

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

% *Judgment Reserved on : January 31, 2013*
Judgment Pronounced on : February 04, 2013

+ **WP(C) 4957/2012**

KHAZAN SINGH Petitioner
Represented by: Mr.Saurabh Ahuja, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Represented by: Mr.Dhanesh Relan, Advocate with
Ms. Sweta, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

1. A joint departmental enquiry was held against Inspector Manju Dubey, HC Bhajnatri and the petitioner Ct.Khazan Singh. The contours of the indictment as per the Summary of Allegations were that on the intervening night of November 1st and 2nd of the year 2007 Inspector Surjeet Malik alongwith SI Jagdish Kumar were directed to check Apsara and Maharaj Pur Border and while on their way as they reached near Dhaula Kuan at 11.30 PM they noticed one Head Constable and one Constable in traffic uniform having stopped Truck No.HR-55 B 1982 with conversation going on between a person in civil clothes who seemed to be the driver of the truck and the said two police personnel, which roused a suspicion of foul play during checking. Inspector Surjeet Malik and SI Jagdish Kumar saw the person in civil clothes hand over something to the Head Constable and thereafter the truck drove towards Ridge Road and was stopped by the two officers at a distance of 300 to

400 meters from the checking points. The driver of the truck, Munfaiz Son of Ruzdar informed that he was a driver with Jain Carrier Corporation and that he used the route frequently and makes entry on to Ridge Road (a No Entry road) after bribing the police and that today the Head Constable demanded ₹100/- and that on his expressing inability to bribe ₹100/-, negotiations resulted in the demand being reduced to ₹50/- for the police officers to permit him to drive his truck on to Ridge Road. Mufaiz was taken back to the checking point where HC Bhajnatri and petitioner Ct.Khazan Singh of the traffic police department were found performing duty by putting one iron barricade. They recorded the statement of the driver and went to the office of the Delhi Cantt. Circle to check the duty roster and found that neither HC Bhajnatri nor Ct.Khazan Singh were deployed for duty at the Dhaula Kuan flyover at the loop towards Ring Road and thus it was apparent that the two were checking vehicles illegally and demanding illegal gratification. The duty roster was found incomplete, in that, duty points were mentioned in the roster without names of traffic personnel; for the reason Inspector Manju Dubey was responsible for deploying the staff, she had been negligent in discharge of her duties.

2. We would not be concerned with the indictment against Inspector Manju Dubey or HC Bhajnatri for the reason though indicted, HC Bhajnatri died on May 14, 2010 before the disciplinary authority could consider the report of the enquiry officer against him and as regards Inspector Manju Dubey, evidence surfaced that due to heavy rush of work on account of VVIP duty she was short on time and probably this was the reason why she could not fill all columns of the duty roster, resulting in she being exonerated.

3. As regards the petitioner, we find that with reference to the Summary of Allegations, three out of four prosecution witnesses deposed as per the Summary of Allegations that Munfaiz, the driver of the truck examined as PW-3, did not support the case of the prosecution. Inspector Surjeet Malik PW-2 and SI Jagdish PW-4 deposed facts as per the Summary of Allegations and proved the statement recorded at the spot which bore signatures of Munfaiz who denied having paid any bribe or having made any statement before Inspector Surjeet Malik but admitted his signatures thereon. HC Prakash Chand PW-1 have produced the duty roster, copy whereof was exhibited as Ex.PW-1/A.

4. Complying with the procedure of the law and framing a charge which was served upon the petitioner as also co-delinquents, and noting that in respect of the charge, no issues were raised before us, we note that proceeding to record defence evidence consisting of only DW-1 Shri Jainuabdin, the helper of the truck, who deposed that no bribe was demanded and much less paid and that some police officers took signatures of the driver Munfaiz on a piece of paper, the enquiry trotted on.

5. We note that as per Munfaiz, Ex.PW-2/B bore his signatures and he claimed that driving from Dhaula Kuan side towards Karol Bagh, one police man had signaled him to stop but he paid no heed and as he drove ahead two police personnel stopped his truck and obtained his signatures on a piece of paper.

6. We highlight that as per the petitioner, he had signaled Munfaiz to stop the truck but he drove and this was his defence for the truck making an entry on a road where HMTVs and MMVs were banned 24 hours a day.

7. Supplying the report of the enquiry officer to the petitioner and considering his response, the Additional Commissioner of Police levied

penalty of permanent forfeiture of five years approved service upon the petitioner and dropped the proceedings against HC Bhajnatri who had died in the meanwhile and as regards Inspector Manju Dubey held no malice attributable to her and thus exonerated her.

