

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

% *Judgment Reserved on : February 08, 2013*
Judgment Pronounced on : February 25, 2013

+ **WP(C) 4560/2012**

BALBIR SINGH Petitioner
Represented by: Mr.Sourabh Ahuja, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Represented by: Mr.P.Pankaj, proxy counsel for
Mr.Sumit Chander, Advocate for R-1 to R-4.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

1. Petitioner, ASI Balbir Singh and Ct.Mohandas had faced a joint inquiry when summary of allegation was served upon the two on January 25, 2008 alleging that on November 02, 2007 when en-route to the Office of the DCP (North-East), Insp.Hira Lal and SI Pawan Kumar Thakur crossed ISBT at around 04:50 PM and found three light commercial vehicles bearing No.DL-1L-4253, DL-1LA-7884 and HR-46-5239 parked on the roadside and saw one ZO (the petitioner) and one Constable prosecuting the commercial vehicles. The two officers took position at Y Point, Dharampura – GT Road and waited for the vehicles to arrive. At 05:15 PM vehicle HR-46-5239 arrived and the two other vehicles did not arrive. Ombir, the driver of the vehicle was asked by Insp.Hira Lal to produce a copy of the challan at which he replied that he

was not fined and was let off by the traffic staff at ISBT flyover accepting gratification in sum of ₹100/-. The statement was recorded at the spot, as per which he stated that when he reached ISBT flyover a traffic constable stopped his vehicle and took the RC and permit. He was taken towards the ZO (the petitioner) who was sitting on a motorcycle cutting challans and in the meanwhile the traffic constable threatened to seize his vehicle if ₹100/- was not paid. He gave ₹100/- and the ZO also looked at him and towards the vehicle. Thereafter he left the vehicle. It was thus alleged that the act was a grave misconduct.

2. We need to highlight at this very moment that with respect to when ₹100/- was given to Ct.Mohandas by way of bribe, the role of the petitioner, as per the summary of allegation, and we reproduce verbatim, is: *'Thereafter he was taken by the Traffic Constable towards the ZO who was sitting on a motorcycle and prosecuting other vehicles. Meanwhile, the traffic constable threatened him of seizing his vehicle if he does not pay some gratification immediately. Then he gave ₹100/- (single note) to him, the ZO also looked at him and towards his vehicle.'*

3. Ct.Ajit Singh PW-1 produced the duty roster Ex.PW-1/A which had an entry recording petitioner and Ct.Mohandas being detailed for duty at ISBT flyover on November 02, 2007. SI Pawan Kumar Thakur and SI Hira Lal deposed as PW-2 and PW-3 respectively. They deposed in sync and proved the facts alleged in the summary of allegation and additionally highlighted that the light commercial vehicle HR-46-5239 was loaded with medicines and labour were sitting on the vehicle, which was not permitted (i.e. the vehicle should have been challaned). As per them the driver of the vehicle told them that the traffic constable threatened to impound the vehicle if bribe was not paid and he gave ₹100/- to the constable. *'ZO saw him and his vehicle'* at that time.

Ombir Singh, the driver of the vehicle who appeared as PW-4 did not support the prosecution and stated that when he drove vehicle HR-46-5239 towards Seelampur flyover at 05:00 PM two policemen in plain clothes stopped him and recorded something on the paper. They took him to the police line and made him sign a blank paper.

4. In his defence the petitioner produced photostat copies of challans being 12 in number which he had issued for traffic violations between 04:20 PM and 05:15 PM to bring home the point that he had diligently prosecuted the offending vehicles. That Insp.Hira Lal never went to the Traffic Circle at Civil Lines and sent a false report.

5. The Inquiry Officer submitted a report on August 27, 2008 indicting the petitioner as also Ct.Mohandas, and dealing with Ombir Singh, PW-4 denying having been stopped by the Traffic Constable when he crossed ISBT flyover or having paid bribe to him, the Inquiry Officer relied upon an application filed by Ct.Mohandas on March 25, 2008 before Ombir Singh was examined in which he had alleged that Ombir Singh and his relatives were demanding ₹50,000/- from him for Ombir Singh to change the statement which he had made earlier. Therefore the Inquiry Officer concluded that it was apparent that Ombir Singh had resiled from his earlier statement which was correct.

