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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1070/2001

New Delhi, this the 4th day of February, 2002

HON'BLE SH. M.P.SINGH, MEMBER (A)
HON'BLE SH. SHANKER RAJU, MEMBER (J)

In the matter of :

Const. Mangat Ram
(PIS No. 28931033)
R/o C-437, Hastal Colony
Uttam Nagar, New Delhi-59.
Presently Posted at :-
DCP Reserve,
Darya Ganj, Delhi.Applicant
(By Advocate: Sh. Anil Singhal)

Versus

1. Govt. of NCT of Delhi
through Commissioner of Police
Police Headquarters
I.P. Estate, New Delhi.
2. Joint Commissioner of Police
Northern Range, PHQ
I.P. Estate, New Delhi.
3. Add. DCP (Central Distt.)
Darya Ganj, Delhi. Respondents
(By Advocate: Mrs. Sumedha Sharma)

O R D E R (ORAL)

By Sh. Shanker Raju, Member (J)

Applicant, a Constable, has been proceeded against on the basis of a preliminary enquiry in the departmental enquiry on the following charges. ,

"It is alleged against you Ct. Mangat Ram No.1350/C (PIS No.28931033) P.S. Prashad Nagar that on 27.3.99, an undertrial prisoner Satinder Pal @ Twinkle was granted parole by the Hon'ble Court from 10.00 a.m. to 5.00 p.m. to meet his family members at this residence at Karol Bagh. He was escorted by the staff of III Bn., DAP. At about 12.30 p.m., you have reached at H.No.

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6/55 WEA, Karol Bagh, New Delhi, alongwith another person and you have told the escort party of III Bn., DAP that the person accompanying you are cousin of undertrial prisoner Satinder Pal @ Twinkle and wants to meet undertrial prisoner Satinder Pal @ Twinkle being his family member as per court's order you further told that you are attached as P.S.O. to the person subsequently identified as Harsh Malhotra S/o Sh. V.P.Malhotra aR/o 14/19, Dev Nagar, Delhi. During interrogation, it came to notice that Harsh Malhotra is not related to Satinder Pal @ Twinkle but a witness in some case against the undertrial. You constable give false identity of the person and tried to mislead the escort staff of III Bn. DAP. Detailed for parole duty of Satinder Pal @ Twinkle obviously with some ulterior motive.

During the preliminary enquiry, the allegations levelled against you constable No. 1350/C have also been prima facie established."

2. Applicant on the basis of the prosecution evidence has been held guilty of the charge. The disciplinary authority agreeing with the findings of the enquiry officer awarded the applicant a major penalty of forfeiture of three years approved service permanently for a period of three years entailing proportionate reduction in pay and withholding of increment which has been upheld by the appellate authority by an order passed on 10.11.2000. Both these orders are assailed in the present OA.

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3. Learned counsel of the applicant Sh. Anil Singhal has taken several contentions to assail the impugned orders but at the outset stated that he on immediately receiving the summary of allegations has made a request to the enquiry officer by asking for certain documents which inter alia included the statement of prosecution witnesses recorded during the course of preliminary enquiry as well as the preliminary enquiry report. According to him, the summary of allegations and the list most of documents does not contain the PE report as well as the statement of witnesses recorded in PE as listed documents. This is stated by referring to the findings of the enquiry officer that the PE officer Inspector B.M.Sharma was examined as prosecution witness i.e. PW-3 who exhibited his report but yet a copy of the same has not been served upon the applicant which resulted in a grave prejudice to the applicant as he has been deprived of effective cross examination. Placing reliance on the decision of the High Court of Delhi in Ex. Constable Randhir Singh CRPF Vs. UOI & Ors. 1995 (5) SLR 731 and the decision of the Coordinate Bench in Vijender vs. Govt. of NCT of Delhi & Ors. 2000 (3) SLJ CAT 40. It is contended that in similar circumstances preliminary enquiry officer was examined and exhibited his report. Non-furnishing of the report has been held to have vitiated the enquiry on the basis of the circular of the Delhi Police dated 1.5.80 which envisages supply of the copy of the PE report suo moto even if it is not specifically asked for. Learned counsel of the applicant has further stated that in view of his averment in para 5.10, the testimony of PW-6 has been found to be inadmissible which was the basis of the disciplinary action against him and the same is not disputed by the respondents.

The present enquiry is liable to be set aside as based on no evidence as the applicant has not committed any misconduct which warrants any punishment.

4. On the other hand, the learned counsel of the respondents controverted the contentions of the applicant and stated that there is sufficient evidence against the applicant to bring home the charge against him has further stated that the PE report and the statements recorded therein are not relevant to be relied upon and the applicnat at the time of service of summary of allegations by his own written statement dated 9.7.99 admitted that he did not want any additional documents as such. He cannot allege violation of principles of natural justice. The charges levelled against the applicant have been *prima facie* established. However, on the query, the learned counsel of the respondents has not disputed the fact of their own circular and also admitted that the applicant has made a request as contended by him for supplying him the additional documents.

5. We have carefully considered the rival contentions of the parties and perused the material on record. In view of the statutory Rule 15(3) of the Delhi Police (Punishment and Appeal) Rules, 1980, in the event the enquiry officer takes on record of departmental enquiry any documents from the file of the preliminary enquiry it is incumbant upon him to supply the copy to the accused officer. Preliminary enquiry statements and the preliminary enquiry report has been asked specifically by the applicant by a written request, the denial of the same to him is certainly the violation of principles of natural justice which has greatly prejudiced him in denial of an effective cross-examination.

6. In our considered view, having regard to the ratio laid down by the apex court in State of U.P. vs. Shatrughan Lal & others 1998 (6) JT 55 denial of the statements recorded during the course of PE as well as PE report constitute the violation of principles of natural justice vitiates the departmental enquiry.

7. However, as regards the second ground alleged by the applicant we are not impressed by it as held by the apex court in Kuldeep Singh vs. Commissioner of Police & others 1998 (8) JT 603 if there exists some evidence on the record of the departmental enquiry in a judicial review the court would not interfere and act as a appellate authority to reappraise the evidence. We find from the record and more particularly from the testimony of PW4 that there is sufficient material to justify the conclusion drawn by the enquiry officer. In this view of the matter, present case cannot be treated as a case of no evidence or misconduct.

8. In the result, the OA is partly allowed. Impugned order of punishment and the appellate order are quashed and set aside. The matter is remanded back to the respondents to be taken up, if advised, from the stage of supply of PE enquiry report and the statements to the applicant and to expeditiously conclude the proceedings within a period of 3 months from the date of receipt of a copy of this order. OA is disposed of accordingly. No costs.

S. Raju

(SHANKER RAJU)
Member (J)

(M.P. SINGH)
Member (A)