8. Petitioner's departmental appellate remedy was not fruitful for the reason on February 18, 2011 the Commissioner of Police to whom the appeal was made rejected the same. The petitioner fought the next battle before the Central Administrative Tribunal when he filed OA No.2622/2011 which has been dismissed by the Central Administrative Tribunal as per the impugned order dated January 13, 2012.

9. We proceed straight to deal with the legal contentions urged.

10. The first. Rule 5 of The Delhi Police (Punishment & Appeal) Rules, 1980 stipulates the penalties which can be levied on the force personnel of Delhi Police and Rule 6 thereof stipulates the Authority Competent to award the punishment. Rule 6 of The Delhi Police (Punishment & Appeal) Rules, 1980 reads as under:-

“6. Classification of punishments and authorities competent to award them –(i) Punishments mentioned at Serial Nos.(i) to (vii) above shall be deemed ‘major punishment’ and may be awarded by an officer not below the rank of the appointing authority or above after a regular departmental enquiry.

(ii) Punishment mentioned at Serial No.(viii) shall be called ‘minor punishment’ and may be awarded by the authorities specified in sub-section (i) of Section 21 of the Delhi Police Act, 1978 after serving a show cause notice giving reasonable time to the defaulter and considering his written reply as well as oral deposition, if any for which opportunity shall be afforded on request.

Authority Competent to award	Rank to whom it can be awarded
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i.	Deputy Commissioner of Police and above	Inspector and below
ii.	Assistant Commissioner of Police	Constable to Sub-Inspector

And relevant would it be to highlight that as per the Rule in question, the Disciplinary Authority of officers up to the rank of Sub-Inspectors is the Assistant Commissioner of Police and of officers up to the rank of Inspectors the Competent Authority is the Deputy Commissioner of Police and above. This means that officers of the rank of Deputy Commissioner and above, which would include an Additional Commissioner of Police, can act as the Disciplinary Authority of all officers of the rank of Inspector and below. In the instant case it was the Additional Commissioner of Police who had considered the preliminary enquiry record and had sanctioned initiation of the disciplinary proceedings; and the challenge by the petitioner is that he being a constable, it was only the Assistant Commissioner of Police who could act as the Disciplinary Authority.

11. Now, it was not disputed that the Additional Commissioner of Police is an officer in rank above the Deputy Commissioner of Police as also the Assistant Commissioner of Police. Thus, said officer, by virtue of Rule 6(ii)(i) could act as the Authority Competent to initiate the disciplinary proceedings.

12. It has to be remembered that there were three delinquents. Inspector Manju Dubey, HC Bhajnatri and the petitioner Ct.Khazan Singh. Qua Inspector Manju Dubey the Disciplinary Authority could not be Assistant Commissioner of Police for the reason as per the Rule in question it had to be an officer of the rank of Deputy Commissioner of Police or above.

13. In the decision reported as (1997) 3 SCC 371 Balbir Chand vs. Food Corporation of India & Ors. it was categorically held that where a joint inquiry is conducted against several delinquents the highest in the hierarchy of Competent Authority who could take disciplinary action against the senior most of the several delinquents would be competent to act as the Disciplinary Authority so long as the appellate right and remedy was not infringed. In the instant case the appellate remedy of the writ petitioner has not been affected by the Additional Commissioner of Police acting as the Disciplinary Authority.

14. Besides, as would be noticed from the second legal challenge predicated with reference to sub-Rule 2 of Rule 15 of the Delhi Police (Punishment & Appeal) Rules 1980, it is the case of the petitioner himself that since the offending act was a penal offence also, it was only the Additional Commissioner of Police who could sanction the initiation of the disciplinary inquiry. This explains why Rule 6 makes Deputy Commissioner of Police and above to be the Competent Authority of officers up to the rank of Inspectors. If the misdemeanour would be a penal offence as well the requirement of sub-Rule 2 of Rule 15 would necessarily require the Assistant Commissioner of Police to act as the Disciplinary Authority because it is he who has to decide whether the officer in question should be proceeded against only departmentally or by way of a criminal prosecution or both. Thus, the first legal challenge fails.

15. The second legal challenge by the petitioner is predicated on sub-Rule (2) of Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980, and this necessitates a reproduction of sub-Rules (1) and (2) of Rule 15. The two read as under:-

“15. Preliminary enquiries – (1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulters(s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above-mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally proceed a departmental enquiry.

(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.”

