

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No.7786 of 2005 and W.P.(C)No.12431 of 2005.

DATE OF DECISION : 23.04.2008

IN THE MATTERS OF :

Sukhbir Singh

.....

Petitioner .

Thru. Mr.Shyam Babu,Adv.

- Versus -

Commissioner of Police, Delhi & Ors. .. Respondent in W.P.(C)No.7786/05.
Govt. of NCT of Delhi & others Respondent in W.P.(C)No.12431/04.

Thru. Mr.V.K.Tandon,Adv.

CORAM :-

THE HON'BLE MR.JUSTICE A.K.SIKRI

THE HON'BLE MR.JUSTICE J.R.MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

Though the matter pertains to the promotion of the petitioner to the post of Inspector (Executive) in Delhi Police w.e.f. 1992 and 1994 respectively, the Department thereof is dependent upon the show cause notice issued to the petitioner on earlier occasion as a result

of which he was inflicted with the punishment of Censure. It is the nature of those proceedings and the background under which the said penalty of censure was awarded which is material and, therefore, we shall have to consider that aspect of the matter at the first instance. The petitioner was served with show cause notice proposing therein the award of punishment of Censure. We may mention at the outset that show cause notice was for minor penalty proceedings and, therefore, no regular departmental enquiry was conducted. In the show cause notice the allegation leveled against the petitioner was that during surprise checking organized by DCP (Traffic) on 28.3.90 at 4.30PM in the Punjabi Bagh Traffic Circle, it was found that radar checking was being conducted by T.I./Punjabi Bagh Circle along with 4 Z.O's. at Pitampura on Outer Ring Road. The petitioner challaned one Truck Driver in which he seized his Driving Licence. Later he accepted Rs.200/- from him as compounding fee and returned the Driving Licence. The petitioner had also given him receipt of the said amount of Rs.200/-. However, the amount was not endorsed/entered on the copy of the Challan Book which is retained in the Department.

The reply of the petitioner to the said show cause notice was that after the petitioner had challaned the said truck driver and seized his driving licence, the truck driver returned back after 20-25 minutes and showed his willingness to pay the challan fee. In these circumstances, truck driver was challaned for Rs.200/- and after taking this money his driving licence was returned. The Truck Driver was given the official receipt for this purpose. The explanation given by the petitioner for not entering the same in the copy was that he was busy in completing the half made challan of another person and had asked the driver to wait for some time. Since the driver was in hurry he accepted Rs.200/- from him and issued the receipt with the intention to fill up the copy later on with the cashier. He had deposited the said amount of Rs.200/- with the Punjabi Bagh Circle in the evening. It appears that the Authorities thought that the petitioner, in the aforesaid circumstances, could not be charged for serious charge of corruption and because of this reason it was decided not to hold any regular departmental enquiry for major penalty proceedings but to give him a show cause notice and whereby proposing punishment for Censure. Of course, the charge, therefore, was that the amount of Rs.200/- was not entered in the copy which was to be retained

by the Department. On this charge explanation of the petitioner was not found satisfactory and punishment of Censure was inflicted upon the petitioner vide Orders dated 1.10.1990. The petitioner submitted his appeal thereagainst which was also dismissed by the Appellate Authority vide Order dated 1.4.1991. The concluding para of this order would be relevant for our purposes and, therefore, we reproduce the same:

“I heard the petitioner and also gone through the record. It is a fact that the petitioner did not make endorsement immediately on the copy of the receipt/challan when he endorsed the original receipt/challan. This is the reason why he has been censured. There was no difficulty for him to endorse the copy also. Appeal is rejected. Let the appellant be informed accordingly.”

This also reflects the mind of the Authority, namely, the main reason for imposing the punishment was that the petitioner did not make endorsement immediately on the copy of the challan when he endorsed the original receipt/challan. When the punishment of Censure is given, as per the extant instruction, such an employee is not to be considered for promotion only for a period of six months and after the expiry of six months the case of such an employee is to be considered for promotion without having any regard to the punishment imposed. However, when

the case of the petitioner was considered by the DPC in the year 1992 as well as 1994 for promotion to the post of Inspector (Executive), it was rejected on account of the said punishment of Censure. In these circumstances the petitioner filed OA.No.1031/93 and OA.No.610/96 challenging his non-promotion. The OA No.1031/93 was disposed of by the Tribunal vide its Order dated 16.3.1999 with the direction to the respondent to consider the case of the petitioner for bringing his name on promotion list 'F' (Executive) w.e.f. 26.8.92, with all consequential benefits, within a period of one month from the date of receipt of a copy of the said order. The other OA was also allowed vide orders dated 24.1.2000 on the same terms.

The respondents challenged these orders by filing petitions in this Court. These writ petitions were disposed of permitting the respondents to file review petition. Thereafter, Review Petitions were filed in which orders were reviewed by the Tribunal and ultimately the OAs were heard afresh. OA.1031/93 was dismissed on 3.11.2003 and other OA.610/96 was dismissed on 1.2.2001. Challenging these orders, these petitions are filed by the petitioner.

On going through the impugned orders filed in both these petitions it is clear that the Tribunal has taken the view that though there was a penalty of Censure imposed upon the petitioner but it was “on a charge of receiving bribe of Rs.200/-“. This is perceived as a serious charge of corruption by the Tribunal on the basis of which Tribunal held that DPC was entitled to take into consideration such a serious charge and deny him the promotion.

Having regard to our discussion above, we are of the opinion that the Tribunal has committed material irregularity and illegality in appreciating the nature of charge. The petitioner was never charged for receiving bribe of Rs.200/- which is clear from the language of show cause notice, orders passed by the Disciplinary Authority as well as orders passed by the Appellate Authority which are mentioned above. We have already pointed out above that had there been a charge of bribe, the Disciplinary Authority would not have initiated minor penalty proceedings of Censure but would have conducted regular departmental enquiry against the petitioner after serving proper charge-sheet. The charge of not entering the compounding fee on the copy simultaneously with issuing the challan to the truck driver is totally different from the

allegation that he took a bribe of Rs.200/- from the truck driver. This is a fine and settled distinction which has to be borne in mind and in fact the Authorities were also conscious of the same. In these circumstances, the Tribunal without any material on record could not have treated the charge against the petitioner as that of receiving bribe.

We thus hold that the order of the learned Tribunal cannot stand judicial scrutiny. We accordingly set aside order dated 1.2.2001 passed in OA.No.610/96 as well as order dated 3.11.2003 passed in OA.No.1031/93. In these circumstances, we direct the respondents to convene Review DPC for the years 1992 and 1994 keeping in view the orders passed by the Disciplinary Authority and Appellate Authority imposing the punishment of Censure only as explained by us in this order. The necessary exercise of conducting Review DPC shall be taken within four months from today. There shall be no orders as to costs.

A.K. SIKRI, J.

April 23, 2008
skk

J.R. MIDHA, J.