

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.2373/2003

New Delhi, this the 1st day of September, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.K.NAIK, MEMBER (A)

1. Mahmood Hassan  
Head Constable No.90/T  
s/o Late Shri Dalel Khan  
r/o B-6/173, Main Road  
Brij Puri, Delhi - 110 094.

2. Naresh  
Constable No.2622  
Presently posted in  
3rd Bn. DAP, Vikaspuri  
Delhi.

... Applicants

(By Advocate: Sh. S.K.Gupta)

Versus

1. Govt. of NCT of Delhi  
through Chief Secretary  
Delhi Secretariat  
Players Bhawan, I.P.Estate  
New Delhi - 110 002.
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: Mrs. Sumedha Sharma)

O R D E R (Oral)

Justice V.S. Aggarwal:-

Applicant No.1 (Mahmood Hassan, Head Constable) and Applicant No.2 (Naresh, Constable), by virtue of the present application seek to assail the note of disagreement dated 22.5.2002; the order imposing penalty dated 9.8.2002 of the disciplinary

*Ag*

authority and the order of the appellate authority dated 14.5.2003. They seek consequential benefits to be released to them.

2. The disciplinary proceedings had been initiated against the applicants on the allegation that on 18.12.1999 at 9.30 PM while posted in Model Town Traffic Circle and detailed for duty at H-Point, Ajad Pur, they were found indulging in illegal activities along with Constable Satish Chand during the surprise checking by Inspector Om Prakash Sharma and another. They stopped a truck and extorted Rs.280/- from the Driver Shri Kulvinder Singh in the name of plying the above truck in the 'No Entry Zone'. A total amount of Rs.460/- including Rs.280/- were recovered on the spot during search from Constable Satish Chand.

3. The inquiry was entrusted to Inspector Mohan Singh Dabas who returned the findings stating that the charge stood not proved. The disciplinary authority disagreed with the findings of the inquiry officer and ordered a departmental inquiry against the applicants afresh. Once again the inquiry officer returned the findings stating that the charges are not established. The disciplinary authority disagreed with the findings of the inquiry officer on the following grounds:

"I disagree with the findings of the Enquiry Officer on the following grounds:-

1. The PW, Shri Kulvinder Singh has resiled from his earlier statement recorded during preliminary enquiry and



has been probably won over by the delinquents HC Mehmud Hassan, No.90-T and Constable Naresh Kumar, No.1951-T.

2. The Enquiry Officer has not given any credence to the recovery of Rs.460/-, collected illegally, which was affected from the DHG Constable Satish Chand, No.8136-DHG in presence of both the delinquents. Instead of restraining the DHG Constable from illegal activities, the delinquents were conniving with DHG Constable Satish Chand and were collecting illegal money from the commercial vehicles as was found during the surprise checking done on 18.12.1999 by Inspr. O.P.Sharma, the then TI/TMC."

4. Thereupon a copy of the findings of the inquiry officer was served upon the applicants. The applicants submitted their representations and on consideration of the same, the disciplinary authority passed the following order:

"..... The deposition of PW-2 clearly establishes the connivance of the defaulters with the DHG Constable in the collection of illegal money. Moreover, the presence of Truck and the driver on the spot is also proved, from the version of PW-2 and as such there is no reason to disbelieve the fact that the illegal money was being collected through DHG Constable and that too with the connivance of both the defaulters. Such type of mischief is reprehensible and damaging to the image of Delhi Police. Hence, I impose the punishment of forfeiture of two years service permanently upon HC Mehmood Hassan, No.90-T (Now 253-PCR) and Const. Naresh Kumar, No.1951-T entailing reduction in their pay from Rs.4645/- to Rs.4475/- and Rs.3650/- to Rs.3500/-, respectively."

5. The appeal filed by the applicants had been dismissed. Resultantly the present application has been filed.

6. The application is being contested. The primary arguments raised by the learned counsel for the applicants were:

*Ag*

-u-

(a) there is no provision for a fresh inquiry under Delhi Police (Punishment & Appeal) Rules, 1980 and the order so passed in this regard is invalid.

(b) the note of disagreement was not a tentative note of disagreement.

(c) it was a case of 'no evidence'.

7. So far as the second argument of the learned counsel is concerned, he urged that the disagreement with the report of the inquiry officer was not a tentative note of disagreement. He relied upon the decision of the Supreme Court in the case of PUNJAB NATIONAL BANK AND OTHERS v. KUNJ BEHARI MISHRA, (1998) 7 SCC 84 in this regard. The same is based on the principle that while note of disagreement is to be recorded, it should not be prejudging the issue because a final decision can only be arrived at after the concerned officer replies to the charges. The Supreme Court 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

U Ag

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."

8. Even in the case of YOGINATH D. BAGDE v. STATE OF MAHARASHTRA AND ANOTHER, 1999 (7) SCC 62, 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 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."

9. The Division Bench of the Delhi High Court had considered a similar controversy in the case of COMMISSIONER OF POLICE v. CONSTABLE PRAMOD KUMAR, in CWP Nos.2665/2002 and 4593/2001, decided on 12.9.2002. Like in the present cases, a note of disagreement was recorded by the Disciplinary Authority. 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

*CS Ag e*

which proceeds in the matter of this nature with a pre-determined mind, cannot be expected to act fairly and impartially."

10. As already referred to above, the position herein is no different. We have already extracted the relevant portion of the note of the disagreement. The disciplinary authority rather giving a tentative opinion, had finally discarded certain evidence. Once the inquiry officer had exonerated the applicants and the disciplinary authority thought it proper to take a decision otherwise, only a tentative decision should have been taken. The same was not done. Disciplinary authority could not predetermine the opinion of the issue without receiving a reply to the charge notice from the applicants.

11. Reverting back to the first argument, once again the facts can be delineated. Earlier admittedly, the inquiry officer had exonerated the applicants. The disciplinary authority had passed the following order:

"O R D E R

A Joint departmental enquiry was ordered against HC Mohd. Hussain. No.90/1, (PIS No.28760437) and Ct. Naresh Kumar No.1951/T (PIS No.28931248) VIDE No.871-900/HAP/T(D-I) dated 1.2.2000 to be conducted by Inspr. Mohan Singh Dabas, II/SMC on day to day basis and for submitting his findings. The E.O. has completed the DE proceedings and submitted his findings with the conclusion that the charge framed against HC Mohd. Hussain No.90-T and Ct. Naresh Kumar, No.1951/T are not proved.

I have read the entire proceedings. It is strange that the fact that II/MTC has caught them and already haul suspicion, cannot be ignored. It was just a routine check of his hunch which proved correct. The circumstantial



7

evidence is overpowering which is enough in DE. Moreover, the statement given on spot is always spontaneous and true. The E.O. has not taken care to bring out the facts correctly.

Therefore, disagreeing with the findings of the Enquiry Officer, I Sanjay Baniwal, Dy. Commissioner of Police, Traffic, Delhi, hereby order that the DE against HC Mohd. Hussain, No.90/T, and Ct. Naresh Kumar, No.1951/T be started afresh from the Prosecution stage. The DE is entrusted to Shri Svatantra Kumar ACP/T/South, who will conduct the same on day to day basis and submit his findings expeditiously. He will, also submit weekly progress of the DEE.

Sd/-  
(Sanjay Boniwal)  
Dy. Commissioner of Police  
Traffic, Delhi

No.1281-1300/HAP-T(D-I) dated Delhi 17.2.2001."

12. It is abundantly clear from the aforesaid that the disciplinary authority had directed for a fresh inquiry from the stage of the prosecution evidence.

13. Rule 15 of the CCS (CCA) Rules permits the disciplinary authority, if he is not the inquiry officer, to remit the case to the inquiring authority for further inquiry and report. This rule had been considered by the Supreme Court in the case of K.R.DEB v. COLLECTOR OF CENTRAL EXCISE, SHILLONG, 1971 Supp. SCR 375. In the cited case, K.R.Deb was a Sub-Inspector of Central Excise. A departmental inquiry was held against him in respect of a charge of misappropriation of Government money. The Inquiry Officer exonerated him. The Collector, Central Excise, ordered another Inquiry Officer to make a report after further evidence. The inquiry officer had been appointed. The Supreme Court held that under Rule 15 of the Central Civil Services (Classification,



Control and Appeal) Rules, 1957 (1965) only one inquiry is contemplated. The findings of the Supreme Court are:

"It seems to us that Rule 15, on the fact of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside the previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

14. The same analogy would be applicable to the departmental proceedings under Delhi Police (Punishment & Appeal) Rules, 1980. Sub-Rule (x) to Rule 16 reads as under:

"(x) On receipt of the Enquiry Officer's report the disciplinary authority shall consider the record of the inquiry and pass his orders on the inquiry on each charge. If in the opinion of the disciplinary authority, some important evidence having a bearing on the charge has not been recorded or brought on the file he may record the evidence himself or send back the enquiry to the same or some other enquiry officer, according to the circumstance of the case for such evidence to be duly recorded. In such an event, at the end of such supplementary enquiry, the accused officer shall again be given an opportunity to lead further defence, if he so desires, and to submit a supplementary statements, which he may wish to make."

15. It certainly does not permit the second de-novo inquiry afresh. It permits the disciplinary authority to remit the matter if some importance evidence has not been recorded or brought on the file


*LS Ag*




and contemplates the supplementary inquiry. In the present case, as already noted above, the order was passed to start a fresh inquiry from the prosecution stage.

16. In this process, Sub-Rule (x) to Rule 16 of the Delhi Police (P&A) Rules referred to above, was clearly violated. For these reasons, keeping in view the aforesaid, it will be improper for us to express any opinion pertaining to other arguments.

17. For the reasons recorded above, we allow the present application and quash the impugned orders. However, we direct that if deemed appropriate, the disciplinary authority may pass a fresh order from the stage the first inquiry report had been received. The applicant would be entitled to the consequential benefits, if any.

  
(S.K. Naik)  
Member (A)

  
(V.S. Aggarwal)  
Chairman

/NSN/