16. From a bare perusal of the two sub-Rules it would be apparent that they envisage a preliminary as also a regular Departmental Enquiry, the former being a fact finding enquiry having purpose to determine the nature of default, the identity of the defaulter and collection of evidence both ocular and documentary, to facilitate a decision by the Disciplinary Authority whether a regular Departmental Enquiry is warranted or not. The challenge in the instant case is with reference to sub-Rule (2) by urging that since the indictment pertains to demanding and receiving a bribe, a cognizable offence was prima facie made out, thereby warranting a reasoned decision by the Additional Commissioner of Police as per the mandate of sub-Rule (2) as to whether a criminal case should be registered or a Departmental Enquiry should be held.

17. As a matter of fact we note that it was the Additional Commissioner of Police, as noted hereinabove, who taking cognizance of the preliminary fact finding enquiry had directed a Departmental Enquiry to be held. But what was seriously debated was : Whether while recording his opinion the Additional Commissioner had to record reasons as to why he was directing Departmental Enquiry and not a criminal prosecution. Shri Saurabh Ahuja learned counsel for the petitioner vehemently urged that in view of the law declared by the Supreme Court in the decision reported as 2007 (3) SCALE 581 Vijay Singh Vs. UOI & Ors. the issue was not longer res integra and for which the following words in paragraph 5 of the opinion were highlighted:-

“Such approval, if any must also be accorded after due application of mind.”

18. On facts, as would be evident from paragraph 3 of the opinion, the learned Additional Solicitor General had fairly conceded that the file pertaining to Vijay Singh had not been placed before the Additional Commissioner of Police for approval.

19. We highlight at the first instance that in Vijay Singh's case (supra) no such contention was urged as was urged before us and it is in said context that we have to understand the solitary sentence in paragraph 5 of the opinion relied upon by learned counsel for the petitioner.

20. Is recording of reasons a sine qua non to establish an application of mind where one out of two options has to be chosen?

21. We need to remind ourselves of some basic principles of law on the subject. When an authority exercising power under a statute or a statutory rule takes a decision, the first and the foremost question which warrants a decision is : What is the nature of the power exercised? Is it a

judicial power? Is it a quasi judicial power? Is it an administrative power?

22. In the decision reported as (1924) 1 KB 171 R. vs. Dublin Corpn. Atkin L.J. opined that where a person or a body of persons has legal authority to determine questions affecting the rights of subjects and having the duty to act judicially such person or body of persons discharges quasi judicial powers and would be duty bound to give reasons for the decision, which was held to be a correct test in the decision reported as AIR 1950 SC 222 Province of Bombay Vs. Khushaldas.S.Advani. But with passage of time the law developed by looking at the issue with reference to a *lis*. The presence or absence of a *lis* was treated as determinative of the nature of the power, for if the statutory power discharged by a statutory authority determined a *lis* or a dispute akin to a *lis* i.e. a contest between two contending parties, the power was treated to be a quasi judicial or a judicial power and in the absence of a *lis* between two contending parties the power was treated to be of an administrative nature. This was held way back in the decision reported as (1937) 2 KB 309 Cooper Vs. Wilson which was referred to by the Supreme Court in the decision reported as (2002) 5 SCC 685 Indian National Congress (I) Vs. Institute of Social Welfare & Ors.

23. But as time progressed, on the subject of giving reasons for a decision, the distinction between a judicial, quasi-judicial and an administrative power got blurred to a point of no distinction between the three and it is well recognized by now that whatsoever may be the nature of power, the obligation to give reasons would flow from whether the decision affects the right of a person. In other words, it is the opinion of Atkin L.J. which has survived albeit after demolishing the walls separating judicial, quasi-judicial and administrative decisions; the

common thread being *'to determine questions affecting the rights of subjects'*.

24. The question which therefore directly arises is whether when the Additional Commissioner of Police takes a decision under sub-Rule (2) of Rule 15 does he or does he not affect the right of the charged officer.

25. When a right of a party is affected are the catchwords used by Atkin L.J. What is the right of a delinquent police officer which is affected when a decision is taken by the Additional Commissioner of Police to either direct departmental action or a criminal prosecution? None whatsoever. It is trite that when a provision in a Rule is enacted it has some utility and is not redundant. To unravel the mystery of the nature of the decision making power under sub-Rule (2) of Rule 15 we need to understand the statutory contextual setting of the statute in the backdrop of which the Rule finds a place.

26. That takes us to the Delhi Police Act 1978. Section 21 of the Delhi Police Act 1978 reads as under:-

“21. Powers of punishment.– (1) Subject to the provisions of Article 311 of the Constitution and the rules, the Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal of the Police Training College or of the Police Training School or any other officer of equivalent rank, may award to any police officer of subordinate rank any of the following punishments, namely:-

- (a) dismissal;
- (b) removal from service;
- (c) reduction in ranks;
- (d) forfeiture of approved service;
- (e) reduction in pay;
- (f) withholding of increment; and
- (g) fine not exceeding one month's pay.

(2) Subject to the rules—

(a) any police officer specified in sub-section (1) may award the punishment of censure to any police officer of subordinate rank;

(b) the Assistant Commissioner of Police may award the punishment of censure to police officers of, or below, the rank of sub-Inspectors of Police;

(c) any police officer of, and above, the rank of Inspector may award punishment drill not exceeding fifteen days or fatigue duty or any other punitive duty to constables.

(3) Nothing in sub-section (1) or sub-section (2) shall affect any police officer's liability for prosecution and punishment for any offence committed by him.

(4) The Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal of the Police Training College or of the Police Training School, Assistant Commissioner of Police, or any other police officer of equivalent rank may suspend any police officer of subordinate rank who is reasonably suspected to be guilty of misconduct, pending an investigation or enquiry into such misconduct.

(5) An Inspector of Police may suspend any police officer below the rank of Sub-Inspector of Police, who is reasonably suspected to be guilty of misconduct, pending an investigation or enquiry into such misconduct.”

27. We highlight that the power to inflict punishments flows from Section 21. After enlisting the punishments in sub-Section 1 and sub-Section 2, sub-Section 3 makes it clear that a police officer would be liable to be simultaneously prosecuted as well as punished departmentally for an offence committed by him. To put it pithily, sub-Section 3

recognizes that for the same act pertaining to it being a civil wrong departmental action can be taken and pertaining to it being a penal offence, action under the penal law can be taken.

28. Section 147 of the Delhi Police Act 1978 reads as under:-

“147. Power to make rules.– (1) The Administrator may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely;

(a) recruitment to, and the pay, allowance and all other conditions of service of the members of, the Delhi Police under clause (b) of section 5;

(b) the manner of publication, under sub-section (2) of section 17, by the Commissioner of Police, of the names of special police officers appointed under that section;

(c) awarding of any of the punishments referred to in sub-section (1) or sub-section (2) of section 21 to any police officer of subordinate rank;

(d) procedure for awarding punishments under section 22;

(e) form of Discharge Certificate under sub-section (8) of section 25;

(f) determination of the cost of employing additional police under sub-section (2) of section 38;

(g) manner of taking measurements and photographs under section 55 of a person against whom an order has been made under section 46, section 47 or section 48;

(h) manner of constituting Defence Societies under sub-section (1) of section 58;

(i) form of receipt to be given in respect of any article detained under section 62;

(j) the authority to whose satisfaction claims are to be established under sub-section (2) of section 69 and the form and manner in which claims may be made under that sub-section, the procedure for dealing with such claims and all other matters connected therewith under sub-section (3) of that section;

(k) payment to any police officer or division among two or more police officers the whole or any portion of any reward, forfeiture or penalty, under the proviso to section 132;

(l) any other matter which has to be, or may be, prescribed, or provided for by rules, under this Act.”

29. And relevant would it be to highlight that clause (c) of sub-Section 2 of Section 147 deals with the subject of awarding punishments referred to in sub-Section 1 and sub-Section 2 of Section 21 and it is thus apparent that the Delhi Police (Punishment & Appeal) Rules 1980 have been framed in exercise of the power under clause (c) of sub-Section 2 of Section 147. We have noted herein above Rule 6 of the Delhi Police (Punishment & Appeal) Rules, 1980 from which it is apparent that a Deputy Commissioner of Police and officers above can act as the Competent Authority to levy punishments on all officers from the rank of Constable to the rank of Inspector. The purpose of sub-Rule 2 of Rule 15 shall therefore have to be found out keeping in view the undisputed position that a delinquent act may be simultaneously a criminal offence as also a civil wrong.

30. We have noted herein above that the purpose for a preliminary inquiry is to establish the nature of the default and identity of the defaulter as also to collect the relevant evidence. When evidence surfaces that a delinquent has committed a wrong which is a penal offence and

simultaneously a civil wrong, by virtue of sub-Section 3 of Section 21 of the Delhi Police Act 1978 the delinquent can be prosecuted and tried departmentally simultaneously. Thus, no right of a delinquent is involved and therefore, there is no question of his being prejudiced in any manner whatsoever whether the Additional Commissioner chooses to decide that the delinquent be prosecuted in a Court or be subjected to a departmental inquiry or both. No right whatsoever of the delinquent is affected and thus the Additional Commissioner of Police need not record reasons as to why he was ordering departmental inquiry to be conducted.

