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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1547 OF 2003

New Delhi, this the 5th day of February, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, ADMINISTRATIVE MEMBER

Zabbar Singh
S/o Shri Jai Prakash,
R/o Village & P.O. Alipur Kalan,
District Muzaffar Nagar,
(U.P.)

....Applicant

(By Advocate : Shri S.K. Gupta)

Versus

1. Govt. of NCT of Delhi,
Through Chief Secretary,
Delhi Secretariat,
Players Bhawan, I.P. Estate,
New Delhi-110002.
2. Commissioner of Police,
Delhi Police Headquarters,
MSO Building, I.P. Estate,
New Delhi-110 002.
3. Joint Commissioner of Police(Traffic)
Delhi Police Headquarters,
MSO Building, I.P. Estate,
New Delhi-110 002.
4. Deputy Commissioner of Police (Traffic)
Delhi Police Headquarters,
MSO Building, I.P. Estate,
New Delhi-110 002.

.....Respondents

(By Advocate : Shri Shishar Singh for
Shri Rajan Sharma)

ORDER (ORAL)

SHRI-JUSTICE-V.S. AGGARWAL:-

The applicant faced disciplinary proceedings.
The inquiry officer had exonerated the applicant. The
disciplinary authority recorded a note of disagreement
which reads:-

"A joint D.E. was initiated against
SI Zabbar Singh, No.3813-D and Const.Mool
Chand, No.3509-T vide this office order
No.1767-68/HAP-T(D-I) dated 06.06.2001 and
entrusted to Shri Onkar Prasad, the then
ACP-I (West). Lateron, the said D.E. was



transferred to Shri K.S. Dalal, ACP/D.E.Cell. The Enquiry Officer completed the D.E. proceedings and submitted his findings concluding therein that in view of discussion of evidence, charge served upon SI Zabbar Singh, No.38130D does not prove in any manner but charge served upon Const.Mool Chand, No.3509-T stands proved without any shadow of doubt.

I disagree with the findings of the E.O. on the following grounds:-

1. It has been established that on 07.05.2001 Const.Mool Chand, No.3509-T was detailed for duty at Andrews Ganj Crossing under the supervision of SI Zabbar Singh, No.33813-D.
2. The duty hours for traffic personnel at particular point is from 08.00 A.M. to 08.00 P.M. SI Zabbar Singh, No.3813-D pleaded in his defence statement that he was busy in mobile prosecution and was not aware about the misdeed of the Constable. Being supervisory officer, he should have exercised control over his subordinates and also checked their presence on place of duty. SI Zabbar Singh, failed to effectively restrain his Constable from indulging in illegal activities. If he was not aware of the Constable he should have marked him absent in the daily dairy of circle. This clearly indicates negligence and dereliction of duty on the part of SI Zabbar Singh, No.3813-D."

2. After considering the reply of the applicant, a penalty was imposed which reads:-

"I take a lenient view and impose the punishment of forfeiture of one year approved service permanently for a period of one year with immediate effect. It is therefore ordered that the pay of SI Zabbar Singh, No.3813-D and Const. Mool Chand, No.3509-T be reduced by one stage from Rs.5850/- to Rs.5675/- and Rs.3425/- to Rs.3350/-, respectively in their time-scale of pay for a period of one year with immediate effect. It is further directed that SI Zabbar Singh, No.3813-D and Const. Mool Chand, No.3509-T will not earn increment of pay during the

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period of reduction and that on the expiry of this period, the reduction will have the effect of postponing their future increment of pay. The suspension period of SI Zabbar Singh, No.3813-D and Const.Mool Chand, No.3509-T from 07.05.2001 to 12.08.2001 is also decided as period not spent on duty for all intents and purposes."

3. The appeal filed by the applicant was dismissed on 19.5.2003.

4. By virtue of the present Original Application, the applicant assails the said orders.

5. The Original Application is being contested.

6. We are not dwelling into other controversy and submissions of the applicant. Reason being that it was argued that the disciplinary authority did not record a tentative note of disagreement and made a final order. Therefore, it prejudiced the applicant.

7. We do not dispute the right of the disciplinary authority to record a note of disagreement on the facts of a particular case, but the rules of natural justice would require that it should be a tentative note of disagreement rather than the findings which had been recorded in the present case.

8. Learned counsel relied upon the decision of the Supreme Court in the case of Yoginath D. Bagde V. State of Maharashtra & Anr., JT 1999 (6) SC 62, and also the decision of the Delhi High Court in the case

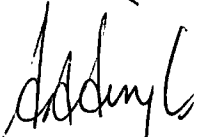
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of Commissioner of Police Vs. Constable Parmod Kumar & Anr. in Civil Writ Petition No.2665 of 2002 decided on 13.9.2002. In the latter decision, reliance has been heavily placed on the decision in Yoginath D. Badge (supra). It was held that when there is a final finding recorded rather than a tentative note of disagreement, the same will not be legally sustainable.

Thus following the

9. A Ratio deci dendi of the same, without expressing ourselves on other controversies, we allow the present Original Application and quash the impugned orders. It is directed that the disciplinary authority may pick up the loose threads from the stage of the report of the inquiry officer, and, if deemed appropriate, may pass a fresh order. Consequential benefits shall be awarded to the applicant.


(S.A. SINGH)
ADMINISTRATIVE MEMBER


(V.S. AGGARWAL)
CHAIRMAN

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