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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA NO. 1101/2001

New Delhi, this the 16<sup>th</sup> day of October, 2001

HON'BLE SH. KULDIP SINGH, MEMBER (J)  
HON'BLE SH. S.A.T.RIZVI, MEMBER (A)

Harish Chander  
S/o Sh. Jage Ram,  
R/o H.No. 270, Nangloi,  
Delhi-110041.  
Working as:  
Sub-Inspector No. D-2081,  
IGI Airport,  
New Delhi-110037.  
(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Lt. Governor  
Govt. of NCT of Delhi,  
Raj Niwas Marg,  
Raj Niwas,  
Delhi.
2. Commissioner of Police,  
Delhi Police Headquarters,  
M.S.O. Building, I.P. Estate,  
New Delhi-110002.
3. Additional Commissioner Of Police,  
Northern Range,  
Delhi Police Headquarters,  
M.S.O. Building, I.P. Estate,  
New Delhi-110002.
4. Deputy Commissioner of Police,  
North-West District,  
Ashok Vihar,  
Delhi-110052.  
(By Advocate: Sh. P.K. Singh proxy for  
Sh. A.K. Chopra)

**ORDER**

By Sh. Kuldip Singh, Member (J)

Applicant impugnes an order dated 28.3.95 (Annexure A-1) passed by the disciplinary authority vide which the applicant was punished and the disciplinary authority had directed that the next increment of applicant is withheld for a period of 3 years with cumulative effect on his future increments. The allegations against the applicant were that upon the enquiry made by one Sh. M.N. Tiwari, ACP on the complaint of Mr. Ashwani Kumar resident of A-103, Group Industrial Area,

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Wazirpur Delhi revealed that 170 Kgs., steel plates were stolen from his factory on 15.8.93 and matter was reported at P.P. Wazirpur Industrial Area through one Kishan Pal contractor of the factory but no case was registered in this regard. Contractor Kishan Pal and Hari brought three persons, who had allegedly stolen steel plates, on 17.8.93 and handed over to PCR Van R-61. The staff of PCR Van handed over the three persons to H.C. Krishan Kumar, 41/NW who alongwith Ct. Suresh Kumar, 1151/NW took these people to Shakur Basti from where they got recovered 2.1/2 Katta Steel plates. The H.C. handed over these persons to S.I. Harish Chander, D/2081 (applicant) for necessary action as per orders of SHO/Ashok Vihar. But the case was registered after a considerable delay on 19.8.93 vide FIR No.309/93 U/s 380/411 IPC, P.S. Ashok Vihar and only 185 plates were shown recovered while the recovery was of 787 plates. The stolen property was recovered on 17.8.93 but it was shown deposited in the P.S. Malkhana after about 5 days late, i.e., on 22.8.93 as per entry No.1462 in register No.19 of the P.S. S.I. Harish Chander, D-2081 who was incharge of P.P.Wazirpur Industrial Area and entrusted with the investigation of the case, did not arrest all persons at whose instance, the recovery was made, although on coming to know about the complaint against the P.P. Staff, S.I. Harish Chander returned all the plates to the complainant which shows his malafide intention.

2. The above act on the part of S.I. Harish Chander, D/2081 amounts to gross negligence, misconduct and dereliction in the discharge of his official duty which renders liable, to be dealt with departmentally.



