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Central Administrative Tribunal, Principal Bench

Original Application No.673 of 2003
M.A.No.680/2003

New Delhi, this the 15th day of September, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. R.K. Upadhyaya, Member (A)

1. Head Constable Diwan Singh No.136/T,
S/o Shri Sher Singh
R/o Village Dariya Pur,
Distt. Jhajjar Haryana
2. Head Constable Dharambir Singh No.494/T,
S/o Shri Nafey Singh
R/o Village & P.O. Dichkow Kalan,
Delhi
3. Constable Jasbir Singh No.1699/T,
S/o Shri Chand Ram,
R/o Village & PO Dichcow Kalan,
Delhi
4. Constable Mahender Rai No.1105/T,
S/o Shri Kanhiya Rai,
R/o B 285, Nehru Vihar near Timarpur
Delhi

.... Applicants

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi
2. Joint Commissioner of Police,
Traffic,
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi
3. Dy. Commissioner of Police,
Traffic,
Tin Murti Lines, New Delhi

.... Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

There are four applicants in the present O.A. Applicants 1 and 2 are Head Constable and 3 and 4 are Constable. Departmental proceedings had been initiated against them and the enquiry officer had framed the

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following charge:

"I G.C. Kapur Asstt Commissioner of Police Traffic North West Distt. Delhi charge you ASI Ram Chander No.430/D, HC Dharambir Singh No.494/T, HC Diwan Singh No.136/T Constable Mahender Rai No.1105/T and Constable Jasbir Singh No.1699/T that on 3.2.99 while posted in Traffic Circle Najafgarh Delhi you were found to be indulging in illegal practice of stopping each and every commercial vehicles opposite police station Najaf Garh with intent to collect entry money when checked by the PRG team at about 11.10 AM. You got a truck no. HR 26GA-0343 stopped and took a currency note of Rs. hundred signed by Inspr. Inder Singh of PRG/T as "Entry" from the truck driver Mirji Ram S/o Shri Basant Lal R/o House of Naresh, Rajendra Park, Thanewali Gali, Gurgaon (Haryana) in presence of shadow witness const. Devender Kumar No.1821/T and signed the note book meant for entry. When the PRG team raided at about 11.45 AM, HC Dharambir Singh No.494/T, HC Diwan Singh No.136/T, Const. Mahender Rai No.1105/T and Const. Jasbir Singh No.1699/T fled away and managed their escape even inspite of being chased by PRG staff but ASI Ram Chander No.430/D was accosted on the spot. The cash of ASI Ram Chander No.430/D was counted and found short of Rs.50/- when tallied with the challans made him on that day. He could not account for the short cash. Later on HC Diwan Singh No.136/T who had fled away from the spot was identified by the PRG staff in the circle officer. The perusal of chitha of Najafgarh circle revealed that there was not traffic point opposite PS Najafgarh and you were detailed at different traffic points. You had also got truck No.1 & 20 which appeared to be identified. You had also got truck No.DL-1GA-8754 stopped and demanded entry from its driver Bablu Kumar Singh S/o Shri Kailash Prasad Singh R/o House of Praveen Bhardwaj, opposite Railway Station Prem Nagar Nangloi, New Delhi. This demand could not be materialized as the PRG Team reached at the spot in time.

The above act on the part of ASI Ram Chander No.430-D, HC Dharambir Singh No.494/T, HC Diwan Singh No.136/T, Const. Mahender Rai No.1105/T and Const. Jasbir Singh, 1699/T amounts to gross misconduct, negligence and dereliction in the discharge of their official duties which render them liable for punishment under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

2. After recording the evidence on the charges, the enquiry officer had exonerated the applicants. The disciplinary authority disagreed with the findings and

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passed the following order:

"A departmental inquiry was ordered against ASI Ram Chander No.430/D, HC Dharambir Singh, No.494/T, HC Diwan Singh, No.1699/T vide this office order No.1349-79/HAP-T, dated 1.3.99 to be conducted by Sh.JG.C. Kapoor, ACP/Traffic. The inquiry officer completed the DE proceedings and submitted his findings concluding therein that the charge framed against them is not proved.

