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Central Administrative Tribunal, Principal Bench

Original Application No. 2071 of 2003

New Delhi, this the 14th day of July, 2004

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

Kishan Lal, ASI
S/o Shri Hardan Singh,
R/o J3/2, Police Colony,
Andrewganj, New Delhi

...Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi
through its Chief Secretary,
Players Building, I.P. Estate,
New Delhi
2. Jt. Commissioner of Police,
(Armed Police)
Police Headquarters, I.P. Estate,
New Delhi
3. Dy. Commissioner of Police, Delhi
5th Battalion,
Delhi Armed Police,
New Police Lines, Kingsway Camp,
Delhi

.... Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R (ORAL)

Justice V.S. Aggarwal, Chairman

The applicant is a Sub-Inspector in Delhi Police.

Following summary of allegations had been served upon him:

"It is alleged against SI Kishan Lal, No. D/380, HC Sudhir Kumar Rana, No. 202/T, Const. Suresh Kumar, No. 3074/T and Const. Nathu Ram, No. 3184/T that while posted in Narela Traffic Circle on 23.8.2000 were present at G.T.K. Road near Jain Temple, Delhi and found indulging in mal-practices by collecting illegal money from commercial vehicles coming from Sindhu Border to Azad Pur. At about 11.15 AM HC Sudhir Kumar, stopped truck No. HP-09-1627 loaded with apples and demanded Rs. 500/- as illegal entry money from driver, Shri Prakash Chand S/O Shri Bharat Singh R/o Vill. Katheri

(Signature)

P.O. Tagu. Tehsil Theog, Distt. Shimla (H.P.) and on the request of Shri Neel Kumar S/O Chhaujan R/O Vill. Themgarang, Tehsil Sangha, Distt. Kinwar, H.P. Apple contractor, HC Sudhir Kumar was caught red handed on the spot by the PRG team and illegal entry money of Rs.300/- was recovered from his right side pocket of uniform pant alongwith another amount of Rs.100/- in 50/50 denomination suspected to be taken as illegal money from commercial vehicles. ZO/SI Kishan Lal managed and manipulated unauthorised presence of all three above mentioned lower subordinates at the spot with common malafide intention of collecting illegal money with commercial vehicles.

The above act on the part of SI Kishan Lal, No.D/3880, HC Sudhir Kumar Rana, No.202/T, Ct. Suresh Kumar, No. 3074/T and Const. Nathu Ram, No.3184/T amounts to grave mis- conduct, negligence and dereliction in performance of their official duties which render them liable to be dealt with departmentally under the provision of Delhi Police (Punishment and Appeal) Rules, 1980".

2. Enquiry officer had been appointed. After recording of the evidence, he framed the following charge:

"I, J.S.Mann, ACP/E.O., D.E.Cell, Defence Colony, New Delhi, charge you SI Kishan Lal No.D/3880, HC Sudhir Kumar, No. 202/T, Const. Suresh Kumar, No.3074/T and Const. Nathu Ram, No.3184/T that while posted in Narela Traffic circle, on 23.8.2000, you were present at G.T.K.Road near Jain Temple, Delhi. You SI Kishan Lal No.3880 and HC Sudhir Kumar, No.202/T were found indulging in malpractices by collecting illegal money from commercial vehicles coming from Sindhu Border to Azad Pur. AT about 11.15 AM HC Sudhir Kumar stopped truck No.HP-09-1627 loaded with apples and demanded Rs.500/- as illegal entry money from truck driver, Shri Parkash Chand. Finally, you HC Sudhir Kumar, 202/T accepted Rs.300/- from him and were caught red handed on the spot by the PRS Team and illegal entry money Rs.300/- was recovered from your right side pocket of uniform pant alongwith another amount of Rs.100/- in 50/50 denominations suspected to be taken as illegal money from commercial vehicles. Z.O./SI Kishan Lal managed and manipulated unauthorised presence of all the lower subordinates and failed to supervise the activities of his HC Sudhir Kumar

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No. 202/T from collecting illegal money from commercial vehicles.

You Constable Suresh Kumar, 3074/T and constable Nathu Ram, 3184/T were found unauthorisedly present on the other side of the road of G.T. Road unauthorisedly were also absent from your duty points.

