

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

Judgment reserved on: 09.11.2022

% **Judgment delivered on: 15.11.2022**

+ **W.P.(C) 292/2012**

GOVT. OF NCT OF DELHI AND ORS

..... Petitioner

Through: Mr. Zoheb Hossain, Addl. Standing Counsel with Mr. Vivek Gurnani, Advocate along with SI Harpal Singh, Parvi Office.

versus

RADHEY LAL

..... Respondent

Through: Mr. Kirti Uppal, Sr. Advocate with Mr. Shekhar Kumar, Ms. Riya Gulati, Mr. Himanshu Bhiduri, Advocates.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present petition is arising out of order dated 07.07.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 106/2008, titled *Ct. Radhey Lal v. Govt. of NCT of Delhi and Others*. The facts of the case reveal that the Respondent employer at the relevant point of time was serving on the post of Constable in the services of Delhi

Police and on account of an incident which took place on 05.08.2005, he was subjected to disciplinary proceedings. The facts of the case reveal that allegedly the Respondent employee while posted in Kotwali Traffic Circle was deployed for duty at Old Delhi Railway Station and he was collecting illegal entry fees from the staff of blue line buses by engaging a discharged Home Guard Manoj Kumar.

2. The facts of the case further reveal that at about 3.30 P.M. the Respondent employee stopped a blue line bus bearing registration No. DL-1PB-1617 and demanded for entry fee and told the private person Manoj Kumar to collect the same. The bus took a U-Turn at the light point opposite Old Delhi Railway Station and after parking the bus Manoj Kumar demandd Rs.300/- from Inder Pal and collected the same at about 4.00 P.M. A team of officers headed by Inspector Sanjeev Tyagi nabbed Manoj Kumar and on enquiry he disclosed the he was collecting entry money for the Radhe Lal who was the constable. A search was carried out and Rs. 200 were recovered from the pocket of his shirt and Rs.100 note was recovered from the pocket of his trouser. It is an undisputed fact that the person from whom the money was recovered was a discharged home guard.

3. The amount which was recovered from Manoj Kumar was kept in an envelope and sealed with the seal of 'MI' and a preliminary enquiry took place in the matter. The Respondent employee was placed under suspension on 11.08.2005 and later on he was reinstated on 04.10.2005. A preliminary enquiry took place on 06.08.2005. Statement of witnesses were recorded and after conducting the preliminary enquiry, the inquiry officer in the fact finding enquiry arrived at a conclusion that Manoj Kumar collected Rs.300

on behalf of the Respondent employee from the conductor of bus No. DL-1PB-1617.

4. The Respondent employee in the preliminary enquiry stated categorically that on 05.08.2005 he was detailed for duty at crane No.6763 vide DD No. 9 along with other staff and he recorded his arrival vide DD No.29 along with other staff.

5. It has been further stated that Inspector Sanjeev Tyagi interpolated with the record and got recorded arrival of the applicant from plain duty and departure at Point No. 4 Kot-4 Old Delhi railway station vide DD No. 11 dated 08.05.2005 only to substantiate the contents of the preliminary enquiry report.

6. It was also stated that in the record there was interpolation and the Respondent employee was not at all posted at the relevant spot where the alleged incident took place.

7. Based upon the preliminary enquiry, the disciplinary authority, Deputy Commissioner of Police on 08.10.2005 ordered a regular departmental enquiry and the imputation of misconduct reflected in the order dated 08.10.2005 is reproduced as under:

ORDER

It is alleged against Constable Radhey Lal No. 3576-T that he while posted in Kotwali Traffic Circle and deployed for duty at Old Delhi Railway Station on 05.08.2005, was found collecting illegal entry money from the staff of blue line buses by deploying a discharged Home Guard Manoj Kumar s/o Rajpal R/o H.No. 39, Gali No. 14 Khajuri Khas, New Delhi as observed during the PRG surveillance. At about 3.30 PM traffic

Constable Radhey Lal accompanying civvies stopped a blue line bus bearing registration No. DL-1PB-1617 and asked for entry. After that bus took U-Turn at the light point opposite old Delhi Rly station and parked in another carriageway. Same traffic constable gave indication to that person in civvies who was standing with him to go to the same blue line bus. At about 4 PM Inspector Sanjeev Tyagi TI/PRG nabbed Ex. DHG Manoj Kumar with the help of PRG Team at station side carriage way (Fateah Puri to Kauria Pul), when he demanded Rs.300/- and accepted Rs.200/- from Inder Pal S/o Sardar Singh R/O Kacchi Colony, Mubarak Pur Dabas, New Delhi conductor of the said bus. On enquiry, he disclosed that he was collecting entry money for traffic constable Radhey Lal No. 3576-T who was later identified by him. He was asked to empty out his pockets. He took out Rs.200/- (4 GC Notes of Rs.50/-) from the pocket of his shirt and Rs.100/- (1 GC Note) from the pocket of his trouser and also produced a sheet of paper on which he had noted down several number of blue line buses. He further disclosed that 5/6 years back he joined Delhi Home Guard but due to injury he couldn't perform further duty and he left/discharged from DHG. Last month he came in contact of one Gauri Dutt, who is also discharged home guard and collecting entry from blue line buses for traffic staff. Gauri Dutt also advised him to collect illegal entry money from the blue line buses for traffic staff and after that he started collecting illegal entry money from blue line buses for traffic staff. The cash amount of Rs.300/- (100x1, 50x4) was kept in an envelope and sealed with the seal of 'MI'. The sealed (NR) envelop and one sheet of paper were seized vide a seizure memo which was signed by Manoj Kumar, Inder Pal conductor of bus No. DL-1PB-1617 and proceedings completed. Meanwhile one Mr. Suresh Kumar S/O S.Lal R/o Village Ghavera, Delhi driver of blue line bus number DL-1PB-3895 also arrived there who also identify Manoj Kumar to be the same person who used to demand and accept illegal entry money of Rs.300/- from the blue line buses on behalf of the traffic staff. The statement of Mr. Suresh was recorded. During the time traffic staff disappeared from the spot.

The above act on the part of constable Radhey Lal No. 3576-T amounts gross misconduct, lack of integrity, indulgences in corruption and dereliction in the discharge of his official duties, which renders him liable for departmental action under the provisions of the Delhi Police (Punishment & Appeal) Rules 1980.

Therefore, I, H.P.S. VIRK, Deputy Commissioner of Police, Traffic (NR), Delhi, with the prior approval of Joint CP/Traffic, Delhi, under rule-15 (2) of the Delhi Police (Punishment & Appeal) Rules 1980, hereby order a regular departmental enquiry against constable Rahey Lal No. 3567-T (PIS no.28951125) to be conducted by Inspr Nav Rattan, TII Route, on day-to-day basis and to submit his findings within three months. The E.O. shall also submit a weekly progress to the undersigned.

Sd/-

*H.P.S. VIRK
DEPUTY COMMISSIONER OF POLICE
TRAFFIC (NR) DELHI"*

8. The Respondent employee did submit a detailed and exhaustive reply stating categorically that he was not present at the spot and he has been falsely implicated. However, a detailed and exhaustive enquiry took place in the matter. The enquiry officer submitted a report on 27.10.2006 and the Respondent employee did submit his defence statement and prayed for exoneration in the matter.

9. The Disciplinary Authority based upon the enquiry report as charge was proved against the Respondent employee passed an order on 13.03.2007 awarding forfeiture of two years of approved service. The Respondent employee thereafter preferred an appeal in the matter and the Appellate Authority has dismissed the Appeal by an order dated 24.07.2007.

10. The Respondent employee being aggrieved by the findings arrived at by the Enquiry Officer, the order passed by the disciplinary authority and the order passed by the Appellate Authority, preferred an Original Application before the Central Administrative Tribunal i.e O.A. No.106/2008 and the Tribunal has allowed the Original Application vide impugned order dated 07.07.2011.

11. Paragraphs 8,9,10,11,12 and 13 of the order passed by the Central Administrative Tribunal reads as under:

“8. We have heard the lengthy submissions of the learned counsel for the parties and perused the entire documents available on record. We have also considered the various judgments of the Apex Court, the Hon’ble High Court of Delhi and this Tribunal relied upon by the Learned Counsel for the Applicant in support of his arguments. The charge against the Applicant was that he was found collecting illegal entry money from the staff of blue line buses by deploying a discharged Home Guard Shri Manoj Kumar and Shri Sanjeev Tyagi TI/PRG nabbed him with the help of PRG Team. Further, according to the charge, Sh. Manoj Kumar disclosed that he worked in Delhi Home Guard 5/6 years back and he along with another discharged Delhi Home Guard, namely, one Gauri Datt was collecting money from the blue line buses for the traffic staff. In our considered view, the aforesaid charge itself suffers from significant credibility issues. During the enquiry proceedings Sh. Manoj Kumar who was cited as PW 9 denied the prosecution story that he was earlier working with the Delhi Home Guard. The Enquiry Officer did not take any effort to verify his aforesaid statement to establish his identity. Again, if Shri Manoj Kumar was actually indulging in extortion of money from the blue lines buses, it is not explained as to why he was not handed over to the local police after having nabbed by the PRG team for registering an FIR and to take criminal proceedings against him.

9. Again, according to the Enquiry Officer himself, he has examined 9 PWs but PW 4, 5 and 6 were formal parties and PWs 1, 7 and 8 were members of the PRG. The PW 2 Inder Pal Singh was the conductor of a private bus No. DL-1PB-1617. His deposition was that a policeman had demanded Rs. 300/- and he paid Rs. 200/- in the previous month and that policeman was caught by 2-3 Checking Officers. In the cross examination he stated that he had given entry money "to the person in the previous month but he could not identify him. In the clarification sought by the Enquiry Officer he stated that he had seen the Applicant at the spot. The PW-3, Suresh Kumar, the driver of bus SPL-1PB-3895, in his deposition has stated that a private person used to collect the entry money from the buses and he was caught red handed by the Checking staff but he himself did not pay any such entry money and as, he had no knowledge about the Applicant. The depositions of both DWs were also in line with the deposition of PW 9 and they have also stated that the applicant was not at the spot.

10. We are conscious of the fact that the scope of judicial review in matters of disciplinary proceedings is very limited. However, cases of no evidence or perverse findings cannot be allowed to go un-interfered. The charge against the Applicant is a very serious one. Unauthorizedly collecting entry money from blue line bus drivers directly or through a conduit is serious case of corruption. However, there should be atleast some evidence to prove such charge leveled against such police officials. Mere conjectures or surmises are not sufficient. During the departmental enquiry proceedings, none of the witnesses have proved that the Applicant was collecting entry money through the PW 9, Manoj Kumar. The PW 1, 7 and 8 have not adduced any evidence during the said proceedings to connect the Applicant and Manoj Kumar to substantiate and prove the charge. Therefore, the findings of the Enquiry Officer to the contrary can be treated only as perverse. The Disciplinary Authority and the Appellate Authority have also proceeded in the matter on the basis of the aforesaid perverse findings of the Enquiry Officer and the unverified report of the PRG team that PW 9 was a discharged DHG.

11. We also find merit in the legal contentions raised by the learned Counsel for the Applicant. According to the preliminary report in the matter, the allegation against the Applicant was illegal and unauthorized collection of entry money from the drivers of the blue line buses through his conduit named Manoj Kumar which is a cognizable offence. But in violation of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rule, 1980, the Joint Commissioner of Police has not applied his mind to take a decision whether a criminal case was to be initiated against him or not. The said authority straight away ordered for the departmental enquiry against the Applicant. 12. Further, the Disciplinary Authority has relied upon the alleged statement of PW 9 Manoj Kumar recorded during the preliminary enquiry but discarded his deposition made during the departmental enquiry, in violation of the Rule 15(3) and 16(3) of the aforesaid Rules. As held by the Apex Court in Narayan Dattatraya Ramteerthakhar, after the full-fledged departmental enquiry was held in the matter, the statement of the witnesses recorded during the preliminary enquiry should not have been given preference over his deposition during the departmental enquiry. 13. We, therefore, allow this OA and quash and set aside the impugned Enquiry Officer's Report and the orders of the disciplinary authority as well as the appellate authority and consequently restore the service of the Applicant. The Respondents shall pass appropriate orders in implementation of the aforesaid directions, within a period of two months from the date of receipt of a copy of this order. No order as to costs. ”

12. The CAT has allowed the Original Application by holding that the findings arrived at by the Enquiry Officer were perverse and the person from whom the money was recovered, Manoj Kumar, PW-9 has categorically denied the prosecution story.

13. The Tribunal has arrived at a conclusion that the Disciplinary Authority has relied upon the statement of PW-9, Manoj Kumar which was recorded during the preliminary enquiry but has discarded his deposition

made during the departmental enquiry in violation of the Rule 15(3) and 16(3) of the Delhi Police (Punishment and Appeal) Rules, 1980.

14. Learned counsel appearing for Government of NCT of Delhi has vehemently argued before this Court that in the present case, the misconduct was proved based upon the evidence of witnesses and merely because the person who gave money to Manoj Kumar has denied the involvement of the Respondent Employee Radhey Lal, it cannot be a ground to exonerate the Respondent employee in the manner and method it has been done by the Central Administrative Tribunal.

15. He has vehemently argued before this Court that Manoj Kumar, PW-9 during the preliminary enquiry has categorically stated that he was collecting money on behalf of Respondent employee Radhey Lal and he has later on retracted from his original statement during the departmental enquiry and, therefore, the enquiry officer has not committed any error in relying upon the statement recorded during the preliminary enquiry and discarding the statement recorded during the regular departmental enquiry. He has prayed for quashment of the order passed by the Central Administrative Tribunal.

16. Learned counsel has argued before this Court that the Tribunal has failed to appreciate the fact that PRG team of Delhi Police has caught the constable red handed along with discharged Delhi home guard Manoj Kumar while collecting money and, therefore, the order passed by the Tribunal deserves to be set aside.

17. He has further argued that the charge of corruption against a public servant is a grave misconduct which tarnishes the image of the department as well as of the police force in the eyes of general public and such practice is required to be suppressed at any cost in view of the law laid down by the Supreme Court in the case of *State of M.P. v. Ram Singh*, (2000) 5SCC 88.

18. He has vehemently argued before this Court that standard of proof in departmental enquiry and criminal proceedings are different and in disciplinary proceedings, the theory of preponderance of probabilities has to be established beyond reasonable doubt. To bolster his contention, reliance has been placed upon *Lalit Popli v. Canara Bank*, (2003) 3SCC 583.

19. He has also argued before this Court that there was no violation of Delhi Police (Punishment & Appeal) Rules, 1980. The competent disciplinary authority has initiated the departmental enquiry and the competent disciplinary authority has passed the order of punishment against which the appeal was also dismissed and the Tribunal has erroneously interfered with the order passed by the disciplinary authority as well as the Appellate authority. Reliance has been placed upon a judgment in the case of *Constable Chander Bhan v. Govt. of NCT of Delhi*, (O.A. No. 5777/2007, decided on 26.05.2010).

20. Learned counsel has also argued before this Court that there was no violation of Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980. It is for the disciplinary authority to direct registration of a criminal case in case of misconduct or to proceed with a departmental enquiry proceedings. Reliance has been placed upon a judgment delivered in the

case of *H.C. Rohtash Singh v. Government of NCT of Delhi & Anr.*, (2008) SCC OnLine CAT 672.

21. Learned counsel has also vehemently argued before this Court that appreciation of evidence as is done by the Tribunal is not permissible in the case of departmental enquiry. There was enough evidence against the respondent employee on the basis of which the charge was established. Reliance has been placed in the case of *Union of India v. Ashok Kumar*, (2005) 8 SCC 760.

22. Learned counsel has also argued before this Court that the Enquiry Officer has not acted as a prosecutor. He has simply asked clarificatory questions and the same is permissible in law. Reliance has been placed upon a judgment delivered in the case of *Delhi Government & Anr. v. Union of India & Anr.*, (2013) SCC OnLine Del 2004.

23. This Court has heard learned counsel for the parties and perused the record.

24. The facts of the case reveal that a charge sheet was issued to the Respondent employee on 08.10.2005 and it was alleged that the Respondent constable while posted at Kotwali Traffic Circle and deployed for duty at Old Delhi Railway Station on 05.08.2005 was found collecting illegal entry money from the staff of blue line buses by deploying a discharged home guard Manoj Kumar.

25. The enquiry officer has held the charges proved after conducting a detailed enquiry and the disciplinary authority based upon the enquiry report

has passed an order dated 13.03.2007 awarding forfeiture of two years of approved service. The Appeal was also dismissed by the Appellate Authority by an order dated 24.07.2007. The Respondent employee being aggrieved by the order passed by the disciplinary authority and the Appellate Authority has approached the CAT, Principal Bench of the Tribunal has allowed the Original Application.

26. It is well settled proposition of law that the scope of interference in departmental enquiries and the punishment awarded thereafter is quite limited. However, the Tribunal and this Court can certainly exercise its jurisdiction in case findings arrived at by the Enquiry officer are perverse or are based upon no evidence. The Tribunal has allowed the Original Application by holding that it is a case of no evidence and also taken into account other grounds raised by the Respondent employee before the Tribunal.

27. The undisputed facts of the case reveal that on 05.08.2005 an inspecting team based upon some input (PRG Surveillance) allegedly reached at the spot where the Respondent employee was posted and deployed for duty at Old Delhi Railway Station.

28. The record of the case reveal that the inspecting team apprehended one Manoj Kumar who took Rs.300/- from the conductor of the bus. Based upon the aforesaid inspection, a preliminary enquiry took place and in the preliminary enquiry, statement made by Manoj Kumar that he had taken money on the instructions of the Respondent employee Radhey Lal. The disciplinary authority, based upon the report submitted in the preliminary

enquiry issued a charge sheet and detailed enquiry took place in the matter. In the enquiry which took place in the matter, the person from whom money was recovered, Manoj Kumar, PW-9 categorically stated that he was travelling in a bus and a fight took place with the conductor and he was caught by two persons and they started abusing him. He has categorically stated that the persons who caught him took his signatures on blank papers and took Rs.300/- which he was carrying and he has, at no point of time, collected any money on behalf of Radhey Lal, the constable in question. The statement of PW-9, Manoj Kumar is reproduced as under:

“Stated that he runs a video game shop in his house. On 5th August last year he had gone to Chandni Chowk in a bus route No.214. He got down at Fatehpuri and had taken another bus for Korla Pul. In that bus one person was quarrelling with the conductor and he got down. After that the conductor started quarrelling with me on the pretext of demand of Rs.2 for ticket. He had boarded that bus keeping in mind that it will terminate at Korla Pul. How I will pay Rs. 2 for a short distance. The conductor started abusing me and in the meantime he was caught by two persons and started abusing/beatng. They had stopped 3/4 buses and were saying that I used to collect entry money from the buses. The buses staff had denied the allegation and left the spot. They were taken him in PS Kotwali and threatened me for arresting. They taken Rs.350/- from my possession and threatened to write as they want otherwise I will be kept in prison. They had taken my signature on 3/4 blank papers and left me keeping Rs.300/- with them. They were saying that you have to keep mum otherwise you will be behind the bars.

During cross-examination he stated that he never served in Home Guard. He never indulged in the practice to collect illegal entry money. The alleged stake money was his own. I do not know any stout built Hawaldar.

During clarification he denied to have knowledge about Gauri Dutt.”

29. The aforesaid statement makes it very clear that the person through whom allegedly the Respondent employee Radhey Lal took money gave him a clean chit. There was another dispute regarding posting of the Respondent employee at the relevant place and to establish his posting at the relevant place at the relevant point of time, statement of Jail Pal Singh, PW-6 was recorded. The statement of PW-6, Jai Pal Singh is reproduced as under:

“Stated that as per duty roster on 05.08.05 Const. Radhey Lal and HC Ramesh Kumar 187/T were deployed at point No. Kot-4 Old Delhi Railway Station. The photocopy of duty roster is Ex. PW-6/A. He stated that as per DD No.9 dated 05.08.05 Const. Radhey Lal 3576/T was deployed at crane No. 6763 and after that he was relieved from crane duty vide DD No.11 and deployed at point No. 4 at about 10:05 AM the copy of DD entry is Ex. PW-6/B.

During cross examination he stated that overwriting and cutting at DD No.11 are very much visible and adding of last line clearly indicative. DD No.11 relates to the arrival of Const. Sita Ram and there should not be made departure of anyone. The arrival of staff is made in DD NO.29 and crane arrival in DD No. 28, however DD No. 29 does not indicate the names of lower subordinates.”

30. The aforesaid statement reveals that there was overwriting in respect of placement of constable Radhey Lal at Old Delhi Railway Station and the statement does not establish that he was present at the relevant point of time.

31. It is true that the members of the surveillance team (PRG Team) PW-1 Sanjeev Tyagi, PW-2 Inder Pal Singh stated categorically that they have seen Manoj Kumar collecting money from the bus conductor, but the fact remains that the constable in question Radhey Lal was never nabbed/ detained at the spot.

32. PW-3, the driver of the bus in question has also given a clean chit to the Respondent employee saying that he does not know Radhey Lal and he was forced to sign some blank documents by the surveillance team (PRG Team). In the aforesaid circumstances, as there was no evidence to establish the nexus between Radhey Lal and Manoj Kumar, there was no recovery of money from Radhey Lal, the Tribunal has arrived at a conclusion that it is a case of no evidence.

33. It is true that in case of departmental enquiry the misconduct has to be proved taking into account preponderance of probability. However, the present case is a case of no evidence and by no stretch of imagination especially in the light of the statement made by Manoj Kumar, the question of interference with the order passed by the Tribunal does not arise.

34. Learned counsel for the Petitioner has relied upon a judgment delivered in the case of ***State of M.P. v. Ram Singh*** (supra). Paragraph 8 of the aforesaid judgment reads as under:

“8. Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to malignise (sic) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence — shaking of the socio-economic-political

system in an otherwise healthy, wealthy, effective and vibrating society.”

35. This Court is also of the view that in case of corruption, misappropriation, there cannot be any other punishment except dismissal/removal from service. In the present case, the punishment awarded was only forfeiture of two years of approved service. In the considered opinion of this Court, once it is a case of no evidence, the aforesaid judgment does not help the Petitioner in any manner.

36. Heavy reliance has been also placed upon a judgment delivered in the case of **Lalit Popli v. Canara Bank** (supra) and paragraph 16 of the aforesaid judgment reads as under:

“16. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See State of Rajasthan v. B.K. Meena [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455] .) In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of “proof beyond doubt” has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.”

37. It is certainly true that the approach and objective in criminal proceedings and disciplinary proceedings is altogether are distinct and different. However, even after taking into account the theory preponderance

of probability, the misconduct has not been proved in the present case and, therefore, judgment in the case of the ***Lalit Popli v. Canara Bank*** (supra) is also of no help to the Petitioner.

38. The Petitioners have also relied upon a judgment delivered in the case of ***Constable Chander Bhan*** (supra). Paragraph 8 of the aforesaid judgment reads as under:

“However, during the pendency of this O.A, the following reference made by the Division Benches including the one in this OA itself was considered by a Full Bench of this Tribunal vide its order dated 26.05.2010 and the same was answered as under:

Reference Answer

“Whether obtaining of prior approval of the Joint Commissioner of Police concerned instead of the Additional Commissioner of Police would meet the requirement of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980?” “Obtaining of prior approval of the Joint Commissioner of Police concerned instead of the Additional Commissioner of Police would meet the requirement of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980”.”

39. Keeping in view the aforesaid judgment, this Court is of the opinion that in the present case the action was initiated by the competent disciplinary authority. However, once the Tribunal has arrived at a conclusion that it is a case of no evidence, the question of interference on the aforesaid ground with the order of the Tribunal does not arise.

40. Reliance has also been placed upon a judgment in the case of ***H.C. Rohtash Singh*** (supra). Paragraph 14 of the aforesaid judgment reads as under:

“14. In view of the discussion made above, we answer the question of law by holding that the Additional Commissioner of Police while choosing between the two options, i.e., as to whether a criminal case is to be registered and investigated, or departmental proceedings should be held, need not record reasons for opting either course of action. Law laid down to the contrary by this Tribunal in OA No. 95/2006 decided on 6.3.2007 in the matter of Naresh Kumar v. Commissioner of Police, taking a contrary view is overruled.”

41. In the light of the aforesaid judgment, this Court is of the opinion that the disciplinary authority was certainly justified in ordering a departmental enquiry and merely because a criminal case has not been registered, it does not help the Respondent constable. However, the interference done by the Tribunal on account of the fact that it was a case of no evidence does not warrant any interference.

42. Heavy reliance has been placed on a judgment delivered in the case of ***Union of India v. Ashok Kumar*** (supra). Paragraph 21 of the aforesaid judgment reads as under:

“21. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only

by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (S. Pratap Singh v. State of Punjab [(1964) 4 SCR 733 : AIR 1964 SC 72] .) It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in E.P. Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] courts would be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Rly. Construction Co. Ltd. v. Ajay Kumar [(2003) 4 SCC 579 : 2003 SCC (L&S) 528] .)”

43. This Court has carefully gone through the aforesaid judgment and the in the considered opinion of this Court once a finding of fact has been arrived at by the Tribunal that it is a case of no evidence, the aforesaid judgment does not help the Petitioner in any manner.

44. Reliance has also been placed upon a judgment delivered in the case of **Delhi Government & Anr. v. Union of India & Anr** (supra). Paragraphs 30 and 33 of the aforesaid judgment read as under:

“30. From a perusal of the findings of the Enquiry Officer, it is clear that the Enquiry Officer has put forth certain questions to the witnesses. It is well settled that the Enquiry Officer does have a right to ask questions as he is not supposed to act as a mute spectator. The Enquiry Officer has ample power to put forth questions to the witnesses to test the authenticity of their statements. Disciplinary proceedings cannot be regarded as

adversarial in nature as the sublime philosophy behind these proceedings is a quest to unravel the truth.

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33. *In a case titled as Badruddin (Sub Inspector (S.I.)) v. Govt. of NCT of Delhi: W.P. (C) No. 7070/2011, a Division Bench of this Court has considered Rule 16 of the said Rules and has observed:*

“7. We have perused the statement of the witnesses as set out in the inquiry report and are unable to fathom any irregularity or violation of any rule therefrom. It cannot be lost sight of that the rules of inquiry proceedings are inquisitorial and not adversarial. A Division Bench of this Court in Om Pal Singh v. UOI held that the purpose of disciplinary inquiry proceeding is to find out the truth and whether or not the misconduct alleged against the delinquent Officer stands proved; in the said proceedings the adjudicatory authority i.e. the Inquiry Officer is empowered to put questions to and cross examine witnesses; that the mere fact that the Inquiry Officer under Rule 15 (The said case also related to Delhi Police and it was the Delhi Police (Punishment and Appeal) Rules 1980 which were under consideration) is required to examine witnesses himself, put questions to the witnesses and cross examine the defence witnesses cannot by any stretch be regarded as violation of Article 311(2) and 14 of the Constitution. From a perusal of the evidence, we are unable to find any irregularity in the Inquiry Officer putting a few questions to the witnesses appearing before him. The Supreme Court as far back as in Workmen v. Buckingham & Carnatic Mills (1970) 1 LLJ 26 held that Inquiry Officer in a domestic inquiry can put questions to the witnesses for clarification wherever necessary and the inquiry proceedings cannot be impeached as unfair on this ground. It was so reiterated in Mulchandani Electrical and Radio Industries v. The Workmen: (1975) 4 SCC 731.”

45. This Court has carefully gone through the aforesaid judgment and is of the considered opinion that the enquiry officer can certainly ask clarificatory questions to the charged official.

46. Learned counsel for the Respondent has placed reliance upon a judgment delivered in the case of ***Dhujender Pal Singh v. Govt. of NCT of Delhi***, W.P.(C) No. 1043/2002, decided on 12.07.2002. Paragraphs 12,13,14,15 and 16 of the aforesaid judgment read as under:

“12. Having considered the matter we are of the opinion that the learned Tribunal posed to itself a wrong question and thus arrived at a wrong conclusion that there was some evidence to prove the charge of corruption against the petitioner.

13. From the evidence on record, it appears that not only no money was demanded by the petitioner but the same had been put in his pocket. Even the co-accused had been held to be not present at the relevant point of time. PW-1 Hitesh Jain stated that no money was recovered from the person of the petitioner. From the evidence of PW-2 Sh. Bhupender Singh, who is an independent witness, it appears that he denied the entire story, The Enquiry Officer did not analyze the evidences adduced in the departmental enquiry at all. He merely recorded the statements of the witnesses. He arrived at the following conclusion:

“I have carefully gone through the statements of PWs. DWs defense statements of both the defaulters and material available on file. Sh. Hitesh Jain the complainant and Sh. Bhupender Singh the public witnesses have not supported the prosecution. It seems that they have been won over by the defaulters. There is no evidence against Ct. Manoj Kumar No. 1383/NE except his presence on the spot on the first day of the incident. Hence the charge against Ct. Manoj Kumar No. 1383/NE is not proved substantially. Although PWs-1 & 2 have turned hostile but keeping in view the statements of PW 3 and 4 (i.e. Sh. B.K. Mishra ACP/PG/Cell/NE and Sh. Suresh Dabas. Inspr./Spl.

Staff/NE) and other evidence available on file the charge against defaulter Ct. Dhujender Pal Singh No. 450/NE is proved.”

14. Despite the fact that PWs 1 and 2 had not been declared hostile nor any prayer was made to cross-examine them the Enquiry Officer proceeded on the basis that they were declared hostile. No permission was obtained from the Enquiry Officer to cross-examine the said witnesses by the Presiding Officer. We cannot subscribe to the view that they were hostile witnesses. As indicated hereinbefore, the Enquiry Officer has also not arrived at a finding as to whether the charge had been proved from the evidences of the said PWs or the material on record. The learned Tribunal, therefore, in our opinion was not correct in arriving at its finding that the charges of corruption have been proved only because there had been alleged recovery of the amount. The findings of the disciplinary authority was, therefore, irrational. Furthermore demand is an essential ingredient for proving the charges of corruption. In this case no amount was demanded by the petitioner by way of illegal gratification and in that view of the matter he cannot be said to have committed the alleged misconduct. In a slightly different situation, the Apex Court in Subhash Parbat Sonvane v. State of Gujarat, 2002 (IV) AD (SC) 580 held:—

“5. In our view, mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i). Section 13(1)(d) is as under:—

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“13. Criminal misconducted by a public servant

(1) A public servant is said to commit the offence of criminal misconduct,

(d) if he -

(i) by corrupt or illegal means obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.”

15. In that case, it was noticed:—

Before the trial court, it was submitted by the learned APP that complaint has not supported the prosecution case on main ingredients of demand and acceptance and was treated hostile. In cross-examination also, he has not supported the prosecution version on demand on acceptance of the amount. The trial court has also observed that the complainant deliberately does not support on the points of demand and acceptance. However, the Court relied upon the evidence of Panch Shailesh Dev shankar Pandya (PW2). We were taken through the evidence of PW2 Pandya and from his evidence, it is difficult to find out any statement made by him that accused demanded any amount from the complainant. The relevant part of the evidence of this witness suggests that when the prosecution party went at the police chowki, accused asked the complainant as why he had come there at that time? To that, complainant replied that he was waiting since one O'clock and that he has brought one witness to be examined. Accused informed him to com in the evening as his writer was not present. When the accused started to go towards toilet, the complainant followed him and he gave something from his pocket to the accused who took the same and put that in his pocket. From this evidence, it cannot be inferred that accused demanded any amount from the complainant or that he had obtained the same. It is apparent that the trial court and the High Court misread the evidence of PW2 and held that there was demand by the accused and the amount was paid to him by the complainant. It was unreasonable to hold that accused demanded money from the complainant. Complainant denied the said story and PW2 had not stated so.”

16. We therefore are of the opinion that the impugned judgment cannot be sustained, which is set aside accordingly.”

47. In the present case also, there was no proof of demand of money. There is no evidence on record that any money was demanded by the

Respondent. The presence of the Respondent employee is doubtful. The person from whom money was recovered has given a clean chit to the Respondent employee and therefore, in the light of the aforesaid judgment, the Tribunal was justified in setting aside the order of punishment.

48. The Rules governing the filed i.e. the Delhi Police (Punishment and Appeal) Rules, 1980 deals with the procedure in respect of departmental enquiry and Rule 15 of the aforesaid Rules reads 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 defaulter(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 straightway. 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.

(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if- the

considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer.”

49. The aforesaid Rule makes it very clear that the preliminary enquiry is a fact finding enquiry and the finding of the preliminary enquiry does not form part of the formal departmental enquiry. It also provides that the statements of preliminary enquiry may be brought on record of the departmental enquiry proceedings when the witnesses are no longer available.

50. In the instant case, the most important witness, Manoj Kumar has categorically stated that he was forced to sign some blank paper during the preliminary enquiry. He has categorically denied the involvement of the Respondent employee in respect of the misconduct and, therefore, this Court is of the considered opinion that the Tribunal was justified in setting aside the order of punishment by holding it to be a case of no evidence.

51. This court also does not find a reason to interfere with the impugned order. The Petition is, accordingly, dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

NOVEMBER 15, 2022

N.Khanna