

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2642/2002

New Delhi this the 4th day of July, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

HON'BLE MR. S.K.NAIK, MEMBER (ADMNV)

1. Baljeet Singh,  
Head Constable in Delhi Police  
(PIS No.28760840)  
R/o H.No.276, Police Colony,  
Hatta Ki Dhara, Delhi-6.
2. Dharamveer Singh,  
Constable in Delhi Police  
(PIS No.28884350)  
R/o B-73, Bhagwati Garden Extn.,  
Uttam Nagar, New Delhi.

...Applicants

(By Advocate: Shri Anil Singhal)

-Versus-

1. Joint Commissioner of Police,  
Northern Range, PHQ,  
IP Estate, New Delhi.
2. DCP (North West Dist.),  
PS Ashok Vihar, Delhi.

...Respondents

(By Advocate: Shri Ram Kanwar)

O R D E R (Oral)

By Mr. Shanker Raju, Member (J):

MA-2251/2002 for joining together is allowed.

2. Applicants impugned order dated 14.2.2002 imposing upon them a major punishment of forfeiture of one year's approved service permanently with cumulative effect as well as appellate order dated 6.7.2002 affirming the punishment.

3. Applicants, Head Constable and Constable respectively while working in North West District, on the

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basis of a preliminary enquiry conducted by ACP Kali Ram Verma have been ordered to be proceeded departmentally on the allegation of letting of one Shri Gurmeet Singh apprehended with opium and with extortion of money. They have been also alleged to have not made any DD entry nor apprised the superior officers.

4. With the summary of allegations served upon them, enquiry proceeded with examination of five PWs and thereafter on defence statement of applicants, the Enquiry Officer (EO) came to the conclusion that in so far as allegations of recovery of opium from Gurmeet Singh and extortion of money from Avneet Singh by the defaulters are concerned, have not been substantiated.

5. Against this finding, applicants represented to the disciplinary authority, i.e., who in turn without recording tentative reasons and also without issuing a show cause notice disagreed with the conclusion of enquiry officer and imposed a major punishment upon applicants on the ground of apprehending one person with opium and letting him off with money consideration.

6. Being aggrieved statutory appeals were preferred which resulted in affirmation of the order, giving rise to the present OA.

7. Several contentions have been put forth by the learned counsel for applicants, Shri Anil Singal including vitiation of the enquiry for non-compliance of

Rule-15 (ii) of Delhi Police (Punishment and Appeal) Rules, 1980 and also denial of reasonable opportunity as per Rule-16 (xii) of the aforesaid Rules.

8. On the other hand, respondents' counsel Shri Ram Kanwar vehemently opposed the contentions and also produced the DE report and has shown that an order has been passed under Rule-15(ii) of the Rules, ibid which was received by applicants.

9. In so far as allegation regarding disagreement by the disciplinary authority without following the due process of law is concerned, the same has not been denied in Para-5.2 of the reply.

10. We have considered the rival contentions of the parties and perused the material on record.

11. As held by the Apex Court in Punjab National Bank Vs. Kunj Bihari Mishra JT 1998 (5) SC 548 as well as State Bank of India Vs. Arvind Kumar Shukla AIR 2001 SC 2398 and also provisions of Rule 16 (xii) ibid in case of disagreement by the DA and if he proceeds to punish the delinquent official on a charge which has been disproved by the enquiring authority taking a contrary view it is mandated upon him to record tentative reasons and after accord of reasonable opportunity to show cause, to pass a final order.

12. Admittedly, the disciplinary authority has disagreed in so far as allegation of recovery of opium and extortion of money, which has not been proved by the E.O.

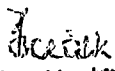
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establishes the same by observing the same as fully proved and imposed upon applicants major punishment. Before referring to the aforesaid, neither any tentative reasons have been recorded nor any opportunity to represent the same has been afforded to them. This has greatly prejudiced applicants and deprived them a reasonable opportunity. As the substantive procedure has been violated, the punishment imposed cannot be sustained in the eyes of law.


13. In so far as non-compliance of Rule-15 (ii) is concerned, we are satisfied that the same stood complied with.

14. However, the other legal grounds taken by applicants are left open.

15. In the light of the aforesaid, OA is partly allowed. Impugned orders are quashed and set aside. However, this shall not preclude the respondents from proceeding further from the stage of recording tentative reasons for disagreement and affording a reasonable opportunity to applicants, if so advised. This shall be done within a period of two months from the date of receipt of a copy of this order. No costs.

  
(S.K. Naik)  
Member (A)

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(Shanker Raju)  
Member (J)