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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.2419/2003
OA NO.615/2004

New Delhi this the 31st January, 2005

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

OA 2419/2003

Rajinder Singh
Constable in Delhi Police
(PIS No.28960181)
R/o Q.No.104, Sector A-5,
Pocket- V/ Narela,
Police Colony, Delhi-40.Applicant.

(By Advocate: Shri Anil Singal)

Versus

1. GNCT of Delhi
through Commissioner of Police
Police Head Quarter,
IP Estate, New Delhi.
2. Joint Commissioner of Police Traffic,
Police Head Quarter, I.P.Estate,
New Delhi.
3. DCP (Traffic)
Police Head Quarter,
IP Estate, New Delhi.Respondents

(By Advocate: Mrs.Renu George)

OA 615/2004

Sunil Kumar
Constable in Delhi Police
(PIS No.28960087)
R/o RZ-1B/322, Gali No.8,
Madan Puri, West Sagar Pur, N.D.46.Applicant.

(By Advocate: Shri Anil Singal)

Versus

1. GNCT of Delhi
through Commissioner of Police
Police Head Quarter,
IP Estate, New Delhi.
2. Joint Commissioner of Police Traffic,
Police Head Quarter, I.P.Estate,
New Delhi.

3. DCP (Traffic)
 Police Head Quarter,
 IP Estate, New Delhi. ... Respondents
 (By Advocate: Mrs. Sumedha Sharma)

ORDER (ORAL)

By Shri Justice V.S. Aggarwal, Chairman

By this common order, we propose to dispose of two Original Applications No.2419/2003 and 615/2004. Both are involved similar controversy and, therefore, they can conveniently be disposed of.

2. Some of the relevant facts are that a preliminary enquiry was conducted ^{on} ~~had been started~~ basis of the preliminary departmental proceedings against the applicants. The applicants were issued summary of the allegations. The enquiry officer had exonerated the applicants. When the matter came up before the disciplinary authority, he had recorded a note of disagreement which reads:

"I have carefully gone through the findings of the E.O. and disagree with it for the following reasons :-

1. The E.O. has not given any weightage to the recovery of Rs.2000/- including currency note of Rs.100/- bearing number JLA 462881 duly initialed by the raiding officer from Const. Sunil Kumar, No.2992-T through seizure memo. This money was collected illegally by the Constable from commercial vehicles and recovered during raid at the spot by the PRG Team.
2. The authenticity of PRG Team and recovery of illegally collected money has been ignored by the Enquiry Officer in his findings.
3. The PW-4 has clearly mentioned in his deposition during D.E. proceedings that the entry money was demanded and accepted by Const. Sunil Kumar who was in civvies. This PW has also deposed that when Const. Sunil Kumar was nabbed, Consts. Rajinder Singh, No.860-T and Mohar Singh, No.3149-T, who were in uniform, fled away from the spot which clearly indicates that they had assembled with mala fide of illegal collection of entry money from the commercial vehicles.
4. The PW-8, the bus conductor has resiled from his earlier statement in such a manner which clearly indicates that he has been won over by the delinquents.
5. It is on record that SI Suleman Khan, No.2346-D was 60/70 meters away from the raiding place which clearly indicates that illegal money was being collected by the Constables with the connivance of the SI.

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Therefore, a copy of findings of the E.O, is being given to SI Suleman, No.2346-D, Const. Mohar Singh, No.3149-T, Const. Rajender Singh, No.860-T and Const. Sunil, No.2992-T for making their representations in writing against the above contents within 15 days from the date of its receipt. They are also show cause notice as to why their suspension period from 08.06.2001 to 22.08.2001 should not be treated as period not spent on duty, within 15 days from the date of receipt of this U.O. failing which it will be presumed that they have nothing to say in their defence and the D.E. will be decided ex-parte, on merits."

