement was recorded which is as placed herewith at F/A for the kind perusal. Photographs of the vehicle were also taken which was placed herewith at F/B. I asked the driver to accompany us to the traffic staff for identification of the person but he refused to do so and left from there.” As such this contention is not sustainable. Having regard to the above relevant para of the report submitted by the Surveillance Team, it is evidently clear that evidence were very much available on record. However, having regard to the facts and circumstances of the case, the competent authority initiated the proceedings relating to award of censure against the applicant and other co-delinquent. The complaint submitted by one Shri Brijesh is the basis for initiating the surveillance to ascertain the veracity of the complaint and the surveillance time vide its report gave a finding that it has been found that ASI Wazir Chand No.2502/T, Const. Dinesh No.3157/T, Const. Jai Bhagwan No.4717/T & Const. Sanjay No.3415/T were on morning checking duty on 24/08/2017 and took Rs.200 from Mr. Rashid Mohd., driver of vehicle No/RJ-10-GA-5790.

9. Keeping in view the aforesaid observations of the Apex Court, this Tribunal found that the orders passed by the disciplinary and appellate authorities are reasoned and

detailed order, which do not suffer from any illegality as the respondents having regard to the facts and circumstances of this case, awarded the punishment of censure not only to the applicant but also to his co-delinquents.

10. In view of the facts of the case and for the reasons stated hereinabove and in view of the law laid down by the Hon'ble Supreme Court, this Tribunal does not find any merit in this case and the same is accordingly dismissed. No order as to costs.

**(Nita Chowdhury)**  
**Member (A)**

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