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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.3144/2003

New Delhi, this the 13th day of October, 2004

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

Head Const. Krishan Pal
No.116/DAP, Ist Battalion
PIS No.28822189
S/o Shri Om Prakash
R/o Village & Post Office Silana
Tehsil Baraut, District Bagpat
(U.P.)

... Applicant

(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-NR)
Old Police Lines, Civil Lines
Opposite Tis Hazari Courts
Delhi – 110 054.
 5. Amrit Kumar
Inspector/Inquiry Officer
C/o Deputy Commissioner of Police
(Traffic-NR)
Old Police Lines, Civil Lines
Opposite Tis Hazari Courts
Delhi – 110 054.
- ... Respondents

(By Advocate: Sh. Ashwani Bhardwaj proxy of Sh. Rajan Sharma)

O R D E R (Oral)

By Mr. Justice V.S. Aggarwal:

Applicant, a Head Constable in Delhi Police, seeks setting aside of the order of the disciplinary authority dated 26.9.2002 and of the appellate authority dated 22.9.2003. The disciplinary authority had imposed the following penalties:

“Therefore, I impose the punishment of forfeiture of one year approved service permanently entailing reduction in his pay from Rs.4220/- to Rs.4135/- upon HC Krishan Pal, No.148-T, with immediate effect. His suspension period from 05.09.2001 to 18.07.2002 is also decided as period not spent on duty. He will draw nothing in addition to what he had already drawn in the shape of subsistence allowance during his suspension.”

He preferred an appeal, which was dismissed by the Joint Commissioner of Police.

2. Some of the relevant facts necessary are that a departmental enquiry was initiated against the applicant on the allegations that on 5.9.2001 a traffic team found one discharged Delhi Police Constable Savender Kumar in collection of illegal entry money from Blue Line Bus at Pul Mithi Khana Marked 'T' Point. He signaled to stop the Blue Line Bus and demanded and accepted Rs.100/- as entry fee from Conductor Shri Pankaj Rana. He was caught red handed and Rs.100/- as illegal money was recovered from his pocket. Besides, an additional amount of Rs.1400/- collected illegally was also recovered.

3. During the inquiry, he disclosed that he has been engaged by the applicant to collect illegal money from the buses on his behalf. The applicant was placed under suspension and on this ground, a departmental inquiry was entrusted to Inspector Rajesh Kumar which was latter transferred to Inspector Amit Kumar Verma. The inquiry officer reported that the charge was, on the lines of which we have already reproduced above, stood proved. A show cause notice was given to the applicant along with findings. After considering the representation, the disciplinary authority imposed the penalty of forfeiture of one year approved service to which we have already referred to above.

V S Aggarwal

4. Learned counsel for the applicant had argued that it is a case where the findings against the applicant are based on 'no evidence' and, therefore, the impugned orders cannot be sustained.

5. Application has been contested.

6. The principle is not in dispute that normally this Tribunal will not interfere with the findings recorded in the departmental proceedings by the disciplinary authority or the inquiry officer. This is for the reason that this Tribunal is not sitting in appeal over those findings but this does not mean that in no circumstances the Court can interfere. If there is no evidence or no reasonable person can come to such findings, there can be interference in the disciplinary proceedings and the findings recorded therein.

7. The evidence against the applicant revolve around the statement of the SI Brijesh Mishra, PW-3, SI Kapil Prasher, PW-4, Inspector V.P.Dahiya, PW-7, Inspector Jagdish Lal Sethi, PW-8 besides the Public Witness Pankaj Rana.

8. So far as the Pankaj Rana is concerned, he did not support the case of the respondents and told the inquiry officer that his signatures were obtained under threat. His previous statement if any could not be taken into account because the witness himself has appeared before the inquiry officer.

9. We know from the decision of the Supreme Court in the case of KULDEEP SINGH v. THE COMMISSIONER OF POLICE & ORS., JT 1998(8) SC 603 that the procedure in the departmental inquiry postulates the examination of all witnesses in presence of the alleged delinquent so that he gets an opportunity to cross-examine. Here the witness himself has not supported the departmental case.