3. After considering the reply of the applicants, a penalty order was passed on 29.8.2002. They preferred different appeals which have been dismissed.
4. By virtue of the present application they seek to assail the said order.
5. Needless to state that the reply of the application has been contested.
6. Learned counsel for applicants have taken up an objection that the note of disagreement was not a tentative note of disagreement rather than it is stated that it was final finding that has been recorded.
7. Strong reliance was placed on the decision of the Supreme Court in the case of Yoginath D. Bagde v. State of Maharashtra and Anr., JT 1999 (6) SC 62. The Supreme Court in unambiguous terms held that when there is a note of disagreement, it should relate only with the findings of the Inquiry Officer. The findings of the Supreme Court in this regard are:

"....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".

8. However, respondents' learned counsel contended that herein a notice to show cause had been given which was answered and thereafter the findings had been recorded which cannot be taken to be a note of disagreement which is not tentative. He relied upon the decision of this Tribunal in O.A.3473/2001 in the matter of Yogesh Gulati Vs. Govt. of NCT of Delhi and Ors., decided on 15.1.2003. Perusal of the cited decision clearly shows that in the peculiar facts of

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that case, this Tribunal concluded that it was a tentative note of disagreement.

The findings of this Tribunal were:

"31. 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".

9. As one glances through the decision in the case of Yogesh Gulati (supra), it is obvious that in the facts it was held that there was a sufficient compliance and it was a tentative note of disagreement.

10. Therefore, the findings of this Tribunal in the case of Yogesh Gulati (supra) would be confined to the peculiar facts of that case.

11. In fact, the case of Yognath D. Bagade had been considered by a Division Bench of the Delhi High in the decision rendered in the matter of Commissioner of Police Vs. Constable Pramod Kumar and Anr. (Civil Writ Petition Nos. 2665/2002 and 4593/2001), decided on 12.9.2002. Therein, the note of disagreement was to the following effect:

"I have considered the evidence on record and the findings submitted by the Enquiry officer. I do not agree with the conclusion of the E.O. that the charge does not stand proved against defaulters Insp. Dal Chand No. D/1865, Consts. Jag Parvesh No. 1573 / E and Pramod No. 1394 / E. From the evidence on record, the sequence of events, which took place related to the charge is quite clear. The testimony of PW-3, DW-2, DW-3 and DW-5, all electrical Contractors, clearly indicates that the electrical engineers were operating as a matter of routine

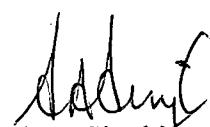
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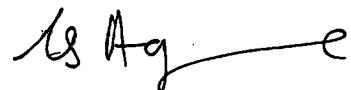
outside the DESU Office, Karkadooma. This activity continued unchecked by the local police. It is evident from the statement of PW-3, which has not been disputed, that in Dec. 1995, a scheme was launched by DESU, which permitted additional load, which resulted in increased activity at and outside DESU office. This again does not seem to have resulted in any police action. If what the electrical engineers were doing was illegal or if the manner in which they were doing their duties was illegal, then appropriate action should have been taken as prescribed under the law. More so, since Insp. Dal Chand has alleged at point -5 / K of his written defence statement that PW 3 was in a habit of making complaints against DESU/Police Officers when "his illegal activities are checked". If, indeed, the activities of PW-3 were illegal, then, what prevented the police from taking appropriate legal action against him? Since no action was taken against PW-3 and the other electrical engineers operating outside DESU office, it is evident that they were nothing illegal about their activities.

He further concluded:

"The totality of the facts and circumstances of the case and evidence on record lends credence to the allegations made. This aspect of the charge, therefore, also stand proved against the Insp."

12. The Delhi High Court held that it was not a tentative note of disagreement and the order passed by this Tribunal was upheld.
13. As one glances through the present note of disagreement which we have reproduced. It is obvious that the disciplinary authority recorded that he had totally disagreed with the findings of the enquiry officer. It was not a tentative note of disagreement and, therefore, the decisions in the case of **Pramod Kumar and Anr.** (supra) and **Yoginath D. Bagde** (supra) of the Delhi High Court and Supreme Court respectively come to the rescue of the applicants.
14. On this short ground, therefore, we quash the impugned order and direct that, if deemed appropriate, a fresh note of disagreement may be recorded and thereafter, the disciplinary proceedings may continue. We make it clear that nothing said herein should be taken as any expression of opinion of other contention raised by the either party. As per rules, the applicants would be entitled to consequential benefits.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman