9

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1207/2002 &
M.A. NO. 945/2002

New Delhi this the 15th day of January, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.SRIKANTAN, MEMBER (A)

Ex.Constable Bajrang Lal
No.365/SB (PIS No.28931112)
S/o Shri Makhan Lal
R/o Vill. Panchoo Kharkada
PO: Patan, Tehsil: Neem-ka-Thana
Dist.Sikar
(Rajasthan) ..... Applicant

(By Shri Sama Singh, Advocate)

-versus-

1. Govt.of NCT of Delhi
Through its Chief Secretary
Delhi Sectt.,
New Delhi.

2. Commissioner of Police,
Delhi Police Headquarters
MSO Building
I.P.Estate
New Delhi-110 002.

3. Special Commissioner of Police
(Intelligence)
Special Branch
Delhi Police Headquarters
M.S.O.Building
I.P.Estate
New Delhi-110 002.

4. Deputy Commissioner of Police
Special Cell (Special Branch)
M.S.O.Building, I.P.Estate
New Delhi-110 002. .... Respondents

(By Shri Vijay Pandita, Advocate)

O R D E R

Justice V.S.Aggarwal:-

Bajrang Lal, the applicant, by virtue of the present application, seeks quashing of the order passed by the Deputy Commissioner of Police dated

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Special Cell (Special Branch) dated 23.2.1999 and that of the Special Commissioner of Police dated 7.7.2000. The Deputy Commissioner of Police, Special Cell while acting as disciplinary authority had passed the order dismissing the applicant from service and the said order had been upheld in appeal.

2. Some of the relevant facts are that the applicant had been inducted as a Constable in Delhi Police. A departmental enquiry was initiated against the applicant on the allegation of grave misconduct, negligence and dereliction in discharge of official duties. A memo had been served with summary of allegations. An enquiry officer was appointed who submitted a finding adverse to the applicant. On receipt of the report of the inquiry officer, the disciplinary authority passed an order dismissing the applicant from service. After dismissal of the appeal, the present application has been filed.

3. Along with the application, Misc.Application No.945/2002 has also been filed seeking condonation of delaying in filing the application asserting that after the appellate authority had dismissed the appeal, the applicant was handicapped because he was not having relevant documents. His own health was not good. He was

suffering from acute Tuberculosis. He was mentally not in a proper state of mind and, therefore, it is prayed that the delay may be condoned in filing of the application.

4. In the reply filed, the application has since been contested. The respondents plead that the applicant was absent unauthorizedly from 14.1.1998 without any proper intimation and an absentee notice was issued to him and sent to the Senior Superintendent as well as at his permanent residence directing him to resume his duties. It was received by the applicant on 19.6.1998 but he did not bother to join his duties. His past record also showed that he was a habitual absentee and an incorrigible type of Constable. He continuously absented from duty for 7 months, 23 days and 9 hours 50 minutes. Agreeing with the findings of the enquiry officer, the abovesaid orders which are impugned in the present application had been passed. It is denied that the same are liable to be set aside.

5. So far as the Miscellaneous Application seeking condonation of delay filed by the applicant is concerned, as referred to above, it has been pleaded that the applicant was unwell and his whole family was at the brink of starvation. He was not mentally fit and thus the delay occurred in filing of the application.

6. Whenever the delay occurs, as in the present case, the concerned court should see whether there was just and proper ground in this regard for condonation of delay or not. The very fact that the applicant had been asking for further documents after the decision of the appellate authority indicates that he was keen to file the present application. If he was prevented by certain grounds which we need not delve into in the facts of the present case, we deem it proper to condone the delay and proceed to dispose of the application on its merits.

7. It has been pleaded that the procedure in the Delhi Police (Punishment and Appeal) Rules, 1980 (for short, "the Rules") is illegal as there exist a complete violation of the principles of natural justice. It has been pointed that the enquiry officer acted as a Presenting Officer and so Rules 16(i) to 16(xi) of the Rules are ultra vires of the provisions of the Delhi Police Act. The enquiry officer does not have any authority to issue the summary of allegations, list of witnesses and the list of documents. The enquiry officer also does not have the authority to decide the names of the prosecution witnesses on behalf of the department. This should be the role of the Presenting Officer. The enquiry officer cannot

decide as to who is to be cross examined. The enquiry officer cannot ask clarificatory questions and consequenlty, it is asserted that this violates the principles of fair play. Even the charge is framed by the enquiry officer.

