

(7)

Central Administrative Tribunal, Principal Bench

Original Application No.817 of 2003

New Delhi, this the 3rd day of November, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Ct. Mukesh Kumar & Another 7773/A
S/o Shri Ranjit Singh,
Add. Vill. & Post - Shamli,
Distt. Baghpat (U.P.)

(W) Ct. Anita Kumari
W/o Rajesh Kumar
G-84, Karampura, Village Balaghaur
Distt. Nava Shar

.... 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 H.Qtr.,
I.P. Estate, MSO Building,
New Delhi

3. Dy. Commissioner of Police, Traffic
Teen Murti Lines,
New Delhi

..... Respondents

(By Advocate: Shri Shishir Singh, proxy for Shri Rajan
Sharma)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

Applicants are Constables in Delhi Police.
Disciplinary proceedings had been initiated against them
with respect to the following charge:

"You const. Mukesh Kumar No.931/T (PIS
No.28930316) and W/Const. Anita Sharma No.1007/T
(PIS No.28882317) are hereby charged that on
29.6.99 while posted in the reader branch and
reader of ACP/T North East, Delhi respectively
demanded and accepted Rs.3500/- from Sh. Vinod
Kumar s/o Sh. Ram Kishan R/o RZ-40, G. Block
Dabri extension East, N.D. for favouring him in
getting the permit of his goods vehicle
no.DL-1L-8-8299 released from ACP/T.NE without
suspending it in the proceedings of section 86 of
Motor Vehicle Act, 1988 for committing offence of
66/192 Motor Vehicle Act vide Challan No.M-344028

LS Ag

for violating the conditions of permits as specified by the Hon'ble Supreme Court of India in Civil Writ Petition Sh. M.C.Mehta Vs. UOI and others, committed in the area of Shahdara Circle under the jurisdiction of their office and handed over the permit to the above mentioned Sh. Vinod Kumar without any orders of ACP/T North East. Thus Const. Mukesh Kumar No.931/T with the connivance of W/Const. Anita Sharma No.1007/T accepted Rs.3500/- through DHG Const. Ram Lal No.4083/DHG and kept illegally accepted bribe money with him which was recovered from the possession of the Const. Mukesh Kumar 931/T during the PRG raid and W/Const. Anita Sharma No.1007/T handed over the permit No.T-12861/95 of vehicle No.DL-IL-B-8299.

The above Act on the part of Const. Mukesh Kumar No.931/T and W/Const. Anita Sharma No.1007/T amount to gross misconduct in discharging their official duty which renders them liable to be dealt with departmentally under the provision of Delhi Police (Punishment and appeal) Rules, 1980."

2. The enquiry officer had been appointed and on 2.11.2000, he returned the findings exonerating both the applicants pertaining to the abovesaid charge. When the matter came up before the disciplinary authority, the findings were not approved and the disciplinary authority recorded the following note of disagreement:

"I disagree with the findings submitted by the E.O. as the PW-3, in his chief-in-examination has stated that he paid Rs.3500/- + Rs.50/- including four notes of Rs.100/- denominations signed by ACP/PRG through DHG Const. Ram Lal. After paying the amount to W/Ct. Anita Sharma she handed over the original permit No. T-12861/95 of vehicle No.DL-IL-B-8299 to Sh. Vinod Kumar (PW-3) without any action. As per seizure memo prepared during raid, the amount of Rs.3500/- was recovered from Ct. Mukesh Kumar, who did this act with the help of W/Ct. Anita Sharma.

Therefore, a copy of the findings of the E.O. is being given to them free of cost for making representations against the above contents. They are also called upon to show cause as to why their suspension period from 29.06.99 to 14.02.2000 should not be treated as not spent duty. Their reply, if any, should reach the under-signed within 15 days from the date of receipt of this letter, failing which it will be presumed that they have nothing to say in their defence and the DE will be



decided on merits."

3. After the reply was received and considered, the disciplinary authority recorded that the charge has been proved and thereupon imposed the following penalty on the applicants:

"....Hence, I impose the punishment of forfeiture of two years approved service permanently upon Const. Mukesh Kumar, No.9310T (Now 1773-A) and W/Const. Anita Sharma, No.1007-T (Now 1414-A) for a period of two years. It is therefore ordered that the pay of Const. Mukesh Kumar, No.931-T (Now 1773-A) and W/Const. Anita Sharma, No.1007-T (Now 1414-A) be reduced by two stages from Rs.3575/- to Rs.3425/- and Rs.3725/- to Rs.3575/- respectively in their time scale of pay for a period of two years with immediate effect. It is further directed that Const. Mukesh Kumar, No.931-T (now 1773-A) and W/Const. Anita Sharma, No.1007-T (now 1414-A) will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. Their suspension period from 29.06.99 to 14.02.2000 is treated as period not spent on duty for all intents and purposes."