The above act on the part of SI Kishan Lal, No.D/3880, HC Sudhir Kumar Rana, 202/T, Const.Suresh Kumar, No.3074/T and const. Nathu Ram, 3184/T amounts to grave misconduct, negligence and dereliction in performance of their official duties which render them liable to be punished under the provision of Delhi Police (Punishment and Appeal) Rules-1980".

3. Thereafter the enquiry officer recorded the following findings:

"So far constables are concerned, they have stated they ad done their duties as per Duty Roaster and were not absent from their dty points. Const. Nathu Ram had given version that he was in VIP arrangement at Darya Ganj and after finishing duty when he was going back, he saw some persons standing near the HC and ZO so he stopped there for knowing that what as happening. His version seems to be correct as per Ds and DD entries of Darya Ganj Daily Dairy. Similarly, Const.Suresh Kumar has stated that he was on duty at his duty point and after 11 AM he was going but he also dropped there to enquire as what was happening there. The leaving of duty points as also been supported by their T.I./Inspr. Rajbir Singh Jhakhan. Hence keeping in view the version of the constable I am of the view that they may not be fault and charge is not proved against both the constables. As per TI, SI could call his staff any time if he requires them. We should also not presumed that all the for traffic police men were there for collecting money.

It has been proved that HC Sudhir Kumar took Rs.300/- from the Truck Driver as illegal money at the name of entry and ZO/SI Kishan Lal was seeing this all and he failed to supervise the activitites of HD. Constable or it was all going on as per his connivance with the HC.

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CONCLUSION

Keeping in view the above facts and discussion, I am of the view that SI Kishan Lal, No.D-3880 and HC Sudhir Kumar, No.202/T are both responsible for their malafide malpracticise and hence charge stands proved against both of them".

4. It is on basis of the same that the disciplinary authority imposed a penalty on the applicant. The appellate authority had dismissed the appeal but had modified the penalty order.

5. By virtue of the present application, the applicant seeks to assail the orders passed by the disciplinary as well as the appellate authority.

6. Needless to state that the application had vehemently been opposed.

7. Learned counsel for the applicant had raised the two contentions which require our immediate attention:

(a) under sub-rule 2 to rule 15 of Delhi Police (Punishment and Appeal) Rules, the approval of the Additional Commissioner of Police had not been obtained and therefore without the same, disciplinary enquiry could not be initiated: and

(b) the summary of allegations had been drawn. The charge framed was different

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and no fair opportunity has been granted and sub-rule (ix) to rule 16 of Delhi Police (Punishment and Appeal) Rules in this regard has been violated.

8. Pertaining to the first question, we take liberty in reproducing sub-rule 2 to rule 15 of the Rules referred to above. It reads as under:

"15.(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

9. Perusal of the same clearly shows that one of the necessary ingredients which is being highlighted before us is that there has to be a preliminary enquiry which discloses the commission of a cognizable offence. If there is no preliminary enquiry, in that event the rigours of sub-rule 2 to rule 15 of the Rules referred to above will not come into play.

10. Learned counsel for the applicant urged that after the raid was conducted, the statements had been recorded and that was a preliminary enquiry that had been conducted. In support of his argument, the learned counsel referred to a decision of the Delhi High Court in the case

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of Commissioner of Police vs. R.C. Shekharan (C.W. No.1553 of 2003) decided on 30.4.2003. To appreciate the facts in the presence of the parties counsel, we had called for the original file of O.A. No.2126/2001 (R.C. Shekharan vs. Commissioner of Police) from the records of this Tribunal. Perusal of the same reveals that in the counter reply filed, it had been admitted that there was no preliminary enquiry. It was in this backdrop that this Tribunal had held that file should have been put up before the Additional Commissioner of Police and that findings of this Tribunal had been upheld by the Delhi High Court. Before us, there is a controversy as to if there was a preliminary enquiry or not. In face of this fact, we must hold that the decision of the Delhi High Court will have no application and is distinguishable.

II. In that event, reliance was further placed on a decision of this Tribunal in the case of Head Constable Hari Kishan vs. Union of India and others (O.A. No.58/2001) decided on 4.2.2002. The learned counsel particularly relied upon the findings in paragraph 10 recorded by this Tribunal. We reproduce the same for the sake of facility:

"There is no doubt that the applicant is a police officer of subordinate rank and the misconduct with which he has been alleged discloses the commission of cognizable offence in his official relationship with the public. The question then arises whether the preliminary enquiry was conducted. In this connection a perusal of the testimony of PW-6 Shri Y.S. Negi, Inspector AC Branch which has been discussed in E.O's findings reveals that he had got the statement of Shri Sandeep Singh recorded before the Panch Witnesses and

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after completing necessary formalities, the details of the same were recorded in the Raid report. It is difficult to take any other view than to hold that in the peculiar facts and circumstances of this case, the aforementioned raid report on the basis of which the trap was laid, was in the nature of a preliminary enquiry to ascertain the facts, to establish the nature and quantum of the default, to identify the defaulter, as also to bring the other evidence on record to facilitate a regular departmental enquiry. Nothing has been shown by respondents to establish that after submission of the raid report, but before initiation of the DE against applicant, the approval of the Addl. Commissioner of Police had been obtained to initiate the DE."

12. The decision of this Tribunal proceeds on the premise that certain statements had been recorded to complete the formalities. However, preliminary enquiry is defined under sub-rule 1 to rule 15 of the Rules referred to above. The same unfolds itself in the following words:

"15(1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter(s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above-mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally proceed a departmental enquiry."

13. It clearly shows that preliminary enquiry is a fact finding enquiry to establish the nature of the charge, identity of the defaulters and to judge the quantum of default. It must be made clear that preliminary enquiry is different from investigation. After the raid, if certain proceedings are taken on the spot, that is a part of the

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investigation. At the risk of repetition, we state that investigation is different from preliminary enquiry. Therefore, the decision so much thought of by the applicant's counsel must be held to be confined to the peculiar facts of that case.

14. Reverting back to the second argument of the learned counsel, we have already reproduced the relevant portion of the summary of allegations and the charge that was framed. In the summary of allegations, it had been mentioned that the applicant had managed and manipulated unauthorised presence of all the three lower subordinate staff at the spot with common malafide intention of collecting illegal money from commercial vehicles. In the charge that had been framed, the said portion is missing and the only fact stated is that the applicant failed to supervise the activities of his HC Sudhir Kumar from collecting illegal money from commercial vehicles. The learned counsel urges that when there is a difference in the charge and the summary of allegations, liberty in terms of sub-rule (ix) to rule 16 of Delhi Police (Punishment and Appeal) Rules has not been granted.

15. Respondents' counsel urged that there is only a minor variation and no prejudice in any case is caused to the applicant. Prejudice necessarily has to be seen from the point of view of the applicant. Sub-rule (1) to rule 16 of the Rules referred to above clearly indicates that summary of allegations which are given to the alleged delinquent are followed by the evidence that is produced



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before the enquiry officer. Sub-rule (ix) to rule 16 of the Rules in unambiguous terms provides that if the enquiry establishes charges different from those originally framed, he may record findings on such charges and liberty has to be granted to the accused to defend himself against it. This is based on the principle of fair play. To state that the applicant could ask for recalling of those witnesses would be giving an interpretation contrary to the plain language of sub-rule (ix) to rule 16 of the Rules referred to above. It was the duty of the enquiry officer in this regard to do so and, therefore, we find no reason to hold that no prejudice in this regard is caused. The enquiry officer had to do the necessary exercise and follow the plain language of the Rules.

16. In this regard, we are supported by a decision of this Tribunal in the case of Rajinder Prasad vs. The Commissioner of Police, Delhi and others (O.A.No.2059/91) decided on 20.4.93. Therein also, while drawing up the charges, there was variation from the summary of allegations. This Tribunal had thereupon directed that the petitioner therein may make an application to the enquiry officer requesting him to re-examine those witnesses from whom the additional matters had been elicited by the department. We would only add that liberty should ~~not~~ be granted in this regard to re-examine any witness pertaining to which a deviation is purported to have been made which we have referred to above. There is a basic difference between failure to supervise the activities as against manipulating unauthorised presence of those persons with

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common malafide intention of collecting illegal money.

17. On this short ground, therefore, we allow the present application and quash the impugned orders and findings referred to above. The matter may be remitted to the enquiry officer and before the enquiry officer, the applicant can request for recalling of certain witnesses as referred to above and thereupon, fresh findings can be arrived at in accordance with law. Applicant would be entitled to all the consequential benefits in accordance with law.


(S.K. Naik)

Member (A)

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(V.S. Aggarwal)
Chairman