8. We have carefully considered the pleas that have been so taken. Rules 16(i), (ii), (iii), (iv), (viii) and (ix) of the Rules reads as under:-

> "16. Procedure in departmental enquiries- The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where prima facie the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer:
>
> (i) A police officer accused of misconduct shall be required to appear before the disciplinary authority, or such Enquiry Officer as may be appointed by the disciplinary authority. The Enquiry Officer shall prepare a statement summarising the misconduct alleged against the accused officer in such a manner as to give full notice to him of the circumstances in regard to which evidence is to be recorded. Lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution shall be attached to the summary of misconduct. A copy of the summary of misconduct and the lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution will be given to the defaulter free of charge. The contents of the summary and other documents shall be explained to him. He shall be required to submit to the enquiry officer a written report within 7 days indicating whether he admits the allegations and if not, whether he wants to produce defence evidence to refute the allegations against him.

(ii) If the accused police officer after receiving the summary of allegations, admits the misconduct alleged against him, the enquiry officer may proceed forthwith to frame charge, record the accused officer's pleas and any statement he may wish to make and then pass a final order after observing the procedure laid down in Rule 15(xii) below if it is within his power to do so. Alternatively the finding in duplicate shall be forwarded to the officer empowered to decide the case.

(iii) If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statements of the witness concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements of documents thus brought on record.

(iv) When the evidence in support of the allegations has been recorded the Enquiry Officer shall:-

(a) If he considers that such allegations are not substantiated, either discharge the accused himself, if he is empowered to punish him or recommended his discharge to the Deputy Commissioner of Police or other officer, who may be so empowered or,

(b) Proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them.

(viii) After the defence evidence has been recorded and after the accused officer has submitted his final statement, the Enquiry Officer may examine any other witness to be called "Court witness" whose testimony he considers necessary for clarifying certain facts not already covered by the evidence brought on record in the presence of the accused officer who shall be permitted to cross-examine all such witnesses and then to make supplementary final defence statement, if any, in case he so desires.

(ix) The Enquiry Officer shall then proceed to record the findings. He shall pass orders of acquittal or punishment if himself empowered to do so, on the basis of evaluation of evidence. If he proposes to punish the defaulter he shall follow the procedure as laid down in Rule 16(xii). If not so empowered he shall forward the case with his findings (in duplicate) on each of the charges together with the reasons therefore, to the officer having the necessary powers. If the enquiry establishes charges different from those originally framed, he may record finding on such charges, provided that findings on such charges shall be recorded only if the accused officer has admitted the facts constituting them or has had an opportunity of defending himself, against them."

9. Perusal of the same clearly shows that even if the rules are not drafted very articulately still they could be held to be illegal if they did not prescribe reasonable procedure for conduct of the enquiry.

10. The principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russel Vs. Duke of Norfolk [1949 (1) All England Reports page 109] way back in 1949, these

principles cannot be put in a straight-jacket. Their applicability depends on context and facts and circumstances of the case [see Mohinder Singh Gill vs. Chief Election Commissioner, 1978(2) Supreme Court Cases page 272]. The objective is to ensure fair hearing, a fair deal to the person whose rights are going to be affected. The principles of natural justice and fair hearing can be treated as synonymous. Thus whichever the case, it is from the stand point of fair hearing and test of prejudice that validity of rule would be tested.

11. Reasonable procedure thus would be to ensure that justice is done. There should be no failure of justice and every person whose rights are affected gets a fair hearing. Justice means justice between the parties. Technicalities and irregularities which do not occasion failure of justice are not allowed to defeat ends of justice or the rules on the subject.

12. While examining the present matter on the aforesaid principles, it can well be mentioned that under the Central Civil Services (Classification, Control & Appeal) Rules,1965, the position is different and the Rules make a departure from it and prescribe a different procedure. Under the Central Civil Services (Classification, Control &

Appeal) Rules, it is the disciplinary authority which draws up the substance of the imputations of mis-conduct or misbehaviour and articles of charge and gives it to the concerned person. If the disciplinary authority is not the inquiring authority, it forwards to the inquiring authority, a copy of articles of charge and the statement of the imputations or misbehaviour with copy of the written statement of the defence submitted by the person concerned and a copy of the statements of witnesses, if any, and evidence proving the delivery of the documents.

13. Can we say that the procedure adopted in the disciplinary proceedings is arbitrary or unreasonable to prompt this Tribunal to quash the same?

14. In the peculiar facts, we find that the said contention cannot be accepted. This is for the reason that if the inquiry officer makes a summary of the misconduct alleged against the police officer, it is done to give him notice of the circumstances appearing against him. It is like the summons case trial in Code of Criminal Procedure, the accused being informed by the concerned Magistrate about the assertions against him. He provides him, the list of witnesses with

the details of the evidence along with the documents. This is done in accordance with the recognised principles of fair trial that the delinquent official must be informed of all the material facts. Whether copies are supplied by the inquiry officer or by the presenting officer to us, it appears that it will not vitiate the whole procedure of a fair enquiry.