They preferred an appeal which was dismissed by the Joint Commissioner of Police on 29.10.2002.

4. By virtue of the present application, the applicants assail the orders passed by the disciplinary as well as the appellate authority.

5. In the reply filed, the petition has been contested. It has been pointed that joint enquiry had been entrusted to Shri Sanjay Tyagi, ACP (Traffic) and thereupon to Shri R.K.Singh, ACP (Traffic). It is admitted that the enquiry officer has exonerated the applicants. The disciplinary authority disagreed with the findings of the enquiry officer. According to the respondents, there is no

ls Ag

procedural irregularity or illegality in the orders that have been so passed.

6. Without adverting to the merits of the matter, the learned counsel for the applicants contended:

(a) that the note of disagreement was a final finding arrived at rather than a tentative note of disagreement, therefore, the proceedings from the stage the note of disagreement was recorded, cannot be sustained; and

(b) the penalty imposed is a dual penalty which violates rule 8(d)(ii) of Delhi Police (Punishment & Appeal) Rules, 1980.

7. On both the counts, we are of the considered opinion that the pleas of the applicants necessarily should succeed.

8. We will take up the second argument first. Rule 8(d)(ii) of the Rules referred to above reads as under:

"Entailing reduction in pay or deferment of an increment or increments (permanently or temporarily."

9. Perusal of the same clearly shows where pay is reduced, an order of deferment of an increment or increments cannot be passed because of the expression 'or' occurring between the abovesaid two penalties. This

CSA

question had been considered by the Delhi High Court in the case of Shakti Singh vs. Union of India (C.W.P.No.2368/2000) decided on 17.9.2002 wherein the following findings were arrived at:

"Rule 8(d)(ii) of the said Rules is disjunctive in nature. It employ the word 'or' and not 'and'.

Pursuant to and/or in furtherance of the said Rules, either reduction in pay may be directed or increment or increments, which may again either permanent or temporary in nature be directed to be deferred. Both orders cannot be passed together.

Rule 8(d)(ii) of the said Rules is a penal provision. It, therefore, must be strictly construed.

The words of the statute, as is well known, shall be understood in their ordinary or popular sense. Sentences are required to be construed according to their grammatical meaning. Rule of interpretation may be taken recourse to, unless the plain language used gives rise to an absurdity or unless there is something in the context or in the object of the statute to suggest the contrary.

Keeping in view the aforementioned basic principles in mind, the said rule is required to be interpreted."

Inadvertently, it appears that the disciplinary authority has fallen into this error.

10. Reverting back to the first contention, reliance is being placed on the decision in the case of Yoginath D. Bagde vs. State of Maharashtra and another, 1999 (7) SCC

62. The same controversy was before the Supreme Court. It recorded:

"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 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."

11. The Delhi High Court in a similar matter in the case of Commissioner of Police vs. Constable Parmod Kumar (Civil Writ Petition Nos.2665/2002 and 4593/2001 decided on 12.9.2002) where the note of disagreement was recorded, held:

"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."

12. We are aware of the decision of this Tribunal in the case of Yogesh Gulati vs. Govt. of NCT of Delhi and others (O.A.3473/2001) decided on 15.1.2003. On perusal of the cited decision, it is patent that the same is distinguishable. 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

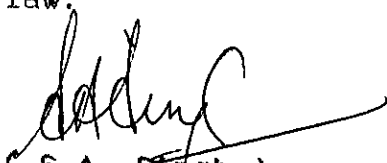
As Ag


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."

13. Perusal of the same shows that it was on the facts of the said case that this Tribunal concluded that this was a tentative decision recorded and a reasonable opportunity had been granted. Therefore, the decision in the case of Yogesh Gulati must be held to be confined to its peculiar facts.

14. In the present case, we have already reproduced above the note of disagreement recorded by the disciplinary authority. In clear and unambiguous terms, it uses the expression that it does not agree with the findings of the enquiry officer. It is not a tentative decision.

15. Resultantly, the impugned order on the said count cannot be sustained. Consequently, we allow the present application and quash the impugned orders. However, we direct that the disciplinary authority from the stage the report of the enquiry officer was received, may pick up the loose threads and pass a fresh order in accordance with law.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman