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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2816/2003

New Delhi, this the 3rd day of August, 2004

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

ASI Jai Pal Singh
No. 3855/D (Traffic)
Kotwali Circle (North Zone)
Delhi, S/o Late Shri Maharaj Singh
Resident of Village & Post Office Naimcha
P.S. Dadri, District Gautam Budh Nagar
(U.P.). ... Applicant

(By Advocate: Sh. Prabhati Lal)

Versus

1. Union of India
through the Secretary
Ministry of Home Affairs
North Block, New Delhi - 110 001.
2. The Commissioner of Police, Delhi
Police Headquarters, M.S.O. Building
I.P. Estate, New Delhi - 110 002.
3. The Additional Commissioner of Police, (OPS)
Police Headquarters, M.S.O. Building
I.P. Estate, New Delhi - 110 002.
4. The Dy. Commissioner of Police, P.C.R., Delhi
Police Headquarters, M.S.O. Building
I.P. Estate, New Delhi - 110 002.
5. The Dy. Commissioner of Police, D.E. Cell, Delhi
Police Bhawan, Asaf Ali Road
New Delhi - 110 002. ... Respondents

(By Advocate: Sh. George Paracken)

O R D E R

Justice V.S. Aggarwal:-

Applicant, by virtue of the present application, seeks quashing of the order passed by the disciplinary authority dated 4.2.2003 and of the appellate authority of 16.6.2003. By virtue of the impugned order, the disciplinary authority had awarded a punishment of forfeiture of one year's approved service permanently to the applicant entailing reduction in his pay from Rs.5200 to Rs.3200 per month

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and suspension period from 17.10.1996 to 9.6.1997 was decided as period not spent on duty for all intents and purposes.

2. Corrigendum was issued on 25.2.2003 by the disciplinary authority which reads:

"CORRIGENDUM"

This is in continuation to this office order No.3669-90/HAP(P-II)/PCR dated 4.2.2003 regarding punishment awarded to ASI (Ex.) Jai Pai Singh, No.3859/D (PIS No.2870035).

Please read Rs.5300/- p.m. to Rs.3200/- p.m. instead of Rs.5200/- p.m. to Rs.5100/- p.m. mentioned in para 14 of this office order referred to above.

Sd/-
DY. COMMISSIONER OF POLICE
SIP/OB POLICE CONTROL ROOM: DELHI

No.5067-97 /HAP(P-II)/PCR, dated Delhi,
the 25.2.2003."

3. As already referred to above, he had preferred an appeal and the same was dismissed.

4. Some of the other relevant facts are that it had been alleged against the applicant that on 16.10.1996 at about 6.25 AM, one British National, namely, Shri S.R.Sethi bound for London reported in writing that before Security X-Ray check, the security staff asked him for a bottle of liquor and some money for 'Chai Pani'. The staff was identified by the passenger with the help of Shri D.V.Singh, Inspector. They were Constable Devender, who had demanded for bottle of liquor and the applicant, who had demanded money for 'Chai Pani'.

5. The complaint made by the said British National reads:

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"NAME: S.R. Sethi
HIGHT AC 897-16.10.96

Before X-Ray (Security) Check. I was asked for a "Bottle or was asked for look after me" and after that the Person at the Body Search asked for some money or "Chai Paani".

Sd/- 16.10.96

UNIT 14 SEE No.105
BARRAM/NS PK SEAT No.79C
PARK AVENUE DEL-LHR
SOUTHALL
MIDDX

ATTESTED

Ex-PW-6 Sd/- Inspector 16.10.96
27.12.96 Shift, NITC"

6. Inspector, D.V. Singh had thereupon made the inquiry and his report is:

"Sub:- Demand of money by the Staff.

Sir,

Today i.e. 1601096 at about 6.25 A.M. during the security check of Flight AC-897 through Gate No.7, 8, 9 one Pax named S.R. Sethi, British national bound for London was intercepted by me while uttering some words about the demand of money by the airport Security staff. I immediately made the enquiry and came to know that Const. Devender 537/A who was on duty at X-ray belt had demanded a bottle of liquor and ASI Jai Pal Singh 3859/D who was on frisking duty had demanded money for "Chai Pani" from the said Pax. Initially the Pax was reluctant to give any complaint in writing but on my persistant pursuasion he submitted a written complaint which is attached for perusal. The Pax had also identified both these police officers who had made demands. It is therefore requested that strict disciplinary action may please be taken against about (above) mentioned officials.

Sd/-
Inspr.
(D.V. Singh)
Inspector
Enclosed- Original complaint
of Pax.

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7. The inquiry officer had been appointed who had framed a charge on the lines to which we have referred to above. It reads:

"I, H.V.S. Rathi, ACP/DE, Cell Enquiry Officer, charge you ASI Jaipal Singh, No.3855-D that you were while posted at IGI Airport Delhi on 16.10.96 at about 6.25 AM during security check of passengers of flight No.AC-897 one British National viz. Sh. S.R.Sethi bound for London reported in writing that before X-Ray Security Check, Security staff asked him for a bottle and some money for 'CHAI PANI'. Later on the security staff was identified by the passenger, with the help of Sh. D.V. Singh, Inspector I/C Gate No.7, 8 & 9/SHA/'C'/NITC, they were Const. Devender No.537/A, who was on duty at X-Ray belt who had demanded for a bottle of liquor and ASI Jai Pal Singh No.3859-D who was on duty at searching and frisking had demanded some money for "Chai Pani".

The above act on your part amount to misconduct and dereliction in the discharge of your official duty and unbecoming of a government servant, which render you liable for punishment under the provision of Delhi Police (Punishment and Appeal) Rules, 1980."

Sd/- 18.4.02
ASSTT. COMMISSIONER OF POLICE
D.E. CELL: N. DELHI."

8. It was recorded by the inquiry officer that the charge stood proved. Resultantly, the above said penalty order had been passed.

9. We have heard the parties' counsel and have seen the relevant record. In the first instance, learned counsel for the applicant argued that in the present case a cognizable offence was drawn and, therefore, permission of the Additional Commissioner of Police was required before initiating the departmental proceedings.



10. We could have gone into this controversy but admittedly the applicant had earlier filed OA 2017/1998. It was decided on 5.1.2001 by a Bench of this Tribunal. This question had been agitated and the Co-ordinate Bench had negatived and held:

"3. The applicant has challenged the impugned order firstly on the ground that no prior approval of the Additional Commissioner of Police had been sought under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980. In D.E., a cognizable offence has been made against the applicant in discharge of his duties in relation to the public as reported by the complainant. To counter the plea, the learned counsel for the applicant has drawn our attention to Section 7 of the Prevention of Corruption Act 1988 and stated that it is a cognizable offence if a public servant admits or receives from any person any gratification as a motive or reward with a view to doing or fore hearing to do an official act. In this conspectus he has stated that the allegation of alleged demand of money as "Chai Pani" by the applicant being on duty and dealing with public person would amount to an offence under aforesaid provision. We have applied our mind to this plea of the applicant and also perused Section 17 of the Act where we find that the offence is non-cognizable as the investigation was not to be taken up without the order of a Metropolitan Magistrate. The respondents, in their counter reply, have also refuted this contention by stating that the allegation does not constitute a cognizable offence. We are of the view that as no cognizable offence has been made out from the allegations levelled against the applicant, the requirement of seeking approval under Rule 15(2) ibid would not apply to the facts and circumstances of the present case. As such, the plea of the applicant is not legally sustainable and is rejected."

11. When a conclusion has been arrived at by a Bench of competent jurisdiction, the applicant cannot raise the same argument again because the said finding had become final between the parties so far as this Tribunal is concerned. We have no hesitation in rejecting the same.

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12. In the earlier OA that was filed, i.e. OA 2017/98, the matter was remitted back after setting aside those orders that were passed. Thereafter, admittedly a fresh opportunity had been granted to the applicant before the present impugned orders were passed.

13. Learned counsel for the applicant, in that event, had contended that identity of the applicant had not been established because the said British National had not come forward to depose in this regard.

14. The principle of law is well settled that in a departmental proceedings, the proof required is not beyond reasonable doubt as would be required in criminal trial. Here, on propensity of probabilities, a finding can be recorded. If on other material the said findings could be so arrived at, the above said argument will loose its significance.

15. It is Inspector, D.V.Singh who has immediately taken action and gone into the said controversy on the complaint. He had appeared as a witness before the inquiry officer and proved that as per the duty roster, it was the applicant who was on duty at searching and frisking. When the passenger had complained, his complaint was taken in writing. He stated further that passenger had identified the applicant and the other Constable who demanded money for 'Chai Pani' and one bottle of whisky respectively. It cannot, therefore, be said that it is a case where

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it can be inferred that there is 'no evidence' on the record or that it is a conclusion which has been arrived at on surmises and conjectures. In judicial review, the scope of interference is limited. Thus, in the present case, there is little scope for interference.

16. No other arguments have been advanced.

17. For these reasons, the Original Application being without merit must fail and is dismissed.


(S. A. Singh)

Member (A)


(V. S. Aggarwal)

Chairman

/NSN/