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

% Judgment reserved on: 23.01.2012
Judgment pronounced on: 27.01.2012

\+ **W.P.(C) 301/2012**

MAHENDER SINGH … Petitioner

versus

GOVT. OF NCT OF DELHI & ORS. … Respondents

Advocates who appeared in this case:
For the Petitioner : M.M.Sudan alongwith petitioner-in-person.
For Respondent : Mr Viraj Datar

CORAM:
HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This writ petition is directed against the order dated 04.7.2011, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") in OA No. 1719/2010, filed by the petitioner was dismissed.

2. The petitioner is a Head Constable in Delhi Police. He was charge-sheeted on the allegation that on 19.2.2008, while posted at Aaya Nagar Police Picket, he stopped a van carrying SI Sanjay Gupta and Head Constable Ranbir of Vigilance Branch of Delhi. The petitioner pointed out to SI Sanjay Gupta and Head

Constable Ranbir that they had not put on their seat belts and asked SI Sanjay Gupta to show his driving licence. It was further alleged that the petitioner told them that they were liable to pay Rs 1200/- as fine. Thereafter, SI Sanjay Gupta talked to the petitioner so as to settle the matter without issue of challan. The petitioner told him that the matter could be settled on payment of Rs 200/- which he should pay to one Constable Jagdish, who was standing nearby. At this stage, Inspector Raj Singh switched on the video camera and took photographs of Constable Jagdish accepting two currency notes of Rs 100/- each from SI Sanjay Gupta and putting them in his pocket. The currency was recovered from the pocket of the trouser, which Constable Jagdish was wearing. The petitioner was caught on the spot, but, taking advantage of a scuffle which ensued there, Constable Jagdish pushed Inspector Raj Singh aside and fled from the spot.

3. The Inquiry Officer concluded that it had been established that the petitioner and Constable Jagdish Singh had indulged in corrupt practice since the petitioner has stopped the vehicle, settled the matter for Rs 200/- for not challaning SI Sanjay Gupta, and Constable Jagdish Singh, on instructions from him, had accepted the amount of Rs 200/-, which was later recovered by the Vigilance Team from his pocket. Vide order dated 16.11.2009, the petitioner was removed from service. The appeals filed by the petitioner as well as Constable Jagdish were dismissed by

the Appellate Authority. The OA filed by the petitioner having been dismissed by the Tribunal, he is before us by way of this writ petition.

4. The impugned order has been assailed by the petitioner on the ground that (i) the inquiry was held in violation of Rule 15(2) of Delhi Police Act (Punishment & Appeals) Rules 1980 and (ii) the CD relied upon during the course of inquiry was not supplied to the petitioner which prejudiced him in making his defence before the Inquiry Officer.

5. The contention with respect to breach of Rule 15(2) of Delhi Police (Punishment & Appeals) Rules, 1980 was also raised before the Tribunal. The contention was rejected on the ground that the charge against the petitioner was purely a matter of internal checking by the Vigilance Team and could not be compared with other crimes committed by the police officials and, therefore, compliance with the provision need not insisted upon in such cases.

Rule 15 (2) of Delhi Police (Punishment & Appeals) Rules, 1980 reads as under:

> "15(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."

The learned counsel for the petitioner submitted before us that the allegations against the petitioner indicate that while, striking a deal with SI Sanjay Gupta, the petitioner presumed him to be a general member of the public and not a police officer and, therefore, the case is clearly covered by Rule 15(2) of Delhi Police (Punishment & Appeals) Rules, 1980. It would be seen from a perusal of the Rule that when the preliminary inquiry discloses that the act committed by a police officer in his official relations with the public discloses the commission of a cognizable offence, the Additional Commissioner of Police has to take a decision as to whether the delinquent police officer should be proceeded against departmentally or a criminal case should be registered against him. No third course of action is envisaged in the Rule. The petitioner before this Court has been proceeded departmentally instead of a criminal case being registered against him. The act and conduct of the petitioner disclosed commission of an offence punishable under Section 7 of Prevention of Corruption Act, 1988 read with Section 13(1)(d) thereof. The punishment prescribed for the said offence is imprisonment which shall not be less than one year, but which may extend to seven years and the accused of such an offence is also liable to pay fine. Therefore, proceeding departmentally was a course of action comparatively favourable to the delinquent than registering a criminal case against him under Section 7 and 13(1)(d) of Prevention of Corruption Act. Since the petitioner was subjected to a

treatment which would be considered rather soft as against the other treatment which the Additional Commissioner acting under Rule 15(2) of Delhi Police (Punishment & Appeals) Rules, 1980 could possibly have given to him, it cannot be said that any prejudice was caused to the petitioner on account of prior approval of the Additional Commissioner of Police having not been obtained, in terms of Rule 15(2) of Delhi Police (Punishment & Appeals) Rules, 1980.

It was contended by the learned counsel for the petitioner that since the charge against an accused is required to be established beyond reasonable doubt, whereas the charge in a departmental inquiry can be established on the basis of preponderance of probabilities, it cannot be said that the course of action adopted in this case was favourable to the petitioner and therefore, no prejudice has been caused to him on account of the designated officer not applying his mind in terms of Rule 15(2) of Delhi Police (Punishment & Appeals) Rules, 1980. We are unable to accept the contention made by the learned counsel for the petitioner. The standard of proof, in our view, is not the determinative factor to decide whether a departmental inquiry or a criminal trial is harsher to a delinquent police officer. We cannot lose sight of the fact that in a departmental inquiry, the maximum punishment which can be awarded to an employee is dismissal from service, whereas in a criminal trial, if charge is proved, he can be sentenced to

imprisonment up to seven years in addition to the fine which can be imposed on him.

We, therefore, hold that since no prejudice was caused to the petitioner on account of the designated officer having not applied his mind as to whether to subject the petitioner to a departmental inquiry or to a criminal trial, the finding recorded by the Disciplinary Authority was not vitiated.

6. Coming to the second contention on behalf of the petitioner, we find that the aforesaid contention was dealt with by the Tribunal in para 15 of the order which inter alia reads as under:

> ……, it is the admitted position that the enquiry officer has played the CD before the Applicant during the enquiry proceedings and he has not disputed it. Neither the Applicant has asked for a copy of the same nor the enquiry officer/disciplinary authority has refused to supply the same. Further, before starting the enquiry proceedings the Applicant himself has admitted before the enquiry officer that he received copies of all the documents and he did not consider that the copy of the CD was necessary for him to defend his case……

During the course of hearing before us, the petitioner was present in the Court and stated that the CD was not played in his presence. He also volunteered to file an affidavit to this effect. The order passed by the Tribunal clearly shows that the petitioner had admitted, during the course of hearing, before it, that the Inquiry Officer had played the CD in his presence during the inquiry proceedings

and he had not disputed the same. In case, no such admission was made by the petitioner, he ought to have filed an appropriate application before the Tribunal, seeking correction of the order dated 4.7.2011, to the extent it referred to the admission made by him. We pointedly asked the learned Counsel for the petitioner as to whether he had stated in the Writ Petition that no such admission was made by the petitioner before the Tribunal and to this extent the order passed by the Tribunal proceeds on an incorrect premise. He very fairly conceded that no such plea has been taken in the Writ Petition. We, therefore, feel that the oral statement made by the petitioner in the Court is just after thought and no credence can be given to it. The Tribunal also noted that before commencement of the inquiry proceedings, the petitioner himself had admitted that he had received copies of all the documents and he had not considered copy of the CD to be necessary in order to enable him to defend his case. Nowhere in the Writ Petition has petitioner denied having made such an admission before the Inquiry Officer. Though it is stated in the petition that the petitioner had requested the Inquiry Officer to supply the copy of CD to him, the record does not indicate any such request having been made to the Inquiry Officer.

However, even if, we exclude the CD from consideration, on the premise that the aforesaid CD could not have been taken by the Inquiry Officer into consideration, we find that there is other evidence on record to establish the guilt

attributed to the petitioner. We find that Inspector Raj Singh, who was a member of the Vigilance Team which travelled in the vehicle which was stopped by the petitioner at Aaya Nagar Police Picket on 19.2.2008, stated before the Inquiry Officer that their vehicle was stopped by Head Constable Mahender Singh, the petitioner before this Court, and Constable Jagdish saying that they were not wearing the seat belt and that Rs 1200/- had to be paid for traffic challan. He further stated that the petitioner told SI Sanjay Gupta that the matter could be sorted out for Rs 200/- and thereupon SI Sanjay Gupta gave Rs 200/- to Constable Jagdish Singh who put the same in his pocket and later on that amount was recovered from him. PW-1 Constable Ram Lal proved the duty roster showing the petitioner posted at Aaya Nagar Police Picket. We also note that during the inquiry proceedings the petitioner did not dispute his being on duty at Aaya Nagar Police Picket on 19.2.2008. PW-3 HC Rambir Singh and PW-4 SI Sanjay Gupta also deposed against the petitioner. Since the oral deposition of the witnesses was also taken into consideration by the Inquiry Officer, it cannot be said that the charge against the petitioner could not be established during inquiry. A perusal of the inquiry report would show that during cross examination of PW-3 to PW-5, the emphasize of the petitioner was on the fact that departure/arrival of the surveillance team was not recorded. This was considered to be procedural lapse by the Inquiry Officer and rightly so. The failure to record departure/arrival does not wash away

the positive evidence of the witnesses who deposed during the course of inquiry. Discussion of evidence by the Inquiry Officer would show that the finding recorded by him was based primarily on the oral deposition of the witnesses and not upon what was captured in the CD. In his analysis of evidence, the Inquiry Officer did not even refer to what was captured in the CD.

7. With respect to the power of the Tribunal or for that matter this Court to interfere with the finding recorded in a Departmental Inquiry, this Court in a recent judgment dated 19.1.2012 in **WPC 2431/2011** ***Ex. Head Constable Manjeet Singh v. Union of India & Ors*** inter alia observed as under:

> It is by now a settled proposition of law that the Court, while considering challenge to the orders passed in disciplinary proceedings does not act as an Appellate Authority and does not reassess the evidence led in the course of the inquiry nor can it interfere on the ground that another view in the matter is possible on the basis of the material available on record. If the Court finds that the inquiry has been conducted in a fair and proper manner and the findings rendered therein are based on evidence, the adequacy of evidence or the reliability of the evidence are not the grounds on which the Court can interfere with the findings recorded in the departmental inquiries. It is not open to the Court to interfere with the finding of fact recorded in such inquiries unless it is shown that those findings are based on 'no evidence' or are clearly perverse. A finding would be considered to be perverse if no reasonable person could have recorded such a finding on the basis of material available before him. Another ground on which the Court can interfere with the findings recorded in a disciplinary proceeding is violation of principles of natural justice or statutory rules or if

> it is found that the order passed in the inquiry is arbitrary, mala fide or based on extraneous considerations. This proposition of law has been reiterated by Supreme Court in a number of cases including ***B.C.Chaturvedi v. Union of India:*** **1995(6) SCC 749, *Union of India v. G.Gunayuthan:* 1997 (7) SCC 463, *Bank of India v. Degala Suryanarayana:* 1999 (5) SCC 762 and *High Court of Judicature at Bombay v. Shahsi Kant S. Patil:* 2001 (1) SCC 416.**

8. In the case before this Court, it cannot be said that the finding recorded by the Inquiry Officer was based on 'no evidence' or was a finding which no reasonable person acting on the material placed before him, after excluding the CD from consideration, could have recorded. No plea of the order passed by the Disciplinary Authority being arbitrary, mala fide or based on extraneous considerations has been raised before us. We, therefore, find no reason to interfere with the finding of the guilt recorded against the petitioner.

9. As regards quantum of punishment, this Court in ***Manjeet Singh*** (supra) inter alia observed as under:

> It is a settled proposition of law that neither the Central Administrative Tribunal nor the Writ Court can interfere with the punishment awarded in a departmental proceeding, unless it is shown that the punishment is so outrageously disproportionate, as to suggest lack of good faith. While reviewing an order of punishment passed in such proceedings, the Court cannot substitute itself for the Appellate Authority and impose a lesser punishment, merely because it considers that the lesser punishment would be more reasonable as

compared to the punishment imposed by the Disciplinary Authority. The Court or for that matter even the Tribunal can interfere with the punishment only if it is shown to be so disproportionate to the nature of the charge against the delinquent official that no person, acting as a Disciplinary Authority would impose such a punishment. The following observations made by Supreme Court in ***V.Ramana v. A.P.SRTC And Others:*** **(2005) III LLJ 725 SC** are pertinent in this regard:

"The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

In ***B.C.Chaturvedi (supra)***, Supreme Court, after considering a Constitution Bench decision in ***State of Orissa And Others v. Bidyabhushan Mohapatra: (1963) ILLJ 239 SC*** and some other decisions, inter alia held as under:

> A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

10. The Disciplinary Authority in our view rightly observed that indulgence of a public servant in activities such as demand and accepting money needs to be dealt with a heavy hand and retention of police officials indulging into such activities is undesirable and not warranted in public interest. The Appellate Authority found no reason to interfere with the punishment awarded to the petitioner. Considering the nature of the charge established against the petitioner, it cannot be said that the penalty imposed on him is wholly disproportionate to the charge proved against him or is such as to shock the conscience of the Court. We are in agreement with the view that a police official indulging into such corrupt activities should not be allowed to continue in service and needs to be weeded out from the police force.

11. For the reasons given in the preceding paragraphs we find no merit in the Writ Petition and the same is hereby dismissed, without any order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

JANUARY 27, 2012
bg/vn