I have carefully gone through the statement of PWs/DWs, findings of the inquiry officer and also the entire D.E. file. I disagree with the findings of the E.O. on the ground that in the raid process there were five members in the raiding party including ACP-T/RPG. They had seen the defaulters stopping, the spot on sensing PRG raid. The truck driver (PW-5) had told the PRG Inspr. that he had paid signed note of Rs.100/- to the traffic staff and making of entry in his note book. The other truck driver (PW-4) had also told about the demand of money and making entry in his note book. Both these PWs had also told the PRG team in their statements on the spot, that the traffic staff were slipped away on seeing the PRG staff except Z.O. HC Diwan Singh was identified as one of the member of checking staff in the circle office. The Z.O. had also confessed before the PRG team that he was conducted checking alongwith the traffic staff. The version of the DWs during DE proceedings could not be absolved them from their misconduct. The Z.O. could not explain about shortage of Rs.50/- out of challan money on the spot. The inquiry officer has not given weightage to the earlier statements of both the truck drivers and the version of PRG team. Both the truck drivers have turned hostile from their earlier statements during DE proceedings. The raid report submitted by the PRG team cannot be disbelieved being they were the eye witnesses. It is the fact that the signed note of Rs.100/- was paid to the traffic staff by PW-5 but they subsequently managed to escape from the spot except Z.O. despite chased by the PRG Team.

Therefore, a copy of the findings of the E.O. is being given to them free of cost for making representation against the above contents within 15 days from the date of receipt of this letter. They are also called upon to show cause as to why the suspension period from 3.2.99 to 28.2.99 should not be treated as not spent on duty, failing which it will be presumed that they have nothing to say in their defence and the D.E. will be decided on merits."

3.

After the reply was considered, the disciplinary

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authority imposed a penalty of withholding of one increment for a period of four years temporarily and it will not have the effect of postponing their future increments. The said order reads:

"One increment of other Staff i.e. HC Dharambir Singh No.494-T, HC Diwan Singh, No.136-T, Const. Mahender Rai, No.1105/T and Const. Jasbir Singh, No.1699-T is hereby withheld with immediate effect for a period of four years temporarily and the same will not have the effect of postponing their future increments. The suspension period of above police personnel from 3.2.99 to 28.2.99 is treated as period not Spent on Duty for all intents and purposes.

4. By virtue of the present application, the applicants assail the said orders passed by the disciplinary and the appellate authority because the appeal has since been dismissed.

5. Learned counsel for the applicant contended that in the present case, the disciplinary authority had not recorded a tentative note of disagreement. It was a final finding that has been arrived at and, therefore, the impugned orders cannot be sustained because according to the learned counsel, once such is the situation, there is no proper application of mind.

6. This proposition as such cannot be disputed that the disciplinary authority is not bound by the report of the inquiry officer. He has a right to differ, but in accordance with the settled principles of law, delinquent must be conveyed the note of disagreement which should be a speaking order giving the tentative reasons in this regard.

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If the final findings are arrived at ^{otherwise} in that event, it would be pre-judging the issue because the final findings can only be arrived at after the concerned officer replies and the same has been considered. The Supreme Court in the case of **Punjab National Bank and others v. Kunj Behari Misra**, (1998) 7 SCC 84 in this regard held:-

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

The case of **Yoginath D. Bagde v. State of Maharashtra and Another**, 1999 (7) SCC 62 provides clear guide-lines in this regard. There too the same controversy had come up for consideration and the Supreme Court reiterated that it is only the tentative reasons which have to be conveyed. The Supreme Court held:-

"The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the **"TENTATIVE"** reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the

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findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with."

