

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.1992/2010**

% **Date of Decision: 31.05.2010**

EX. CONSTABLE SHRIMANT PETITIONER
Through Mr. D.K. Garg, Advocate

Versus

GOVT. OF NCT OF DELHI & ORS. RESPONDENTS
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. This writ petition has been filed by the petitioner under Article 226 of the Constitution of India for assailing the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') whereby the Tribunal has dismissed the Original Application filed by the petitioner against the order of the appellate authority dated 23.11.2007 whereby the order passed by the disciplinary authority forfeiting the service of the petitioner for a period of 10 years was converted into the order of dismissal after issuing a show cause notice to the petitioner.

2. It is the submission of the petitioner that the show cause notice issued by the appellate authority in this matter was based upon a decision already taken by the appellate authority to award the punishment of dismissal upon the petitioner and was not based upon a tentative opinion which was contrary to the judgment of the Supreme Court in the case of Yoginath D. Bagade Vs. State of Maharashtra & Anr. (1999) 7 SCC 739

3. Briefly stating the facts of this case are that on 1/2.01.2005, a complaint was made on 100 number by one Sh. Atulesh Kumar Rajat, resident of G-2, Sarvodaya Apartments, Sahibabad, Ghaziabad, U.P. alleging that one Varun Gupta and Bhupinder Tiwari came on a motorcycle from Noida for purchasing air tickets at about 9 pm. At that time 4-6 police personnel including the present petitioner got down from the TCR and made Varun Gupta to sit in the said TCR while another constable made Sh. Bhupinder Tiwari sit on the motorcycle as pillion rider. About 15-25 minutes, the constable made a round of Connaught Place and threatened them that they would not be bailed out for six months and after bringing them in the dark took about Rs.14,000/- from them. Thereafter all the five personnel were called in Police Station Connaught Place. Then they were produced before Addl. S.H.O. and were identified by the complainants Varun Gupta, Bhupinder Tiwari and Atulesh Kumar. Accordingly they were put under suspension vide order dated 10.01.2005 and a departmental inquiry was held where Varun Gupta, Constable Shiv Dass Singh, ASI

Tara Chand and Addl. S.H.O., Inspector Bijender Singh appeared as witnesses. Charges framed against the petitioner were found to be proved by the Inquiry Officer. The disciplinary authority vide order dated 06.10.2006 imposed penalty of 10 years of forfeiture of service in case of four constables including the petitioner.

4. The petitioner and other delinquents filed appeal under Rule 24 of the Delhi Police (Punishment and Appeal) Rules, 1980 against the order of the punishment imposed upon them by the Joint Commissioner of Police, New Delhi range on 06.10.2006. The appellate authority instead of taking a lenient view felt it appropriate to enhance the punishment to the extent of their dismissal from service and for that purpose served upon the delinquents including the petitioner with a show cause notice against the order of punishment imposed by order dated 06.09.2007

5. It is not disputed that such a notice was received by the petitioner which was also replied to by him thereafter the Appellate Authority passed an order of punishment whereby the petitioner and other delinquents were dismissed from service.

6. it is against the order of the disciplinary authority dated 06.10.2006 as well as the order of the appellate authority including the show cause notice issued to them as well as the order of dismissal dated 23.11.2007, the petitioners and others filed respective Original Applications before the Tribunal on 12.12.2007 and all these applications were decided by common judgment dated 06.01.2007 by the Tribunal. It is against the said order, the petitioner is before us.

7. It is the submission of the learned counsel for the petitioner that the Appellate Authority was not competent to issue a show cause notice which reflected the decision already taken by the said authority. In fact, for the purpose of enhancement, the said authority ought to have only conveyed a tentative decision.

8. To appreciate the aforesaid contention, we may examine the contents of the show cause notice issued to the petitioner. The relevant portion of the show cause notice is reproduced hereunder

I have carefully gone through the punishment order, appeals preferred by the appellants and the other file records. It is a proved case of corruption. As per Rule XI of CCS/CCA Rules, 1965 in every case where charge of corruption is proved the penalty of either dismissal or removal from service shall be imposed. Further for the sake of natural justice the punishment awarded should commensurate with the gravity of misconduct committed by the individual (s). The Disciplinary Authority while considering/examining the gravity of misdemeanor committed by the appellants and failure to maintain integrity and devotion to duty had felt that they all deserve for the punishment of dismissal from service. It was also felt that the punishment will affect the livelihood of their family and adversely impact the proper bringing up of their minor children. All the appellants have crossed the age of 30 years & would not gain entry into another job/service in case of dismissal or removal. Considering all, the Disciplinary Authority has awarded them instant punishment.

