

**(2013) 10 DEL CK 0394**

**In the Delhi High Court**

**Case No : Writ Petition (C) 3682 of 2013**

Commissioner of Police and Others

APPELLANT

Vs

Brahm Prakash

RESPONDENT

---

**Date of Decision : 21-10-2013**

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 1, 14

**Citation : (2013) 10 DEL CK 0394**

**Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J**

**Bench : Division Bench**

**Advocate : Ruchi Sindhwani and Ms. Bandana Shukla, for the Appellant;  
Sourabh Ahuja, for the Respondent**

**Final Decision : Allowed**

---

## **Judgement**

Pradeep Nandrajog, J.—The present writ petition challenges the order dated November 20, 2012 passed by the Central Administrative Tribunal in OA No. 1928/2011 wherein the Tribunal has quashed the findings of the Inquiry Officer, the penalty order dated March 18, 2010 imposing a penalty of forfeiture of five years" approved service upon the respondent as well as the order dated May 25, 2010 rejecting the appeal filed by the respondent against the order dated March 18, 2010 passed by the disciplinary authority. The respondent was enrolled as a Constable with the Delhi Police in the year 1993, and on August 22, 2008, on the allegation that he and HC Birender Kumar had let off one Vicky s/o Inder Singh in case FIR No. 814/06 after accepting an illegal gratification in sum of Rs. 5000/-, a joint inquiry was conducted against the respondent and HC Birender Kumar at which only respondent was indicted.

2. As required by the Delhi Police (Punishment & Appeal) Rules, 1980, the domestic disciplinary inquiry commenced when a Summary of Allegation was drawn up on March 09, 2009 against respondent and HC Birender Kumar, which reads as under:

It is alleged against HC Birender Kumar, No. 321/SW (now 108/DAP)(PIS No. 28822451) and Const. Brahm Prakash, No. 961/SW (now 917/DAP)(PIS No. 28930188) that on 28.9.06 an information was received from PCR that one bag was lying near Telephone Exchange which was recorded vide DD No. 9-A, dated 28.9.06 P.S. Dwarka and was marked to ASI Satyawar for further necessary action. ASI Satyawar was not available at that time, hence, on the directions of Duty Officer, Const. Brahm Prakash, No. 961/SW reached the spot where the staff of PCR Van Z-80 told him that they had apprehended two bootleggers, namely Ram Singh s/o Jai Singh and Vicky s/o Inder Singh with a Pulsar Motor Cycle and 144 quarters of illicit liquor. As the Const. was alone, he requested the PCR staff to carry the bootleggers and the liquor to the Police Station, Dwarka. The PCR staff brought them to PS, Dwarka and handed over to Const. Brahm Prakash. Both of the bootleggers were produced before SHO/Dwarka and the PCR call was entrusted to HC Tejpal, No. 411/SW. Later on, PCR staff was also called at Police Station and HC Tejpal, No. 411/SW obtained the signature of HC Waryam Singh, No. 650/PCR on a blank paper and in connivance with HC Birender Kumar, No. 321/SW Duty Officer and Const. Brahm Prakash No. 961/SW prepared "tehrir" showing that there was only one accused, namely Ram Singh s/o Jai Singh and 120 quarters illicit liquor was shown recovered vide case FIR No. 814/06 dated 28.9.06 u/s. 61/1/14 Excise Act, PS Dwarka. Another accused Vicky s/o Inder Singh was let off free and also did not deposit 24 quarters with ulterior motive and mala fide intention. All the facts were in the notice of HC Birender Kumar but he did not arise any objection at the time of registration of said case. It is further alleged that Const. Brahm Prakash, No. 961/SW took Rs. 5000/- from Inder Singh f/o Vicky to let him off and to bail out Ram Singh.

The above act on the part of HC Birender Kumar, No. 321/SW (now 108/DAP) and Const. Brahm Prakash, No. 961/SW (now 917/DAP) amounts to grave misconduct, negligence, dereliction in the discharge of their official duties which renders them liable to be dealt with departmentally under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980.

3. The summary of allegation brings out that as per the department, the role of respondent and that of HC Birender Kumar was distinct and severable. As per the allegation, it was the respondent who received Rs. 5000/- from Inder Singh, father of Vicky, to let him off and to bail out Ram Singh. HC Birender Kumar, being the Duty Officer at PS Dwarka at the time, did not raise any objection and allowed the misdemeanour to be perpetuated under his nose was the allegation against HC Birender Kumar.

4. Since both officers pleaded not guilty, an Inquiry Officer was appointed as required by the Delhi Police (Punishment & Appeal) Rules, 1980, before whom the Department examined 11 witnesses.

5. HC Raghuvinder PW-4 proved the record of the entries made in the PCR logbook on September 28, 2006; facts not in dispute. Ct. Sandeep Kumar PW-5 proved the record establishing both petitioner and HC Birender Kumar being

posted at PS Dwarka; facts not in dispute. Ct. Narveer PW-6 deposed regarding the service of the order initiating disciplinary proceeding upon the two charged officers; again a fact not in dispute. HC Satender Kumar PW-7 proved DD Entry 9-A dated September 28, 2006 as well as FIR No. 814 dated September 29, 2006 for offences punishable u/s 61/14 of the Excise Act; HC Daljeet Singh PW-8 proved the duty roster for September 28, 2006; and HC Shanti Ram PW-9 proved the seizure memo in case FIR No. 814/2006; all being facts not in dispute.

6. ASI Laxman Singh PW-1 deposed that he was posted as the driver of PCR Van No. Z-80 at South West Zone, along with HC Wariyam Singh on the intervening night of 27/28 September 2006. At about 08:00 A.M. they received a call regarding an unclaimed bag and he along with HC Wariyam Singh reached the red light opposite the MTNL office, Sector-6 Dwarka where they saw a crowd and two boys with a Pulsar motorcycle, bearing registration No. DL 8S AF 6294. Someone from the crowd handed them three carry-bags, stating that they contained liquor. The bags were then checked and 144 quarters of Bonny Scot whisky were recovered. The same was then communicated to the control room as well as to the local police. After sometime, the I/C van was intimated by ASI Satyawan that respondent would arrive at the spot and the two boys as well as the recovered liquor be handed over to him. After sometime, respondent reached the spot and the I/C Van handed over the two boys along with the alcohol recovered. After that they left the spot.

7. During cross-examination, PW-1 stated that he was called to PS Dwarka the next day and was verbally questioned by the SHO regarding the incident. When questioned as to whether he saw respondent or HC Birender Kumar release Vicky, he replied in the negative. When asked whether Inder Singh had given Rs. 5,000/- to the respondent to secure the release of his son Vicky in his presence, he replied in the negative.

8. HC Wariyam Singh, PW-2 stated that on September 28, 2006 he was on duty at Van No. Z-80 with driver PW-1 and deposed a version of events identical to that given by ASI Laxman Singh PW-1.

9. During cross-examination, when asked as to whether on September 28, 2006 he saw either the respondent or HC Birender Kumar release Vicky, he replied in the negative. When question was put as to whether Inder Singh, father of Vicky gave Rs. 5000/- to respondent in his presence, he stated that he did not.

10. HC Rohtash Singh PW-3 deposed that on September 28, 2006 he was sent for duty to I/C Van No. Z-80 but when he reported for duty in the morning the van was not at the base. He enquired about the same from the Duty Officer of the Zonal Office, Mayapuri who told him that van Z-80 was attending a PCR call. He then reached the red light at Sector 23, Dwarka. In his presence, in the morning of September 28, 2006 I/C Van HC Wariyam Singh handed over the two boys and the three bags containing liquor at PS Dwarka. During cross-examination, when questioned as to whether HC Wariyam Singh and ASI Laxman

Singh had brought the two boys and the bags containing the alcohol to PS Dwarka while he was present, he replied in the affirmative.

11. Vicky s/o Sh. Inder Singh PW-10 deposed that he had previously given a statement on November 02, 2007 at PS Dwarka and the same was correct. The statement dated November 02, 2007 reads as under:

It is stated that I am resident of the above-mentioned address. On 30.09.2006 I along with Ram Singh was bringing one pethi (box) of Bonnie Scot liquor from Gurgaon. Ram Singh was driving my Pulsar motorcycle and I was sitting on the backseat of the motorcycle. When we reached near the MTNL Office, Dwarka we had a small accident with another motorcycle upon which a nearby PCR Van became suspicious of our activities. Ane Sardar Constable questioned and checked them whereupon he found the liquor and he took us to the police station and handed us over to Constable Brahm Singh and HC Tej Pal. From the police station I called my father Inder, who arrived at the police station and after some discussion gave Rs. 5,000/- and got me and the motorcycle released and posted the bail of Ram Singh. Before this the Head Constable along with the Constable presented as before the SHO. His father gave the money to the Head Constable and Constable in front of him. I have understood the statement and the same is correct.

12. During cross-examination he stated that neither he nor his father made any complaint to the SHO regarding the demand of Rs. 5,000/- made by HC Birender Singh and the respondent. He also stated that the co-accused Ram Singh did not tell him that he had made any complaint against any police officer regarding Vicky's release after they had demanded Rs. 5,000/- as bribe.

13. Inder Singh PW-11, the father of Vicky, deposed that on September 30, 2006 Vicky, along with another relative, Ram Singh brought 48 quarters of Bonny Scott whisky from Gurgaon and met with a minor accident with another motorcycle at Sector-6, Dwarka. A PCR Van stationed nearby apprehended both of them after conducting their search. They were then brought to PS Dwarka where his son Vicky informed him over telephone about their arrest. He reached PS Dwarka where he posted bail of Ram Singh and gave Rs. 5,000/- as bribe to HC Tejpai Singh and the respondent to get his son Vicky released. They did not take any action against Vicky and released him as well as the motorcycle.

14. During cross-examination, when question was put to him whether HC Birender Singh had demanded any money from him he replied that his eyesight was poor so he could not see HC Tejpai Singh and respondent who had demanded Rs. 5,000/- from him. He further stated he had not made any complaint against them. When asked whether other police officials were also present in the room when the amount was paid to HC Tejpai and the respondent, he replied in the affirmative. Lastly, he stated he had given a prior statement in court regarding demand of bribe to secure the release of his son Vicky.

15. Being of the opinion that the evidence recorded justified the framing of a

charge, the Inquiry Officer framed the charge, as required by the Delhi Police (Punishment & Appeal) Rules, 1980; wording it identically to the summary of allegations, and the same was served upon the respondent and HC Birender Kumar on August 27, 2009 and August 29, 2009 respectively. The two were thereafter permitted to lead defence evidence.

16. Respondent and HC Birender Kumar produced one witness in defence, namely HC Raghubir Singh DW-1, who deposed that he was posted as a Naib Constable in the court of Sh. Sanjay Jindal ACMM, Dwarka Courts. The charge under Sections 61/14 of the Excise Act had been framed only against accused Ram Singh and no further proceedings had taken place. Statement made by Inder Singh PW-11 had not been recorded so far by the court and neither was he called by the Court as he had not been made a witness in the said case.

17. The two officers submitted a joint defence statement dated October 14, 2009 stating that Inder Singh PW-11 was making contradictory statements and they highlighted that during his cross-examination he had stated that he had given his evidence before the Court whereas, as per HC Raghubir Singh DW-1, no notice/summons had been issued to any witness by the Court. Thus, it was urged that the testimony of Inder Singh PW-11 could not be believed. It was highlighted that ASI Laxman Singh PW-1, HC Wariyam Singh PW-2 and HC Rohtash Singh PW-3 did not depose anything in respect of the allegations levelled against them. They did not see the two demanding money, neither did they see the two releasing Vicky PW-10. Further, it was pleaded that Vicky PW-10 merely stated that Rs. 5,000/- was given by his father to release him but the name of the officers was not mentioned and neither were they identified. No formal complaint was made.

18. Considering the defence, the Inquiry Officer, in his report dated December 22, 2009 noted the statements of the PCR Staff that two persons along with the motorcycle and the illicit liquor were handed over to the respondent. The PCR staff categorically stated that two persons, a motorcycle and 144 quarters of liquor were taken to PS Dwarka but the record showed only one person by the name of Ram Singh being booked u/s 61/14 of the Excise Act. Further, contents of the FIR showed lesser quantity of liquor and named only one accused. While admitting that there were some contradictions in the statements of PW-11 Inder Singh, the Inquiry Officer held that the same would not discharge the defaulters as the whole record indicated that there was some mala fide intention on their part because less quantity of liquor was shown in the seizure memo and Vicky was released. Accordingly, he held the charge to be proved.

19. Required to respond to the report of the Inquiry Officer, respondent challenged the same on the same lines as the pleas taken in the defence statement. Similarly, HC Birender Kumar submitted a response highlighting that the Inquiry Officer had not carefully considered the response and had painted him with the same brush as was used to paint the respondent.

20. Brushing aside the objections filed by the respondent to the report of the Inquiry Officer, the disciplinary authority vide order dated March 18, 2010 levied the penalty of forfeiture of five years' approved service entailing consequential reduction in pay upon the respondent. The disciplinary authority found that the role of the respondent in the entire episode was proved beyond doubt, but acquitted HC Birender Kumar.

21. Aggrieved by the penalty order, the respondent filed an appeal to the Special Commissioner of Police, the Appellate Authority, which was rejected vide order dated May 25, 2010 against which the respondent filed OA No. 1928/2011 before the Central Administrative Tribunal.

22. Pertaining to the penalty levied, the contentions urged by the respondent before the Tribunal were the same which he had urged in his defence statement and later before the disciplinary authority. The respondent also highlighted that the departmental inquiry was preceded by a preliminary inquiry in which he was absolved and stated that said aspect had been overlooked by the disciplinary as well as the appellate authority.

23. The Original Application was allowed by the Tribunal vide order dated November 20, 2012.

24. After perusing Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980 the Tribunal observed that the very purpose of holding a preliminary inquiry is to find out if the named official is at fault or not. The Tribunal opined that since the preliminary inquiry had absolved the respondent there was no valid ground to proceed against him for a regular departmental inquiry. The Tribunal further held that there was no evidence to prove that the respondent had extorted Rs. 5,000/-. The Tribunal further observed that the statement of one Bagh Singh was taken into consideration in the inquiry proceedings despite he being dropped as a prosecution witness. Relying upon the decision reported as Roop Singh Negi Vs. Punjab National Bank and Others, , the Tribunal held that a statement recorded during preliminary inquiry could not be used unless the maker thereof was examined at the regular inquiry.

25. A perusal of the evidence led at the inquiry would establish that it stands proved that the respondent was on duty at PS Dwarka on September 28, 2006 when DD No. 9-A was recorded by HC Birender Kumar, the Duty Officer and was marked for investigation to ASI Satyawar who was not present at the Police Station and thus copy of DD No. 9-A was entrusted to the respondent with a direction to reach the spot where ASI Satyawar was present so that DD No. 9-A could be handed over to ASI Satyawar for investigation. Probably for the reason ASI Satyawar could not reach the spot where two boys were apprehended with alcohol, and since PCR Van No. Z-80 had reached the spot, as deposed to by ASI Laxman Singh PW-1 ASI Satyawar intimated the Incharge of the PCR Van that the respondent would arrive at the spot and the custody of two boys and the alcohol recovered be handed over to the respondent. It further stands proved

through the testimony of ASI Laxman Singh PW-1 that the respondent reached the spot. The depositions of ASI Laxman Singh PW-1, the driver of the van and HC Wariyam Singh PW-2, the other officer on duty in the PCR Van lends credence to the aforestated version of events. Both witnesses deposed nearly identically, stating that they had apprehended the boys and when the respondent arrived, they were handed over to him along with the liquor recovered. It is obvious that a large quantity of liquor having been recovered, respondent was unable to transport the same himself and so he requested the PCR Van to do the needful. Ram Singh, Vicky and the entire illicit liquor recovered were transported by the PCR Van to the police station and in said regard the version of the officers of the PCR Van that they left from the spot after handing over the two boys and liquor to the respondent appears to be a slight blemish, requiring to be overlooked.

26. The evidence also brings out that both Ram Singh and Vicky as well as the entire liquor recovered reached the police station safely. Said facts stand proved from the statements of various witnesses.

27. The evidence also establishes that when everybody reached the Police Station HC Birender Kumar was directed to take over the further investigation.

28. It is at this point in time that the facts have become a little nebulous, in that, whether it was the respondent who allowed Vicky to go scot free and received illegal gratification in sum of Rs. 5000/- from Inder Singh. But we find that the light thrown by the testimony of Inder Singh who categorically deposed to have given a bribe in sum of Rs. 5000/- to a police official, whom he names as the respondent, removes the state of nebulousness.

29. The FIR registered admittedly records only name of one person as an accused i.e. Ram Singh. The seizure memo Ex. PW-9/A has been drawn up by HC Tejpal but bears respondent's signatures as a witness.

30. Thus, the involvement of the respondent is clearly been brought out by the evidence on record. The clinching factor in this case, is the statement of Vicky proved as Ex. PW-10/A. In the statement recorded on November 02, 2007 he stated:

From the police station I called my father Inder, who arrived at the police station and after some discussion gave Rs. 5,000/- and got me and the motorcycle released and posted the bail of Ram Singh. Before this the Head Constable along with the Constable presented as before the SHO. My father gave the money to the Head Constable and Constable in front of him. I have understood the statement and the same is correct.

31. As regards the decision of the Tribunal, the less said the better. The reasoning of the Tribunal to find fault with the report of the Inquiry Officer with reference to the statement of one Bhag Singh, to say the least is perverse. A perusal of the report of the Inquiry Officer would reveal that neither in the narrative nor in the discussion of evidence he has made a mention to Bhag

Singh's statement recorded during the preliminary inquiry. The mere fact that along with the Summary of Allegation, in the list of witnesses the name of Bhag Singh was mentioned as a witness proposed to be examined and in the list of documents Bhag Singh's statement recorded during preliminary inquiry was mentioned has been converted by the Tribunal to as if the Inquiry Officer relied upon Bhag Singh's unproved statement. We reiterate. The Inquiry Officer has not even made a mention, much less discussed the statement of Bhag Singh.

32. As regards the reasoning of the Tribunal that since the preliminary inquiry report absolved the respondent, the department could not have initiated disciplinary proceedings against the respondent, suffice it to state that if the officer conducting a preliminary inquiry wrongly opines on a matter of fact to absolved an officer who is suspect at the stage of the preliminary inquiry, nothing precludes the competent authority to examine the facts brought out at the preliminary inquiry and then determine whether case is made out to proceed for a regular inquiry. It is trite that the purpose of a preliminary inquiry is not to determine innocence or guilt, but is to gather evidence pertaining to an allegation, leaving it to the disciplinary authority to decide whether the evidence gathered at the preliminary inquiry warrants a disciplinary proceeding to be initiated.

33. The writ petition is accordingly allowed. Impugned decision dated November 20, 2012 passed by the Central Administrative Tribunal allowing OA No. 1928/2011 is set aside and OA No. 1928/2011 is dismissed. The penalty imposed upon the respondent is restored. No costs.