If it is the final finding that has already been arrived at, in that event, the alleged delinquent can reasonably complain of bias and not affording an opportunity and we take advantage in referring to the decision of the Supreme Court in the case of *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant & Ors.*, AIR 2001 SC 24. A Division Bench of the Delhi High Court had also considered almost similar controversy in the case of *Commissioner of Police v. Constable Parmod Kumar* in Civil Writ Petitions No.2665/2002 and 4593/2001 decided on 12.9.2002. Like in the present case, a note of disagreement was recorded by the disciplinary authority that the charges stood proved. The Delhi High Court had set aside the punishment that had been imposed and concluded:

"However, while disagreeing with such findings, he must arrive at a decision in good faith. He while disagreeing with the findings of the Inquiry officer, was required to state his reasons for such disagreement but such a decision was required to be tentative one and not a final one. A disciplinary authority at that stage could not have pre-determined the issue nor could arrive at a final finding. The records clearly suggest that he had arrived at a final conclusion and not a tentative one. He proceeded in the matter with a closed mind. An authority which proceeds in the matter of this nature with a pre-determined mind, cannot be expected to act fairly and impartially."

7. On behalf of the respondents, reliance was being placed on a decision of this Tribunal in O.A.3473/2001 dated 15.1.2003 entitled *Yogesh Gulati vs. Govt. of NCT*

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of Delhi and others. On the strength of this decision, this Tribunal had recorded that it was only a tentative decision that had been arrived at. The findings of this Tribunal read:

"In the result we find that the disciplinary authority on the basis of the EO report has tentatively recorded his reasons and had given a reasonable opportunity to applicants to represent and thereafter on receipt of their replies a final decision was taken. What has been laid down by the Apex Court in Yogi Nath D. Bagde v. State of Maharashtra, JT 1999 (7) SC 62 has been followed in the cases before us by recording tentative reasons. Nowhere in the disagreement Note a final conclusion has been drawn proving the charge against applicants. As such the decision quoted of the High Court of Delhi in Pramod Kumar's case (supra) would be distinguishable and have no application to the present cases as therein the disciplinary authority while giving show cause notice instead of recording tentative reasons concluded the charge showing pre-determination, whereas in the cases in hand a tentative conclusion is drawn. What has been mandated by the Apex Court is not exactly the word mentioning tentative but if from the perusal of the show cause notice it is found that the disciplinary authority has not made up its mind to pre-judge the issue and while disagreeing recorded reasons and indicated to take a final action on receipt of the reply the same would be tentative conclusion on reasons recorded. As such, we do not find any infirmity in the show cause notice issued disagreeing with the findings."

8. Perusal of the cited decision clearly shows that it is on the facts of that particular case that this Tribunal had concluded that it was a tentative decision recorded and thereafter reasonable opportunity had been granted. The decision of the Supreme Court in the case of Yoginath D. Bagde (supra) and of the Delhi High Court in the case of Constable Parmod Kumar (supra) were thus distinguished.

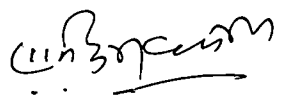
9. It is obvious from the aforesaid that this

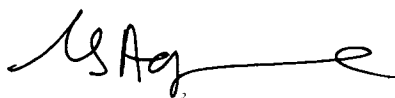
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decision was confined to its peculiar facts. If this Tribunal records that it was a tentative decision recorded, the decision in the case of Yoginath D. Bagde would come to support that view. It is, therefore, clearly distinguishable.

10. However, the facts of the present case clearly indicate that the disciplinary authority had specifically recorded in its note of disagreement that it differs with the findings of the enquiry officer. It is not a tentative decision but a final conclusion that has been arrived at. It was a pre-determination of the issue which is not permissible in law. Therefore, following the decision in the case of Yoginath D. Bagde (supra) and the Delhi High Court in the case of Constable Parmod Kumar (supra), we have no option but to hold that the impugned orders are liable to be quashed.

11. For these reasons, we allow the present application and quash the impugned orders. The disciplinary authority would be at liberty, if deemed appropriate, to pass a fresh order from the stage the findings were submitted by the enquiry officer and note of disagreement was recorded. It can be so done in accordance with law.


(R.K. Upadhyaya)
Member (A) .


(V.S. Aggarwal)
Chairman .