After going through the file records and hearing the appellants in O.R., I am of the considered view that the misconduct of the appellants in such a condemnable and shameful corrupt activity has eroded the faith of common people in police force and their continuance in the force would cause further irreparable loss to the functioning, credibility of Delhi Police and will also put a bad impression on the other staff. They being a member of the disciplined force were responsible for protecting the life and property of the citizens of the country, but

instead of discharging their duty honestly and sincerely, they themselves indulged in such a corrupt activity. They have not only tarnished the image of Delhi Police but also had rudely shaken the faith of the citizens of Delhi in the entire Police Force. They have acted in the most reprehensible manner, which is totally unexpected from the members of the disciplined force. I find the punishment of reduction in rank from Head Constable to Constable for a period of 10 years/forfeiture of 10 years approved service permanently entailing proportionate reduction in pay awarded to them by the Disciplinary Authority as unreasonable. Such a long period will spread disgruntlement and de-motivation amongst the other staff as they will continue to remain in the force. Moreover, the offence proved is no doubt of the gravest nature and deserve the extreme penalty of dismissal. Therefore, in exercise of powers rendered with me under Rule 25 (d) of Delhi Police (Punishment & Appeal) Rules, 1980, you HC (now Const.) Munshi Lal 408/ND, (now 2271/DAP), Consts. Surrender, No. 590/ND, (now 2627/DAP), Ram Singhasan, No. 1303/ND, Banwari Lal No. 766/ND (now 4308/DAP) and Shrimant No. 1296/ND (now 10296/DAP) are hereby called upon to show cause notice as to why the punishment under appeal may not be enhanced to dismissal from service. Your reply, if any, should reach this office within 15 days from the date of receipt of this notice failing which it will be presumed that you have nothing to say in your defense and the case will be decided on its merit.

9. Pursuant to the aforesaid notice, reply was received from the petitioner and the order dated 06.10.2006 was passed which also goes to show that the order was passed based upon consideration of the record, taking into consideration the reply filed by the petitioner and other delinquents and after dealing with their submissions. In fact, even oral hearing was also given to the petitioner and other concerned as is apparent from reading of some portion of the impugned order which is reproduced hereunder:

The D.E. was initiated with the prior approval of the Jt.C.P./NDR under rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980 and entrusted to inspr. Ravinder Kumar, Addl. S.H.O./T. Road, who after examining 5 PWs framed the charge upon all of them after getting it approved from the disciplinary authority. Copy of charge was delivered to all of them on 19.05.2005. They did not admit the charge and produced 2 witnesses in their defence. After examining both the DWs, they were directed to submit their defense statement, when they submitted on 30.05.2006. On the basis of testimony of all the 5 PWs/2 and other material evidence on record, the E.O. prepared his findings and submitted the same to the disciplinary authority on 14.05.2005 with the conclusion that the charge is substantiated against all the five delinquents/defaulters. Tentatively agreeing with the findings of the E.O., copies of the same was delivered to all of them for furnishing their representation, if any and to show cause as to why their suspension period should not be decided as period not spent on duty vide U.O. No. 4060/HAP/NDD (D-I) dated 24.06.2005. On 14 and 15.07.2005, they submitted their written representation to the Disciplinary Authority. All of them have taken common pleas and requested for O.R. before the Disciplinary Authority. Their requests was accepted and were called in O.R. in the month of September and October 2005. All of them never reported together on all the 7 occasions in the year 2005. In the interest of equity, fair play and justice, they were again called to appear in O.R. on 29.09.2006 H.C. Munshi Lal, Const. Surender Singh, Const. Ram Singhasan and Const. Banwari Lal appeared in O.R. whereas Const. Shrimant No. 1296/ND could not appear as he is reported to have met with an accident and is on M.R. DD No. 34 dated 28.09.2006 has been recorded to this effect. I have heard all the 4 lower subordinates separately one by one. None has confessed. All has stated that they are innocent.

10. Thereafter the Appellate Authority has considered the facts of the case, the evidence which has come on record and has concluded that:

The findings of the E.O. is very much clear on this issue, in which the E.O. has concluded that from the testimony of PWs 1 to 5 it is very much clear that the amount of Rs.14,000/- were extorted by all the 5 defaulters from the complainants. If they did not

took Rs. 14,000/- from the complainants, then why they returned Rs. 14,000/- to the complainants. They finally pointed out some contradiction between the statements of PWs 1 to 5, timing in the P.S., about identification parade, the person who had recorded the statements of the complainants etc. these minor contradictions cannot mitigate their misconduct.

