

(2009) 11 DEL CK 0136

In the Delhi High Court

Case No : Writ Petition (C.) No. 6027 of 2006

Gurdeep Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 15(1), 16(3)

Citation : (2010) 1 SLR 141

Hon'ble Judges : Vipin Sanghi, J;Anil Kumar, J

Bench : Division Bench

Advocate : Anil Singal, for the Appellant; J.K. Chaudhary, for the Respondent

Judgement

Anil Kumar, J.—The petitioner, an Assistant Sub Inspector of Delhi Police has challenged the order dated 3rd September, 2004 of the Central Administrative Tribunal in O.A No. 20/2004 titled Gurdeep Singh v. Union of India through Secretary, Ministry of Legal Affairs, New Delhi and Ors. dismissing his petition against the order dated 16th September, 2002 of the disciplinary authority imposing punishment of reduction in rank from Sub Inspector to Assistant Sub Inspector, and dismissal of his departmental appeal by order dated 24th July, 2003 passed by the Appellate Authority.

2. Brief facts to comprehend the disputes are that a departmental enquiry was initiated against the petitioner and constable Rajbir Singh co-defaulter by order dated 12th September, 2001 on the allegation that on 21st July, 2001 while posted in Hauz Khas traffic circle, at M.B. Road about 1 km ahead from Saket/ Neb Sarai Traffic "T" Point they were collecting illegal entry money from commercial vehicles.

3. The allegation of collecting illegal entry money from commercial vehicles was based on an incident in which at about 12.20 PM co-accused Constable Rajbir Singh stopped truck No. HR 38E-9439 coming from Lado Sarai side and going towards Badarpur side and asked the driver Imtiaz of Shiv Transport Company

Hapur (U.P) to get down and took him to ZO/SI Gurdeep Singh/petitioner. Rs. 150/- was demanded and accepted out of which Rs. 100/- was challan money and Rs. 50/- was illegal entry money. One of the currency note of denomination Rs. 50 which was received by Rajbir Singh was found to be counter signed by the PRG team. It was alleged against the petitioner and Constable Rajbir Singh that they had assembled at the spot with common malafide intention to collect illegal entry money from commercial vehicles. Against the petitioner the allegation was also made that instead of restraining his subordinate from indulging in illegal activities he was also instrumental in collecting illegal entry money from commercial vehicles and, therefore, their acts amounted to gross misconduct and dereliction in discharge of their official duties and they became liable to be dealt with departmentally under the provision of Delhi Police (Punishment and Appeal) Rules, 1980.

4. The petitioner and other co-accused Rajbir Singh did not admit the allegations and they opted for a departmental enquiry and also engaged Sh. Harruhal Singh, a retired Sub Inspector as their defense assistant. In the departmental enquiry the statement of Head Constable Rajpal Singh; Inspector V.P. Dahiya; SI Dharamveer Singh; Inspector Jagdish Lal Sethi; Sh. Sanjiv Dhani, Posting clerk; SI Kapil Prasar, PRG Team; Sh. Brijesh Kumar Mishra, ZO/K.K. Circle traffic were recorded and they were cross examined. The petitioner examined Sh. Rajinder Singh alleged to be a driver of vehicle No. DL-1L-A-2868; Sh. Ramesh Kumar; Sh. Shankar and Sh. Davinder Singh.

5. The enquiry officer submitted his report dated 27th June, 2002 holding that the charge against the petitioner and the co-accused had been made out without any shadow of doubt. Disciplinary authority considered the report of the enquiry officer including the pleas raised by the petitioner that the driver of the vehicle was not produced during the enquiry to enable the petitioner to cross examine him and there is no evidence regarding implication of the petitioner as it has not been established that the illegal entry money was demanded by him from the driver and that the same was not even collected by or recovered from the petitioner. After carefully considering the entire evidence and the statement of the petitioner, penalty of reduction in rank from Sub Inspector to Assistant Sub Inspector was imposed on the petitioner. An appeal filed by the petitioner on 27th September, 2002 was also dismissed by the appellate authority by order dated 24th July, 2003 confirming the punishment of reduction of rank from Sub Inspector to Assistant Sub Inspector. The original application filed by the petitioner before the Central Administrative Tribunal was also dismissed by order dated 3rd September, 2004 which is impugned in the present petition.