10. Pertaining to the other witnesses, SI Brijesh Mishra, PW-3 stated as under:

"..... on 5.9.2001 he was a member of surveillance team consisting of Inspector Jagdish Sethi, Inspr. V.P.Dahiya and SI Kapil Prasher to watch illegal activities of the Traffic Staff. Around 11.20/11.25 AM during inquiries from blue line buses one conductor Pankaj

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of Blue Line bus from Old Delhi to Mukhmail pur who told that the traffic staff charge Rs.100/- per point as illegal money and issue court challans who fails to oblige them. At this Inspr. Jagdish Sethi demanded 100/- Rs. Note from Pankaj, made his initials on the note and gave it back to the conductor with the directions to give signed note to the traffic police man who so ever stops the bus for illegal entry. The currency note is not to be handed over against the will of traffic police man. The raiding team occupied their respective positions. Around 11.40 AM when the bus crossed Pul Mithai and reached near the Vetineary Hospital one person in civil signaled the bus to stop and demanded entry fee from the conductor. The conductor gave him the signed currency note and gave a signal to PRG Team. That person was over powered and when searched a sum of Rs.260/- including the signed currency note and a paper slip bearing vehicles numbers, the last one was of the blue line bus. Another Rs.1240/- were also recovered from that person identified as Sevender Kumar besides Rs.500/- in his vallet which he claimed was his personal. Rs.1240/- were stated to have collected on the previous day as illegal entry money from the buses. The cash recovered was seized through seizure memo and completes paper formalities.”

11. Identical was the statement made by SI Kapil Prasher, PW-4. He also indicated that Inspector Jagdish Sethi had made inquiries from Sevender who told that on 4.9.2001 he had demanded entry fee from the bus in the morning when Head Constable Krishan Pal was present.

12. The statement of Inspector V.P.Dahiya, PW-7 in this regard reads (relevant portion):

“..... The paper chit also had instant blue line bus No. as last entry. Sevender also took out Rs.1240/- from the pocket of his pent stating that the amount was collected by him as illegal entry fee from the buses on 4.9.2001. Sevender also told that HC Krishan Pal had asked from Pankaj the entry fee yesterday i.e. 4.9.2001 which he promised today. The HC had also showed the conductor to the DHG and accept entry fee from him. He was a discharge DHG from Subji Mandi circle. He was collecting the illegal entry fee at Pul Mithai for HC Krishan Pal 148/T. His statement was recorded by the R.O., already placed on the DE file which has been marked Ex. PW-7/A. The seizure memo bears the signature of the PW at point `A`. Handing over memo of G.C.Note number 5 RK 603866 also bears his signature at point `A`.”

13. Identical was the statement of Jagdish Lal Sethi, PW-8. It reads:

“..... He further disclosed that he was collecting entry money from blue line buses for the month of

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September-2001 for HC Kishan Pal No.148/T who had engaged him previously also to collect the entry money from blue line buses during the month of August which he had collected and obtained Rs.1500/- from the HC from this job. On 4.9.2001 HC Kishan Pal had introduced Savender Kumar to the blue line bus conductors and drivers passing through this point. On 4.9.2001 the bus was also stopped by the HC who had demand entry money but the bus conductors promised to give on 5.9.2001. HC Kishan Pal directed the bus conductor to give the entry for the month of 2001 to discharge DHG Sevender Kumar engaged by HC Kishan Pal at that point. The money recovered was taken into police possession alongwith a slip which bears No. of some buses written along with the bus under reference through seizure memo. Another Rs.500/- were also found in his personel search which were returned to him as they were personel. The PW also prepared handing over memo G.C.Note No.5RK 603866 already marked Ex.PW-6/A. He also prepared seizure memo currency notes including signed Rs.100/- note vide Ex. PW-8/A. At the conclusion of the raid, he prepared raid report containing 3 PPs (Both sides) and submitted the same do s _____ Police officers which is placed on the DE File in original and has been marked Ex. PW-8/B.”

14. All these witnesses have stated that money was being collected on behalf of the applicant. The source was Sevender Kumar who was a discharged police official. He has not been examined.

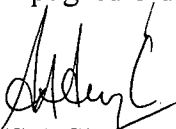
15. No reliance can be placed upon the statement of Sevender Kumar when Sevender Kumar was not examined. During the course of submissions, we were informed that Sevender Kumar had died on 22.3.2002. But the inquiry officer had completed the inquiry before that. In that view of the matter, Sevender Kumar could have been examined but was not examined. The statement made by him before any other person would be hearsay and, therefore, inadmissible.

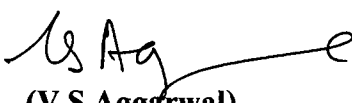
16. Reliance on behalf of the respondents was placed on the fact that it was the applicant, who entrusted the said discharged Constable to collect the entry fee from the conductor of the Blue Line Bus. But there is no evidence on the record because Shri Pankaj Rana, Public Witness-5(DW-5) has not supported this version or in other words. There is 'no evidence' on this effect.



17. Net result is that in the present case, it can conveniently be stated that it is a case of 'no evidence' and therefore, when there is 'no evidence' against the applicant, the impugned orders cannot be sustained.

18. For these reasons, we allow the present application and quash the impugned orders.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

/NSN/