31. On the subject of application of mind, one tends to rush to a conclusion that unless reasons are recorded there would be no other method or tool available to determine whether the mind was applied. This may be the right conclusion in most of the cases, but not in all. As in the instant case we find that but for the mandate of sub-Rule 2 of Rule 15 the matter pertaining to the misdemeanor in question could have been simply considered by an officer of the rank of the Deputy Commissioner of Police had there been no element of an offence committed. The very fact that the file was sent to the Additional Commissioner establishes that the department was cognizant of the fact that since the misdemeanor was a penal offence as well, the final opinion had to be that of the Additional Commissioner and not any other junior officer; we highlight that as per Rule 6 the disciplinary authority was an officer of the rank of Deputy Commissioner and above. Thus, the Additional Commissioner knew the reason why the file was put up for him. He knew the reason was his discretion to direct either departmental action to be taken or whether to proceed for criminal action and by choosing the former it could not be said that by not recording the reasons he has evidenced a non-application of mind. If a person has to choose one from amongst plural, the very fact

of exercising the choice or opting for one of the two options would itself evidenced a mind being applied.

32. The technical/legal pleas having been dealt with, we now deal with the challenge on the substance. Relying upon an unreported decision dated September 05, 2008 allowing WP(C) 6503/2008 Hari Singh v. Govt. of NCT of Delhi & Ors. it is asserted that as in said case, the driver of the vehicle did not support the case of the prosecution and thus as in Hari Singh's case, the verdict of guilt against the petitioner at the domestic inquiry has to be set aside.

33. The facts of Hari Singh's case would reveal that the charge against Hari Singh was of challaning two tempo drivers and as against a fine of ₹100/- each for compounding the offence taking ₹150/- each. The two tempo drivers did not support the indictment.

34. In the instant case the misdemeanor alleged against Ct.Khazan Singh and HC Bhajnatri is in two distinct limbs. The first is of permitting a trailer truck driven by Munfaiz to enter a no entry road and the second of extracting ₹50/- from him. As regards the former limb of the indictment there is direct evidence through the mouth of Inspector Surjeet Malik PW-2 and SI Jagdish PW-4 who have deposed that they saw petitioner and HC Bhajnatri signaling the truck to stop at the barrier followed by they witnessing a conversation between the driver of the truck and the police officers, albeit without hearing the conversation. Now, standing afar, from the gestures one can make out that two persons are in conversation even without hearing what the conversation is. That two people were seen talking is one facet of a fact. What that conversation was is the second facet of a fact.

35. Thus, with respect to the limb of the charge that the petitioner and HC Bhajnatri intentionally permitted the trailer truck to enter a 'No Entry Road' we find direct evidence.

36. We pose a question. Why would two police men on duty at a barrier stop a truck which cannot enter a road because of 'No Entry'? Well! To tell the driver of the truck that the road ahead is 'No Entry' for trucks. But if this was so, the truck driver would not be permitted on the road. Where, after the dialogue the truck is permitted to make an entry in the No Entry road, it is obvious that illegal gratification was the consideration for the permission. Common sense which is a cluster of life experience is often more dependable than the rival facts presented by the warring litigants. We also have the testimony of PW-2 and PW-4 that from the gesticulations of the two police men and the truck driver they could see something being passed on. It is not the case of the petitioner that the truck driver gave him and HC Bhajnatri sweets or a piece of chocolate to eat. That apart, the two police officers have stated that about 200 meters about the barrier when they signaled the trailer truck to stop the driver Munfaiz confessed of having bribed the police officers at the check post ₹50/-. In the decision reported as (1977) 2 SCC 491 State of Haryana & Ors. v. Rattan Singh the Supreme Court categorically held that at domestic inquiries the strict and sophisticated rules of evidence are not applicable and all materials which are logically probative for a prudent mind are permissible and that there is no allergy to hearsay evidence provided it has reasonable nexus and credibility. In said case, statements made by passengers of the bus to the raiding party were held admissible in evidence against the conductor of the bus who had charged the fare as per the statements made, but had not issued the tickets; the passengers not being examined at the departmental inquiry.

37. No motive has been alleged against PW-2 and PW-4. Why should they fabricate a false statement of Munfaiz and obtained his signatures thereon? In the absence of any probable answer emerging with respect to the likelihood of the two police officers conniving, the only logical and probative answer would be that the statement as recorded was truthfully made by Munfaiz who appended his signatures thereto.

38. We find no merit in the writ petition which we dismiss but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

FEBRUARY 04, 2013
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