In view of above discussion, it has been established that on the night intervening 1/2.01.2005 at 12.37 a.m. a PCR call was received in Police Station Connaught Place in which the informer Akhilesh reported that some policemen had taken Rs. 14,000/- from his friends, who were on a motorcycle, near petrol pump, Minto Road. He further informed that the policemen took them to Pragati Maidan where money was taken from them and they were asked to go. ASI Tara Chand had been deputed to attend the call and complainants Bhupinder Tiwari and Varun Gupta were found present in front of Odeon near pump. On enquiry, Mr. Bhupinder Tiwari S/o Sh. L.B. Tiwari, R/o 24/1, Sector 14, Lucknow, U.P. and Mr. Varun Gupta S/o Arjun Dass R/o K-959, Sec-23, Sanjay Nagar, Ghaziabad, U.P. reported that they came to Connaught Place on their motorcycle No. UP-14U-8187. At Outer Circle near Minto Road, when they were taking to a parked TSR in which one girl was sitting, five policemen intercepted them and threatened both of them to take legal action against them and took Rs. 14,000/- from both of them. ASI Tara Chand brought the complainants to Connaught Place Police Station. Addl. S.H.O./Connaught Place enquired the matter from the complainants. Both Bhupinder Tiwari and Varun Gupta stated that they came to Delhi on motorcycle No. UP-14 U 8187. At Outer Circle, Connaught Place they stopped their motorcycle near a TSR to enquire about way to ITO. In the meantime five policemen intercepted them and made Varun to sit in the TSR in which a girl was already sitting. Another constable took the motorcycle and made Bhupinder to sit on the pillion seat of the Motorcycle. They further stated that after driving for about half an hour through various roads, they stopped at dark area and threatened to put them in jail. They also threatened that they have to give Rs. 60,000/- each for getting bail. After about 45 minutes, the remaining three policemen also reached there and demanded all the money they have. The policemen took Rs. 6000/- from Bhupinder Tiwari and Rs. 8000/- from Varun Gupta.

The Policemen then set them free.

Addl. S.H.O./Con. Place called all the night patrolling staff to Police Station and shown to the complainants. They identified Const. Banwari Lal No. 766/ND and Const. Ram Singhasan, No. 1303/ND as two of the five policemen. Both the constables admitted that they have taken the money and also stated that HC Munshi Lal No. 408/ND, Const. Shrimant No. 1296/ND and Const. Surinder No. 590/ND were the three men who accompanied them. As per Duty Roster dated 1.1.2005, HC Munshi Lal and Const. Surinder were detailed for foot patrolling from Minto Road to Bara Khamba Road, Const. Banwari and Const. Shrimant from Barakhamba Road to Regal and Const. Ram Singhasan was detailed for foot patrolling from Regal to Panchkuian Road. All the above staff departed vide DD No. 31-B except Const. Ram Singhasan, who had gone without recording his departure in Daily Diary.

11. Thus, it is thereafter the Appellate Authority took note of the previous conduct of the petitioner and other concerned and passed the impugned order.

12. This goes to show that the show cause notice issued by the Appellate Authority was though based upon facts as came against the petitioners before the Inquiry Officer and as accepted by the Inquiry officer and thereafter the disciplinary authority, the order was passed after taking into consideration representation filed by the petitioner and upon application of mind taking into consideration all the facts of the case and representation of the petitioner and others.

13. Coming to the judgment referred to by earned counsel for the petitioner in the case of *Yoginath D. Bagade (Supra)*. The relevant paragraphs of the judgment are reproduced as under:

31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution.

32. Applying the above principles to the facts of this case, it would be noticed that in the instant case the District Judge (enquiry officer) had recorded the findings that the charges were not proved. These findings were submitted to the Disciplinary Committee which disagreed with those findings and issued a notice to the appellant requiring him to show cause why he should not be dismissed from

service. It is true that along with the show-cause notice, the reasons on the basis of which the Disciplinary Committee had disagreed with the findings of the District Judge were communicated to the appellant but the Disciplinary Committee instead of forming a tentative opinion had come to a final conclusion that the charges against the appellant were established. The Disciplinary Committee, in fact, had acted in accordance with the statutory provisions contained in Rule 9(4)(i)(a) and (b).
761 He was called upon to show cause against the proposed punishment of dismissal as will be evident from the minutes of the Disciplinary Committee dated 21-6-1993 which provide as under:

“Decision : Discussed.

For the reasons recorded in Annexure ‘A’ hereto, the Committee disagrees with the finding of the enquiry officer and finds that the charges levelled against the delinquent judicial officer have been proved.

It was, therefore, tentatively decided to impose upon the judicial officer penalty of dismissal from service.

Let notice, therefore, issue to the delinquent judicial officer calling upon him to show cause why penalty of dismissal from service as prescribed in Rule 5(1)(ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 should not be imposed upon him.

Show-cause notice will be accompanied by a copy of the report of the enquiring authority and the reasons recorded by this Committee.”