6. The learned Counsel for the petitioner has relied on a number of precedents to contend that there is no evidence that the petitioner was aware of illegal money taken by Sh. Rajbir Singh, constable and that none of the witnesses have deposed that demand was raised by the petitioner. The emphasis has also been laid on the fact that Imtiaz the driver of the truck who is alleged to have paid the

bribe has not been examined and relying on Rule 16(3) of Delhi Police (Punishment and Appeal) Rules, 1980 it is contended that the statement of the driver recorded during the preliminary enquiry could not be relied on as the statement was recorded by the PRG Team and it had not been recorded and attested by a police officer superior in rank to the accused officer/petitioner nor it was recorded in a judicial enquiry or trial. It is also asserted that before such a statement of the driver, could be relied upon it was necessary for the enquiry officer to form and record his opinion that the witnesses presence cannot be procured without undue delay, inconvenience or expense.

7. The learned Counsel for the petitioner has also laid emphasis on the plea that the recovery of money, alleged entry money of Rs. 50/-, was also from the co-accused constable Rajbir Singh which was not sufficient to prove the charge against the petitioner in absence of any corroborative or direct evidence. Regarding the statements of the officers of the PRG team it is contended that their evidence in this regard is hear say and cannot be relied on and in any case none of the witnesses have deposed categorically that the demand for illegal entry money was made by the petitioner and in the circumstances the inferences by the enquiry officer and disciplinary officer are based on conjectures which cannot take the place of reliable cogent evidence. The learned Counsel for the petitioner has also contended that no serious efforts were made by the enquiry officer to record the statement of driver Imtiaz Ali and as such no reasonable opportunity was given to the petitioner to cross examine the driver before his earlier recorded statement was relied upon.

8. To refute the allegations of the petitioner it is contended on behalf of respondents that the evidence adduced on behalf of respondents is sufficient to draw an inference that the demand for illegal entry money was within the knowledge and with tacit consent of the petitioner and he could not be ignorant of the demand made from the driver of the truck. Relying on the statement of PW.2 Sh. V.P. Dahiya it is contended that he deposed that during surveillance in the area, truck drivers who had been going on that route had disclosed to him that the petitioner and his constable were collecting Rs. 50/- as illegal entry money with the challan or without challan. Consequent to the complaints one truck driver Imtiaz truck No. HR 38E-9439 was contacted and the facts were explained to him who had also agreed with the version of other drivers about illegal money being extracted and, therefore, he joined the raiding party willingly and also took two currency notes signed by the raiding party, one of Rs. 100/- and another of Rs. 50/- and also signed the memo which has been duly proved. From the evidence it has also been contended that ZO/petitioner was standing near the constable Rajbir Singh from whom Rs. 50/- signed currency note collected illegally was recovered. It is contended on behalf of the respondents that the petitioner was not a stranger to the constable Rajbir Singh and in the facts and circumstances it can be inferred that the petitioner was not oblivious of collection of illegal entry money by his constable. The learned Counsel has also contended that the demand for illegal entry money was by both of them. It has

also been pleaded by the learned Counsel for the respondents that the driver of the truck could not be produced despite diligent efforts made and consequently the proceedings will not be vitiated. On the basis of the entire evidence produced in the matter, it is asserted that there is sufficient evidence to draw an inference on the basis of preponderance of probability that the petitioner was also involved in demanding and collecting the illegal entry money through his constable Sh. Rajbir Singh and had common malafide intention with him and did not take any action in restraining his subordinates from indulging in the illegal act of collection of illegal entry money from the commercial vehicles.

9. The learned Counsel for petitioner has relied on Delhi Transport Corporation Vs. Shyam Lal, Dhujender Pal Singh v. Govt. of NCT of Delhi and Ors. Hardwari Lal Vs. State of U.P. and Others, .; Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, (4) SCT 842 M.L. Jindal v. Delhi Vidyut Board and Ors.; WP(C) Nos. 18390-92/2006 Union of India and Ors. v. J.P. Singh, decided on 22nd January, 2007; WP(C) No. 6503/2008 Hari Singh v. Govt. of NCT of Delhi decided on 5th September, 2008; Central Bank of India Ltd. Vs. Prakash Chand Jain, ; Kuldeep Singh Vs. The Commissioner of Police and Others, . and WP(C) No. 9473/2007 Constable Rajender Kumar v. Govt. of NCT of Delhi and Ors. (FB) decided on 17th April, 2009 in order to contend that there is no evidence against the petitioner as it has not been established by anyone of the witnesses that demand for illegal entry money was made by the petitioner and recovery of signed currency note of denomination Rs. 50/- does from Constable Rajbir Singh not implicate the petitioner in any manner.

10. The precedents relied on behalf of petitioner do not help his case nor support the pleas raised on his behalf as they are distinguishable. It is no more res integra that the ratio of any decision must be understood in the background of the facts of that case. What is of essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases. In Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, vide para 59), the Supreme had observed:

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

In Ambalal Manibhai Patel Vs. State of Gujarat, the Supreme Court had observed:

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

11. In Central Bank of India (supra), certain acts of delinquent employee were

alleged to be prejudicial to the interest of the Bank and an enquiry was conducted and the Enquiry Officer held that the acts of the delinquent employee were prejudicial to the interest of the Bank and amounted to gross misconduct and consequently, the punishment of dismissal from the service was recommended. The Supreme Court while dealing with the procedure adopted by the Enquiry Officer, had held that Domestic Tribunals like an Enquiry Officer are not bound by the technical rules about the evidence contained in the Indian Evidence Act. However, substantive rules which would form part of the principle of natural justice are to be followed by such Domestic Tribunals. It was further held that the principle that a fact sought to be proved must be supported by statements made in the presence of person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that the Domestic Tribunals are not bound by the technical rules or procedures contained in the Indian Evidence Act. The Court in the facts and circumstances of this case had held that the Domestic Tribunal was not justified in recording its finding on the basis of hearsay evidence without having any other direct or circumstantial evidence in support of those findings. In this case, the charge relating to payment of the sum of Rs. 30,400/- to the delinquent employee and the delinquent employee leaving for Muzaffarnagar in the company of some other person, in order to retire the bills drawn by M/s Gupta Iron Industries were sought to be proved before the Enquiry Officer by the evidence of an Internal Auditor, who could not give any direct evidence as he was not present at the time when the money was paid to the employee and when the delinquent employee left for Muzaffarnagar. The Internal Auditor purported to prove these incidents by deposing that the statement was made to him by one person Nand Kishore that he had paid Rs. 30,400/- to the delinquent employee where after he left for Muzaffarnagar in the company of two more persons, which evidence had been accepted by the Enquiry Officer. Such a hearsay evidence was rejected as there was no other direct or circumstantial evidence in support of such hearsay evidence.

12. However in another case reported as *Workmen of Balmadies Estates Vs. Management Balmadies Estate and Others*, the Supreme Court had held that in view of wide power of domestic tribunals, in an appropriate case, the strict principles of evidence act are not applicable and guilt of a delinquent is not to be established only on the basis of proof beyond reasonable doubt but proof of misconduct is sufficient and all relevant material including hearsay evidence can be acted upon. The Supreme Court in para 10 had held as under:

10. It is fairly well settled now that in view of the wide power of the Labour Court it can, in an appropriate case, consider the evidence which has been considered by the domestic tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the domestic tribunal. The assessment of evidence in a domestic enquiry is not required to be made by applying the same yardstick as a civil court could do when a lis is brought before

it. The Evidence Act, 1872 (in short 'the Evidence Act') is not applicable to the proceeding in a domestic enquiry so far as the domestic enquiries are concerned, though principles of fairness are to apply. It is also fairly well settled that in a domestic enquiry guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility.

13. The Statements made to a checking officer by the passenger was held not to be in the nature of hearsay evidence. In *Delhi Transport Corporation Vs. Shyam Lal*, the Supreme Court had held as under:

7. We find that the Tribunal's conclusions are prima facie not correct. The statement made by the passenger who had paid excess money to the checking officer is not in the nature of hearsay evidence. Additionally, the effect of the admission regarding guilt as contained in the letters dated 13-1-1989 and 24-2-1989 have not been considered in the proper perspective. It is a fairly settled position in law that admission is the best piece of evidence against the person making the admission. It is, however, open to the person making the admission to show why the admission is not to be acted upon.

14. In *Hari Singh (supra)*, a Division Bench of this Court had disbelieved the evidence of inspecting staff who had admittedly seen nothing and who were told by the tempo drivers that they had paid Rs. 150/- each to the Constable against whom departmental proceedings were initiated who had challaned two tempo drivers and as against a fine of Rs. 100/- each they accepted Rs. 150/- each that is Rs. 50/- more than the compounding amount. The Enquiry Officer had accepted the version of the inspecting staff and which was also accepted by the Disciplinary Authority and who imposed punishment of withholding one increment temporarily for a period of one year and treating the period of suspension as not spent on duty. In this case, two tempo drivers had stated initially that they had paid Rs. 150/- each to the Constable but later they had resiled from their statements. The Enquiry Officer and Disciplinary Authority had relied only on the statement of inspecting team who had not seen anything. The punishment awarded to the Constable in these facts and circumstances was set aside. It was also noticed that on the basis of the allegations made against the delinquent Constable, there should have been two notes of Rs. 50/- but only one had surfaced and consequently, the statements of the inspecting staff were not relied on as it was not corroborated with the other facts and the punishment was set aside.

15. Another Division Bench of this Court in *Union of India and Ors. v. J.P. Singh (supra)*, had held that the evidence of the prosecution witness who had retracted from the previous statements and had not corroborated the charges could not be relied nor any penalty could be imposed on the basis of inadmissible evidence. The Court had sustained the order passed by the Tribunal setting aside the order passed by the Disciplinary Authority compulsorily retiring the police official from

the service, as the case was held to be a case of no evidence after exclusion of inadmissible evidence. The allegation against the police officer was that he attended the office in an intoxicated condition and on being questioned he used unparliamentarily and abusive language. It was noticed that many of the witnesses while admitting their signatures on the statements made in the Preliminary Enquiry had not subscribed to their contents. The Revisional Authority in this case had concluded that almost all the prosecution witnesses had denied having seen the delinquent police officer in an intoxicated condition on the date of the incident and in the absence of any medical evidence in support of the allegation, it was held that charge of coming to office in an intoxicated condition was not established. It was further held that in disciplinary proceedings, strict rules of evidence as contained in the Evidence Act may not be applicable and the principle of preponderance of probability is to be acted upon yet finding as to misconduct cannot be based on evidence which is wholly inadmissible.

16. In *M.L. Jindal (supra)*, in respect of allegation of misappropriated money collected from counter, the material witness and complainant were not examined and the mere fact that the accused was in-charge of counter on crucial date was held to be insufficient to bring home the charge against him and consequently, on the ground of non-examination of material witness and complainant, the enquiry report was quashed. It was held that factual findings in Department Enquiry would ordinarily not be subjected to judicial review except when it is based on no evidence or are totally perverse or legally untenable or vitiated on account of non-observance of principle of natural justice.

17. In another precedent relied on behalf of the petitioner, *Bareilly Electricity Supply company Ltd. (supra)*, the Supreme Court had held that production of balance sheet and profit & loss account of the company without any further evidence is not the proof of the correctness of the entries made therein. It was held that if the entries are challenged, then each of such entries ought to have been proved by producing the books and deposing about them. The Supreme Court had also held that natural justice does not imply that what is not evidence can be acted upon.

18. In *Hardwari Lal (supra)*, the allegation against the appellant was that he abused under the influence of liquor and after enquiry he was dismissed. The grievance of the appellant was regarding non-supply of certain documents like preliminary enquiry report and the statement of the complainant and relevant witness. In this case complainant and one Sh. Jagdish Ram were not examined. The examination of these two witnesses would have revealed as to whether the complaint made was correct or not and Sh. Jagdish Ram was the person who had accompanied the delinquent to the hospital for medical examination. In absence of the evidence of the complainant and the person who had accompanied the appellant to the hospital, it was held that there was insufficient evidence to bring home the charges against the appellant and his dismissal was set aside. In

another precedent relied on by the petitioner, Kuldeep Singh (supra) the Supreme Court had held that reliance could not be placed on a document which was not mentioned in the charge sheet and which document had not been relied on or even referred to by the disciplinary authority. It was further held that the statement of a witness in domestic enquiry under Rule 16(3) Delhi Police (Punishment and Appeal) Rules, 1980 without producing such a witness would be permissible provided that the conditions precedent for invoking this rule are met, which are that the presence of witness cannot be procured without undue delay, inconvenience or expenses which is otherwise not possible. It was also held that placing the previous statement of the witness without supplying a copy thereof to the delinquent and without affording an opportunity to cross-examine the witness would be violated of Article 311(2) of the Constitution of India.

19. In Dujender Pal Singh (supra) relied on by the petitioner, no money was recovered from the delinquent nor there was any other cogent evidence that the demand was made by the said police official. From the evidence produced it was not inferable that the co-accused was even present at the relevant point of time. The court had held that demand is an essential ingredient for proving the charges of corruption. Since it was held that no demand could be attributed to the delinquent, therefore, it was held that he had not committed any misconduct.

In contradistinction the case of the petitioner is distinguishable as considering the totality of the facts and circumstances, it is apparent that the demand was made on behalf of petitioner by the constable Rajbir Singh from whom signed currency note of Rs. 50/- was recovered. The petitioner and the constable were working in tandem and from the evidence it is inferable that the illegal entry money could not be recovered by the constable Rajbir Singh alone without the consent and approval of the petitioner. The guilt of the petitioner has been established not on the basis of the statement of the driver recorded in preliminary investigation who could not be produced despite due diligence but on the basis of inferences drawn on preponderance of probability of the evidence of witnesses including members of the raiding team and the facts established. Certain material depositions had not even been challenged before the enquiry officer, as those witnesses were not cross-examined on material points. It has not been denied that the constable had stopped the truck and had brought the driver to the petitioner. The money was also taken by the constable from the driver when they were standing near the petitioner. In the circumstances the probable inference that the challan money and illegal entry money was collected by the constable at the instance of and with the tacit approval of the petitioner cannot be termed improbable or based on no evidence.

20. Reliance has also been placed by the petitioner on Anil Kumar Vs. Presiding Officer and Others, . holding that the Court is not to enter into adequacy or sufficiency of evidence in respect of disciplinary inquiry matters, however, where the evidence is annexed to an order-sheet and there is no analysis of evidence and no correlation is established between the two showing application of mind, it

is not an inquiry report at all and the Court must interfere in such circumstances. In the case of the petitioner, the inquiry officer has not just attached the copy of the evidence but has dealt with given the relevant aspect of deposition of various witnesses and has analyzed the same and has also given the correlation in order to reach a finding bringing home the guilt of the petitioner. On the basis of the preponderance of probability, it has been held that it cannot be inferred that the demand was made by Rajbir Singh on his own without the consent and approval of the petitioner and the money, illegally entry amount, was collected by Rajbir Singh on his own without the knowledge and approval of the petitioner. The charges against the petitioner is also that he did not restraining his subordinate from indulging in illegal activities. If the petitioner did not restrain his subordinate from illegal activities, in the facts and circumstances, it would follow that he was himself involved in the collection of illegal money from the commercial vehicles. From the evidence it is apparent that the petitioner could not be oblivious of the collection of illegal money by Rajbir Singh, Constable and if he was aware of it and he did not stop him, then collection of illegal money was also on his behalf even though there is no specific evidence that he had demanded the money from the said driver. It plausibly follows that the Constable was collecting the illegal money and the two i.e. the petitioner and the Constable were to share the spoils. No evidence has been led by the petitioner to say that he complained against his Constable or took such other steps or acts to prevent him from collecting illegal money. The petitioner and Constable Rajbir Singh put up a joint front before the Enquiry Officer. In the circumstances, the probable inference that the illegal money was collected at his instance and he is also guilty of the charge cannot be faulted nor on the basis of the ratio of Anil Kumar (supra) it can be held that there is no application of mind by the inquiry officer.

21. A full Bench of this Court in Constable Rajender Kumar v. Government of NCT of Delhi and Ors. in W.P.(C.) No. 9473 of 2007 decided on 17th April, 2009 had held that the report based on the material collected on the spot would not partake the character of a preliminary inquiry as envisaged in Rule 15(1) of the Rules and a preliminary inquiry has necessarily to be ordered by the disciplinary authority and any other inquiry which is not ordered by the disciplinary authority would not be a preliminary inquiry at all. In the case of the petitioner, it cannot be disputed that a disciplinary inquiry had been conducted in accordance with rules and consequently on the basis of the ratio of Rajender Kumar (supra), the petitioner is not entitled to impugn the order of the Central Administrative Tribunal upholding the order of punishment holding the same has been passed after a proper inquiry into the matter and is based on preponderance of probability. In Narmada Prasad Yadav (supra), another precedent relied on by the petitioner, the allegation against the delinquent was the he detained one Shri Ram Singh and kept his licence, cycle and demanded Rs. 1,000/-for giving the item back and thus he indulged in corrupt behavior and proved himself not fit for the police department. Considering the report of the inquiry officer, it was held that there was no evidence of the demand of Rs. 1,000/- or of the receipt of the

same and no satisfactory evidence was adduced to prove the charge and in the circumstances the penalty imposed upon the delinquent was set aside, as it was held to be a case of no evidence. The ratio of this case is also distinguishable as the facts of the case of the petitioner are different. The signed currency note of Rs. 50/- was recovered from the Constable Rajbir Singh who was working in tandem with the petitioner which has been established on the basis of the testimonies recorded before the inquiry officer and the fact that the salient depositions have remained unchallenged by not cross-examining the witnesses on various relevant aspects. In another precedent relied on by the petitioner, *Union of India v. Constable Paramvir* (supra), the allegation was that the delinquent police officials were found to be at a place other than at which they were deputed and therefore malafides were imputed against them. However, the allegation of malafide that they indulged in the collection of illegal money from a place other than where they were deputed did not form part of the charge and, therefore, it was held that it had not been established as this was not even an allegation in the summary of allegation that there was malafide on their part to be at a place which was away from the place of posting. It was held that in absence of any specific charge, since it was a case of departmental inquiry, in order to enable charge-sheeted employee to defend himself properly, there has to be unambiguous and clear charge framed against such an employee and in absence of specific charge it would not be possible for the delinquent employee to lead evidence to show his innocence. In case of the petitioner, the charge framed is specific that the Constable Rajbir Singh signaled to stop the truck and he got the driver Imtiaz to get down and he took him to the petitioner and demanded and accepted Rs. 150/- of which Rs. 100/- was the challan money and Rs. 50/- was illegal entry money and the petitioner had assembled with Rajbir Singh with common malafide intention to collect illegal entry money from commercial vehicle and the petitioner instead of restraining his subordinate, Constable Rajbir Singh, from indulging in illegal activities himself got involved in collection of illegal money from the commercial vehicle. In the circumstances, on the basis of the ratio of said case, it cannot be held that the charge against the petitioner was ambiguous or it has not been established in the facts and circumstances.

22. This Court has also perused the entire evidence recorded before the inquiry officer. Perusal of the evidence of, PW2, Inspector B.P. Dahia, Inspector Jagdish Lal Sethi, PW4, HC Sanjeev Dhan, PW5; SI Kapil Prashar and SI Brijesh Kumar Mishra, establishes that the petitioner acted in tandem with the Constable Rajbir Singh in collection of illegal money and he was aware of the collection of the illegal money by Rajbir Singh and he did not stop his subordinate him from indulging in the illegal acts and thus also involved himself in the collection of the illegal money. Merely because no witness has categorically deposed that the demand was made by the petitioner from the driver, it cannot be held that the demand was not made on his behalf particularly in the facts and circumstances of the case. Similarly, merely because the amount was not collected by the

petitioner, which was in fact recovered from Rajbir Singh, it does not follow that it cannot be said that both of them have acted in collusion with each other and charge also stipulates that the petitioner had assembled with Constable Rajbir Singh with common malafide intention to collect the entry money and he did not stop his subordinate from indulging in illegal acts. The findings of the inquiry officer and the punishment imposed by the disciplinary authority and approval and sustenance of the order of the disciplinary authority by the appellate authority, therefore, cannot be faulted in the present facts and circumstances. The disciplinary authority and the appellant authority have considered the entire evidence in detail in the context of the charge and therefore, it cannot be held that there is no evidence or the inferences arrived at by the inquiry officer and disciplinary authority cannot be drawn on the basis of preponderance of probability. The orders therefore, do not suffer from any illegality or such procedural impropriety which would require interference by this Court in exercise of power under Article 226 of the Constitution of India.

23. The writ petition, in the facts and circumstances, is without any merit and it is, therefore, dismissed. Parties are, however, left to bear their own costs.