CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 105/2001

This the 27th day of September, 2001.

HON'BLE SHRI JUSTICE B. DIKSHIT, VICE-CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

H.C. Raj Pal S/O Jagdish Chander,
R/O Vill. & P.O. Chhichhrana (Gohana),
Distt. Sonepat, Haryana. ... Applicant

(By Shri Anil Singal, Advocate)

-versus-

1. Govt. of National Capital Territory
of Delhi through Commissioner of Police,
Police Headquarters, I.P.Estate,
New Delhi.

2. Joint Commissioner of Police,
New Delhi Range, PHQ, I.P.Estate,
New Delhi.

3. D.C.P., Shalimar Park,
Bhola Nath Nagar, Near Shahdara,
Eastt. Distt., Delhi. ... Respondents

(By Shri Devesh Singh, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

The applicant, a head constable in Delhi Police, along with constable Suresh Kumar, was proceeded against in a departmental enquiry for beating up one Shri Mool Chand and causing grievous injuries to him on 21.9.1996, and extorting a sum of Rs.300. Punishment of forfeiture of two years' approved service entailing reduction in pay and treating the period of suspension as not spent on duty was inflicted upon the applicant. The punishment was upheld in the appellate order.

2. We have considered the respective pleadings of parties and material on record and heard the learned counsel of both sides. Shri Anil Singal appearing on behalf of the applicant stated that the enquiry officer

vide his report dated 18.6.1998, after considering the entire evidence and documents on file, found that the charges against the applicant were not proved. The disciplinary authority ordered a supplementary enquiry to be held against the applicant. In this enquiry too, another enquiry officer came to the conclusion, on the basis of the material on record, statements of witnesses and defence, that the charge against the applicant and constable Suresh Kumar did not stand proved. However, the disciplinary authority did not agree with the findings of the enquiry officers and served a show cause notice dated 16.4.1999 on the applicant. The learned counsel stated that the disciplinary authority did not attach any importance to the evidence taken into consideration by the enquiry officers and without assigning any reasons for disagreement with the enquiry reports, reached a conclusion as follows in the show cause notice itself :

> "The act of the delinquents is so grave that their further retention in a disciplined force will only be hazardous for the force.
>
> In view of the above mentioned facts, I fully prove the charge against the delinquents by disagreeing with the findings of the E.Os."

The learned counsel stated that it is illegal for the disciplinary authority to have reached a final conclusion regarding the charge against the applicant in the show cause notice itself. The learned counsel also stated that the disciplinary authority relied on the preliminary enquiry without supplying the applicant copies of the statements recorded in the preliminary enquiry. He further pointed out that whereas charge against the applicant is cognizable offence under IPC and in terms of

the provisions of rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1989 [hereinafter referred to as the 1980 Rules] prior approval of the Additional Commissioner of Police is necessary to decide whether a criminal case should be registered and investigated against the delinquent or a departmental enquiry should be held. He stated that no such approval of the Additional Commissioner was taken. In view of the infirmities pointed out by the learned counsel, he contended that the orders relating to initiation of disciplinary proceedings against the applicant and those of punishment have been vitiated and should be quashed and set aside.

3. As regards the objection regarding absence of decision of the Additional Commissioner of Police in terms of rule 15(2) of the 1980 Rules regarding initiation of departmental enquiry against the applicant, the learned counsel for the respondents Shri Devesh Singh stated that approval of the Additional Commissioner had been obtained vide order dated 26.8.1996. The contention of the respondents regarding the approval of the Additional Commissioner having been taken has been contested by the applicant in his rejoinder as well. The respondents have not furnished either a copy of the order of the Additional Commissioner or the departmental enquiry records to establish that the Additional Commissioner's approval under rule 15(2) had been taken. Thus, we hold that the departmental enquiry had been initiated against the applicant without obtaining an order of the Additional Commissioner for initiating the departmental enquiry as the charge against the applicant is a cognizable offence under IPC.

4. As regards the show cause notice containing the note of disagreement with the findings of the enquiry officers, the learned counsel for the respondents maintained that the disciplinary authority had formed only a tentative opinion that he did not agree with the findings of the enquiry officers, and that by issuing a show cause notice the applicant had been accorded full opportunity of defence. The learned counsel for the applicant relied on **Yoginath D. Bagde** v. **State of Maharashtra & Anr.**, JT 1999 (6) SC 62 and order dated 16.1.2001 passed by this Tribunal in OA No.2760/1999, **Constable Jag Pravesh** v. **Union of India & Ors.** by contending that it was not included in the disagreement note that the disciplinary authority had come only to a tentative decision and also that the tentative reasons for disagreement are to be communicated so that the delinquent official has an opportunity to defend the same and this could also show that the reasons arrived at for disagreement are germane to the findings. The Apex Court in the case of **Yoginath D. Bagde** (supra) had made the following observations :

> "In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry

Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as the final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

5. We have gone through the show cause notice as also the note of disagreement recorded by the disciplinary authority. We have to go along with the learned counsel for the applicant that the disagreement of the disciplinary authority with the enquiry officers was not tentative. As a matter of fact, he had reached the final conclusion that the charges against the applicant were established.

6. Shri Singal on behalf of the applicant next contended that the disciplinary authority had taken into consideration the earlier statements recorded during the preliminary enquiry. He pointed out that as per provisions contained in rule 15(3) of the 1980 Rules, the statements made in the preliminary enquiry can be brought on record and considered only when the witnesses are no longer available. On the other hand, the respondents have superficially denied the averment. They have in fact relied on the statements made in the preliminary

enquiry without establishing that such witnesses were not available and without supplying the applicant a copy of the preliminary enquiry report, as is apparent from the list of documents supplied to the applicant along with the charge-sheet.

7. It may also be mentioned here that the applicant had raised several points in his representation in response to the show cause notice. One such point was that as per the provisions of rule 15(3) ibid the earlier statements of witnesses cannot be brought on record. The disciplinary authority vide the impugned final order dated 5.10.1999 (Annexure A-4) has dismissed the points raised by the applicant by a single sentence, "The pleas raised by the delinquents in their joint representation are examined and found unsatisfactory". The dismissive attitude of the disciplinary authority in rejecting the pleas raised by the applicant in this arbitrary manner cannot be allowed. Thus, the objection raised by the learned counsel for the applicant holds good and reliance of the disciplinary authority on the statements made in the preliminary enquiry without establishing that such witnesses were not available and without supplying a copy of the preliminary enquiry report as also such statements to the applicant, is certainly against the said provisions and violative of the principles of natural justice.

8. The learned counsel for the applicant also took exception to the enquiry officer having cross examined various prosecution witnesses (PWs) which is not permissible under the rules. He alleged that by cross examining the PWs the enquiry officer exceeded his

jurisdiction and assumed the role of a prosecutor. Procedure in departmental enquiries under the 1980 Rules does not permit cross examination of PWs as indulged in by the enquiry officer.

9. From the reasons recorded and discussion made above, it is apparent that the respondents have committed several irregularities in conducting the disciplinary proceedings against the applicant. The cumulative effect of all such infirmities is that the entire proceedings against the applicant have been rendered vitiated. Consequently, we quash and set aside Annexures A-4 and A-5, i.e., the orders of punishment against the applicant and direct the respondents to restore his withheld increments forthwith treating the period of suspension as spent on duty for all intents and purposes, with all consequential benefits.

10. The OA is allowed in the above terms. No costs.

(V.K.Majotra)
Member (A)

(B. Dikshit)
Vice Chairman

/as/