15. Similarly under Rule 16(iv) of the Rules, if the inquiry officer finds that after recording of the evidence, the allegations are substantiated, he can proceed to frame a formal charge or charges and explain to the said delinquent. The purpose of framing the charges is well-known. It is to make the concerned person aware of the material against him in a precise and concise manner. The delinquent must know as to what is against him so that he can meet the same. It is to avoid prejudice. Therefore, the procedure so adopted by itself does not appear to be unreasonable, arbitrary or it be held that he had become a judge of his own cause. It is the enquiry officer who has not become a judge of his own cause. Material obviously is provided that had been collected before the enquiry.

16. Merely because if the enquiry officer had been permitted to ask certain questions or in this process even draws charges and informed the

delinquent, it cannot be termed to be a procedure which would violate the law. It has to inform the concerned person as to what are exactly the assertions against him. He cannot complain in this process that prejudice is caused to him. Once no prejudice is caused, the procedure must be taken to be reasonable. Similar arguments had been advanced before this Tribunal in the case of **Ompal Singh v. Union of India & Ors.** in OA No.2098/2001 decided on 5.2.2002 and in the case of **SI Rejeshwar Aggarwal v. Commissioner of Police and ors.** in No.3414/2001 decided on 4.12.2002 which were repelled. Consequently, we have no hesitation in rejecting the said contention.

17. The charge against the applicant was:-

> "I, Inspr. Surinder Pal Singh, D-I/482, Operation Cell, Lodhi Colony charge you Const Bajrang Lal, No.365/SB (PIS No.28931112) posted in SR/Opr.Cell that you were Running unauthorised absent since 14.1.98 vide DD No.26, dated 14.1.98, Lodhi Colony without prior permission of the competent authority. An absentee notice was issued to you vide this office No.5402-i/SIP/SB, dated 30.4.98 and sent to Senior Supdt. of Police, Distt.Sikar, Rajasthan as well as to the permanent residence address through Registered A.D. with the direction to resume your duty at once, or otherwise disciplinary action will be taken against you. The same absentee notice was received by you Const. on 19.6.98, but even then you did not bother to join your duty or send any information about your absence to the department. You resumed your duty vide D.D.No.11, dated 5.9.98 after absenting yourself for a period of seven months, 23 days, 9 hours and fifty minutes. This is the violation of instruction containing in S.O.No.111/88, as well as CCS

(Leave) Rules 1972. From the perusal of your past record it is found that you had absented yourself on 39 different occasions in the past, which shows that you are a habitual absentee and an incorrigible type of constable."

It clearly reveals that it was not only absence of the applicant for a long period as referred to above but even he was informed that on 39 similar occasions, he had absented himself.

18. It is well-known that judicial review is not an appeal from a decision but a review of the matter in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment but interference on facts would only be called if the decision is perverse or no reasonable person would come to that conclusion. Neither the technical rules of Evidence Act nor of proof fact beyond reasonable doubt would apply to disciplinary proceedings. Adequacy of evidence or reliability of evidence subject to what has been recorded above, cannot be permitted to be canvassed in judicial review. In the present case in hand, there was material on the record on basis of the evidence to show that the applicant absented himself for more than 7 months at one stretch and earlier also was absenting from duty. To this extent, therefore, it cannot be termed that there was lack of evidence.

19. Another plea raised is that the punishment awarded is disproportionate to the

nature of dereliction of duty. What cannot be ignored is that the police force has to be a disciplined force. In normal circumstances, this Tribunal will not interfere unless the punishment awarded is disproportionate to the nature of dereliction of duty or the misconduct. Such an act in a disciplined force cannot be taken lightly.

20. We take liberty in referring to the decision of the Supreme Court in the case of **State of U.P. and Others v. Ashok Kumar Singh and Another**, (1996) 1 SCC 302. The delinquent there was a police Constable and had absented himself from duty. The High Court had interfered with the quantum of sentence. The Supreme Court held that the High Court could not have interfered in this regard and had exceeded its jurisdiction. The findings returned were:-

> "8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that "his absence from duty would not amount to such a grave charge". Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that "the punishment does not commensurate with the gravity of the charge:

especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."

Same is the position herein. Not only keeping in view the nature of the dereliction of duty it calls for no interference, but even the nature of misconduct does not call for any modification.

21. Resultantly, the original application being without merit must fail and is dismissed. No costs.

(V.Srikantan)
Member (A)

(V.S.Aggarwal)
Chairman

/sns/