6. Agreeing with the report of the Inquiry Officer and after considering the response of the petitioner the Disciplinary Authority levied punishment of two years approved service being permanently forfeited entailing proportionate reduction in the pay on both the officers and held that the period of suspension would be treated as not spent on duty. Appeal filed came to be rejected.

7. Petitioner's challenge to the penalty before the Central Administrative Tribunal went in vain because OA No.119/2010 filed by

the petitioner came to be dismissed by the Tribunal as per the order dated May 27, 2011, by which composite order even the Original Application filed by Ct.Mohandas registered as OA No.3628/2010 was dismissed.

8. The plea urged before us during hearing of the writ petition that since Ombir Singh did not support the case of the prosecution there was no evidence of any bribe being paid by him to Ct.Mohandas and hence the entire indictment falls is noted and rejected by us for the reason the percipient testimony of SI Pawan Kumar Thakur PW-2 and Insp.Hira Lal PW-3 is to the effect that when the two officers crossed ISBT flyover on their official motorcycle they saw a ZO (who was the petitioner) and a traffic constable challaning commercial vehicles and saw, apart from two other commercial vehicles, vehicle No.HR-46-5239, stopped by the roadside and after some time as said vehicle neared the point where they had stationed themselves, upon being stopped, the driver Ombir Singh did not produce any traffic violation challan. Insp.Hira Lal has categorically deposed that the vehicle driven by Ombir Singh was carrying medicines and some labour were sitting in the vehicle; meaning thereby in a commercial goods vehicle passengers were being ferried making liable the vehicle to be impounded but let off upon payment of a fine. The fact that the vehicle was stopped by the traffic policeman and yet was not challaned would evidence that some consideration was paid not to challan the vehicle. In any case, the indictment of catching a culprit and letting him go scot free stood established by the percipient testimony of PW-2 and PW-3, notwithstanding PW-4 turning hostile.

9. But the second argument advanced by learned counsel for the petitioner merits an acceptance.

10. From the summary of allegation as also the evidence and assuming Ombir's statement recorded at the spot by Insp.Hira Lal was

correct and disclosed the facts pertaining to the events as transpired, the same would evidence that the petitioner was sitting on a motorcycle issuing challans to the offending vehicles and it was Ct.Mohandas who was stopping the commercial vehicles for checking. It was he who demanded and received bribe in sum of ₹100/- from Ombir. Ombir's statement that when he handed over ₹100/- to the constable the petitioner looked up and saw him and the vehicle cannot mean that the said act of looking would amount to a tacit or an implied consent by the petitioner for Ct.Mohandas to accept the bribe and let go the vehicle. It has to be kept in mind that petitioner had led evidence to show that between 04:20 PM and 05:15 PM he had challaned 12 commercial vehicles. It does not mean that only 12 vehicles were stopped during this period for the reason 12 were challaned and we do not know how many more were proceeded to move ahead because the drivers had valid documents with them. As per the evidence the petitioner was sitting on his motorcycle and issuing the challans. It does happen that while writing out documents or filling forms, one looks up temporarily, probably to release the stress on the back or the neck. This is a simple act of looking into space with an empty thought and an empty mind and thus the image on the retina not being perceived in the mind i.e. the look or the gaze remaining blank. In other words, the act of the petitioner to look up and happening to be looking in the direction of the constable while he was issuing the challans cannot be read as an act of consent by gesture.

11. Conscious of the fact that the standard of proof at a departmental inquiry is below the standard of proof at a civil trial and that all evidence which is logically probative could tilt the scale against the accused, but in the instant case we find no evidence whatsoever to sustain the indictment, and what appears to be at first blush an evidence of

consent by gesture, upon a deeper consideration being found to be a neutral evidence; highlighting that Ombir Singh had turned hostile, we allow the writ petition and quash the penalty order dated December 10, 2008, the appellate order dated November 13, 2009 and the impugned dated May 27, 2011 passed by the Tribunal. OA No.119/2010 filed by the petitioner is allowed.

12. There shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

FEBRUARY 25, 2013//dk//