These minutes were recorded after the Disciplinary Committee had considered the enquiry report and differed with the findings and recorded its final opinion in para 10 of its reasons as under:

“10. The Disciplinary Committee is of the opinion that the findings recorded by the enquiry officer on both the charges cannot be sustained. The Committee, after going through the oral and documentary evidence on record, is of the opinion that both the charges against the delinquent are

proved. The delinquent is a judicial officer who has failed to maintain the absolute integrity in discharge of his judicial duties.”

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34. Along with the show-cause notice, a copy of the findings recorded by the enquiry officer as also the reasons recorded by the Disciplinary Committee for disagreeing with those findings were communicated to the appellant but it was immaterial as he was required to show cause only against the punishment proposed by the Disciplinary Committee which had already taken a final decision that the charges against the appellant were proved. It was not indicated to him that the Disciplinary Committee had come only to a “tentative” decision and that he could show cause against that too. It was for this reason that the reply submitted by the appellant failed to find favour with the Disciplinary Committee.

14. It would also be relevant to take note of the facts of that case. In that case the appellant was a judicial officer who was dismissed from service on the charges of indulging in corrupt practices. Complaint was made against him by a person who was an accused in a sessions trial being conducted by the appellant. First charge against the appellant was that “You had a meeting with the said accused at the residence of ... on 23.11.1990 when you assured him of acquittal on payment of Rs.10,000/- in each case and that you thereby indulged in corrupt practice amounting to gross misconduct”. Second charge against him was that “..... on 18-12-1990 at about 8.00 p.m. at the residence of ..., you made a demand of Rs.10,000/- from (the complainant), as consideration for his acquittal in sessions trial.... Under section 302 etc. IPC and that you thereby indulged in corrupt practice amounting to gross misconduct”. Anti-corruption Bureau laid a trap against the

appellant but the trap was unsuccessful and failed. Inquiring Authority described the trap as false and it was laid without the Chief Justice's prior permission. The Inquiring Authority held the charges as not proved against the appellant but the Disciplinary Committee of the High Court disagreed with the findings of the Inquiring Authority and held the charges as proved. Minutes of the Disciplinary Committee were as follows: "Discussed. For the reasons recorded in Annexure 'A' hereto, the Committee disagrees with the findings of the Enquiry Officer and finds that the charges leveled against the delinquent judicial officer have been proved. It was, therefore, tentatively decided to impose upon the Judicial Officer penalty of dismissal from service. Notice was, therefore, issued to the delinquent Judicial Officer calling upon him to show cause why penalty of dismissal from service as prescribed in Rule 5(1)(ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 should not be imposed upon him. Show cause notice will be accompanied by a copy of the Report of the Inquiring Authority and the reasons recorded by this Committee. The appeal was allowed by the Supreme Court by making following observations:

"35. Since the Disciplinary Committee did not given any opportunity of hearing to the appellant before taking a final decision in the matter relating to the findings on the two charges framed against him, the principles of natural justice, as laid down by a three-judge Bench of this Court in Punjab National Bank Vs. Kunj Behari Misra referred to above, were violated.

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52. In the instant case, we have scrutinised the reasons of the Disciplinary Committee and have found that it had taken its final decision without giving an opportunity of hearing to the appellant at the stage at which it proposed to differ with the findings of the enquiry officer. We have also found that the complainant's story with regard to the place at which the demand was allegedly made by the appellant was inconsistent. We have also noticed that the trap laid by ACB, Nagpur against the appellant had failed and was held by the enquiry officer to be a farce and not having been laid with the permission of the Chief Justice. We have also noticed that there was absolute non-consideration of the statements of defence witnesses, namely, Dr Naranje and Mr Bapat, Advocate, by the Disciplinary Committee. This factor in itself was sufficient to vitiate the findings recorded by that Committee contrary to the findings of the enquiry officer."

15. The aforesaid judgment does not apply to the facts of the case in hand. In the present case, the delinquent officers was held guilty by the Inquiry Officer and the disciplinary authority decided to impose punishment of forfeiture of 10 years of service and against that he filed an appeal. It was during the course of hearing of the appeal, the appellate authority thought it appropriate to enhance the punishment. At that stage an opportunity was granted to the petitioner to make his representation which was heard. Even oral hearing was also given to the petitioner and then the impugned order was passed.

16 We do not agree with the learned counsel for the petitioner that in this matter Principles of Nature Justice were not complied with or that the procedure followed was contradictory to the dictum of the judgment delivered in the case of Yoginath D. Bagade (Supra).

17. As such, we do not find any infirmity or impropriety which calls for any interference by this Court in exercise of powers under Article 226 of the Constitution of India.

18. The writ petition is, accordingly, dismissed without any order as to costs.

MOOL CHAND GARG, J.

MAY 31, 2010

'anb'

ANIL KUMAR, J.