

* **HIGH COURT OF DELHI: NEW DELHI**

+ **Writ Petition (Civil) No. 10353/2009**

% Judgment reserved on: July 24, 2009
Judgment delivered on: July 29, 2009

Krishan Pal Petitioner

Through: Mr. Anil Singal, Adv.

Versus

Govt. of NCT of Delhi & Ors. Respondents

Through: Mr. J. K. Chaudhary, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE A.K. PATHAK

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

A.K. PATHAK, J.

1. Petitioner is working as a Constable in Delhi Police. A joint departmental enquiry was ordered against the Petitioner, Constable Balraj Singh and Head Constable Kanwar Pal on the allegations that in the night intervening 3rd/4th September, 2005 they, while posted at P.S. Kalyan Puri were found indulging in

malpractices like demanding illegal entry money from the commercial vehicles on the pretext of checking the non-destined vehicles.

2. A special team comprising Inspector P.P. Singh, Inspector Sukhram and SI Anil Kumar was constituted under the supervision of ACP/PRG for verifying the information about taking of bribe by the policemen from the drivers of commercial vehicles entering Delhi. At about 11 p.m. special team took position near the Toll Plaza at Ghazipur Border. After some time a truck bearing No.HR-38-K-1762 was stopped by them and on enquiry it was revealed by the driver Rajesh Kumar that three police personnel in khaki uniform stopped his truck near the Toll Booth and after checking the papers, told him that he was not authorized to enter into Delhi as the invoice was addressed to Bombay. They told him that he should pay Rs.100/- to them as entry money or to take his truck back. Accordingly he paid Rs.100/- to those police officials. PRG team along with driver Rajesh Kumar went to the spot where bribe was paid and there the Petitioner along with Head Constable Kanwar Pal and Constable Balraj Singh was found present. Petitioner and the other two police officials were identified by the driver Rajesh

Kumar as the same policemen, who had taken Rs.100/- from him as entry money. While the members of the PRG team were talking with the Petitioner and other Constable, SI Anil Kumar noticed that Head Constable Kanwar Pal, took out some currency notes from his pocket and threw them in the bushes. Currency notes were picked up by SI Anil Kumar and counted and the total amount was found to be Rs.2700/-. Currency notes along with the photocopies of the invoice and toll tax receipt were seized vide a seizure memo. On enquiry it was revealed that Head Constable Kanwar Pal and the Petitioner were detailed for patrolling duty; whereas Constable Balraj Singh was on duty at Buchar Khana , Ghazipur.

3. Inquiry Officer submitted his report before the Disciplinary Authority after completing the Inquiry. Thereafter Disciplinary Authority vide order dated 15th September, 2006, agreed with the findings recorded by the Inquiry Officer and held the Petitioner, Head Constable Kanwar Pal as well as other Constable guilty of the charges and awarded punishment of withholding of one increment for a period of five years permanently.

4. Petitioner filed an appeal but the same was dismissed by the Appellate Authority vide order dated 28th September, 2007.

5. Petitioner filed Original Application before the Tribunal being OA No.110/2008 praying therein that enquiry report, orders of Disciplinary Authority as well as Appellate Authority be set aside and the reduced increments be restored with all consequential benefits including seniority, promotion and pay allowances.

6. Vide order dated 16th December, 2008, Tribunal dismissed OA No.110/2008. After examining the record the Tribunal held that the presence of the Petitioner alongwith Head Constable Kanwar Pal and Constable Balraj Singh, on the intervening night of 3rd/4th September, 2005 at the place from where truck of Rajesh Kumar had passed was not in dispute. From the evidence it was proved PRG team took position near the toll booth at about 11 p.m. and intercepted a truck driven by Rajesh Kumar who informed that three policemen had taken Rs. 100 from him. Driver was brought back at the place where money was given and the Petitioner alongwith his two colleagues was found present. A sum of Rs.2700/- which was thrown by Head Constable Kanwar Pal in the bushes was recovered from the spot and seized. Driver Rajesh Kumar had admitted his signatures on the seizure memo, though he had resiled from his earlier statement. Tribunal held

that the statement of members of the PRG team recorded before the Inquiry Officer besides seizure memo were sufficient to record the finding of guilt as per the standard of proof required in a departmental proceeding. Tribunal also observed that in a departmental enquiry charges have to be substantiated on the principles of preponderance of probability and same need not be proved beyond reasonable doubt as in a criminal trial.

7. Aggrieved by the order dated 16th December 2008, Petitioner has filed this writ petition. He has prayed that orders passed by the Tribunal as well as Disciplinary Authority and Appellate Authority be set aside and respondent be directed to restore original increments and original pay of the petitioner with all consequential benefits.

8. We have heard learned counsel for the Petitioner. However, we do not find any error in the impugned order. Tribunal has rightly held that the standard of proof required in a departmental proceeding is based on the principles of preponderance of probability and the department has not to prove the charges beyond reasonable doubt. In the facts of this case Tribunal has rightly held that sufficient material was there to show that the petitioner alongwith the Head Constable Kanwar Pal and

Constable Balraj Singh had been extorting money from the drivers of the Commercial vehicles entering Delhi.

9. We do not find any force in the contentions of learned counsel for the Petitioner that since no money was recovered from the Petitioner it cannot be said he had demanded and accepted money from the drivers of the Commercial Vehicles. We also find no merits in the argument that in absence of testimony of any witness that the Petitioner had demanded bribe from the truck driver, charges against him remained unproved.

10. Learned counsel for the Petitioner has contended that finding of guilt against the Petitioner is based on no evidence. No money was recovered from the Petitioner. Recovery of Rs.2700/- at the instance of Head Constable Kanwar Pal cannot be read against the Petitioner. Learned counsel has further contended that there was no evidence available before the Inquiry officer to conclude that the Petitioner was guilty of charges of extracting money. Reliance has been placed on ***Dhujender Pal Singh Vs. Govt. of NCT of Delhi & Ors.*** reported in ***2002 V AD (Delhi) 485***, ***Union of India & Ors. Vs. J.P.Singh*** reported in ***137 (2007) DLT 276 (DB)*** and ***Narmada Pd.Yadav Vs.State of M.P.& Ors.*** reported in ***(2007) 1 Supreme Court cases 681.***

Petitioner has also placed reliance on unreported judgment titled ***Ex. Constable Tika Ram versus Union of India and others*** passed by this Court in ***W.P. (C) No. 5080/2001***.

11. We are of the view that this Court, in exercise of its power under Article 226 of the Constitution cannot sift and weigh the evidence led before the Inquiry Officer afresh in the manner as if hearing appeal. Only it has to be seen as to whether principles of natural justice had been followed during the disciplinary proceedings. Petitioner has not taken any such plea in this case. Tribunal has already held that sufficient evidence was there to support findings. This view cannot be faulted with in the facts of this case.

12. Petitioner has not disputed his presence alongwith Head Constable Kanwar Pal at the spot on the night intervening 3rd/4th September, 2005. Petitioner was on patrolling duty with Head Constable Kanwar Pal. PRG team found Petitioner along with Head Constable Kanwar Pal and Constable Balraj Singh near the Toll Plaza. When they reached there accompanied with the driver Rajesh Kumar Head Constable Kanwar Pal threw a sum of Rs.2700/- in a clandestine manner in the bushes which was recovered and seized. Petitioner was on patrolling duty with

Head Constable Kanwar Pal thus his complicity with Head Constable Kanwar Pal, stands proved by adopting principles of preponderance of probability.

13. In the facts of the present case it is clear that it was a concerted act of the Petitioner, Head Constable Kanwar Pal as well as Constable Balraj Singh in taking money from the drivers of the commercial vehicles entering Delhi. Petitioner cannot claim innocence while being in the company of Head Constable Kanwar Pal from whose possession an unexplained sum of Rs. 2700/- was recovered.

14. Judgments relied upon by the Petitioner are on different facts and are of no help to the Petitioner. In Dhujender Pal Singh's case (Supra) the evidence on record reflected that the money was thrust upon the Petitioner even though the same was not demanded by him. However in this case, on seeing the PRG team Head Constable Kanwar Pal threw the money in the bushes in order to screen themselves from the evidence. In Constable Tika Ram's case (supra) seizure memo was not prepared in accordance with law in as much as signatures of the witnesses were not obtained. In this case seizure memo was prepared and was even signed by the driver. In Narmada Prasad

Yadav's case (supra) the court found that there was absolutely no evidence with regard to the demand of bribe and the receipt thereof. Similarly, in J.P. Singh's case (supra) the court found that the State case was based on "no evidence". However, in this case situation is totally different which we have noted in earlier paras.

15. In view of the above we are of the opinion that the present writ petition is devoid of merits.

16. Dismissed.

A.K. PATHAK, J

MADAN B. LOKUR, J

July 29, 2009
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