3. After conducting the enquiry the Enquiry Officer held the applicant guilty of charges filled against him upon which the disciplinary authority passed an order which is being impugned by the applicant in this case.
4. An appeal was also filed against the impugned order which was rejected by the appellate authority vide orders Annexure A-2 against the order of the appellate authority a revision petition was also filed which was also rejected by the Commissioner of Police vide Annexure A-3. Representation was also made to the Lieutenant Governor which was also rejected.
5. In the grounds to assail these orders the applicant has alleged that the orders passed by the concerned authorities are arbitrary, illegal and devoid of facts. It is further stated that the appellate authority has decided the appeal by taking extraneous matters into consideration. As the appellate authority has obtained comments from the disciplinary authority which is illegal and the same have influenced the mind of the appellate authority. It is further stated that the appellate authority has not discussed the grounds taken by the applicant in his appeal. It is also stated that the findings recorded by the enquiry officer has also not been recorded on each charge separately as required under Rule 16 of Delhi Police (Punishment & Appeal) Rules, 1980.
6. The applicant has further submitted that EO has cross examined the witnesses himself and has crossed all the limits of fair enquiry officer. The EO has also issued the summary of allegations, decided the name of witnesses alongwith gist of statement and also decided about the relied upon documents.
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Thus, the EO has acted more as a Presenting Officer. So on this ground also the enquiry stands vitiated. It is also submitted that the report of the preliminary enquiry conducted by PW-8 has been illegally brought on record of departmental enquiry and has been exhibited as PW-8 & B, which is in violation of Rule 15 (3) of Delhi Police (Punishment & Appeal) Rules, 1980. It is also submitted that the witnesses gave statement in favour of the applicant which has been ignored and the EO has illegally held applicant to be guilty.

7. It is further submitted that the disciplinary authority also did not apply his mind and without considering the grounds taken by the applicant passed the impugned order. It is also submitted that the EO, disciplinary authority and the appellate authority had passed their findings/order on the basis of surmises, conjectures and imaginations which have no recognition in the face of law and infact no action was required to be taken against the applicant. It is prayed that all these orders be quashed and the increment withheld may be restored and that action should also taken to consider the applicant for promotion to the rank of Inspector.

8. The respondents contested the OA. Respondents submitted that the DE was initiated against the applicant on the allegations that enquiry made by Sh. M.M.Tiwari, ACP on the complaint of Sh. Ashwani Kumar revealed that about 170 Kg. of steel plates were stolen from the factory of Sh. Ashwani Kumar on 15.8.93. The matter was reported at PP Wazirpur Industrial Area through one Kishan Pal Contractor but no case was registered. Contractor Kishan Pal and Hari brought three persons, who had allegedly stolen steel plates on 17.8.93 and handed over to PCR Van R-61 who in turn handed over those

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persons to Head Constable Kishan Kumar who further alongwith Const. Suresh Kumar took those persons to Shakurpur Basti from where they recovered 2.1/2 katta steel plates. The Head Constable handed over these persons to the applicant for taking legal action as per order of SHO/Ashok Vihar. The case was registered after considerable delay of 19.8.92 vide FIR No.309/93 and only 185 plates were shown recovered while there was a recovery of 787 plates. The stolen property was recovered on 17.8.93 but the same was deposited in the Mal Khana after 5 days, i.e. on 22.8.93 as per entry No. 1462 in register No. 19 of the police station. The applicant was incharge of PP Wazirpur Industrial Area and was entrusted with the investigation of the case. He failed to arrest all the persons under whose instance the recovery was made and it is only on coming to now about the complaint made against the PP staff the applicant returned all the plates to the complainant which shows his malafide intention.

9. For these reasons the enquiry was initiated. The enquiry officer was appointed who after holding the enquiry found the applicant guilty of the charge. And after fulfilling of the procedure the applicant was punished. Applicant's appeal was also heard and decided by the appellate authority by fully complying with the procedure as enshrined under the Delhi Police (Punishment & Appeal) Rules, 1980. So OA should be dismissed.

10. We have heard the counsel for the parties and gone through the record. We had also call for the enquiry file and have also gone through the same.

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11. Learned counsel for the applicant submitted that the enquiry officer had no authority to issue the summary of allegations, decide the names of the prosecution witnesses and to summon the witnesses as the enquiry officer is supposed to be an impartial officer who has to exercise a quasi judicial function but in this case the enquiry officer has acted more as a presenting officer rather than an impartial enquiry officer.

12. When confronted with the situation that this power has been given to the enquiry officer under the Delhi Police (Punishment & Appeal) Rules, the applicant has submitted that rules empowering the enquiry officer to act like this are itself ultra virus and are violative of principles of natural justice. So the rules itself should be quashed. The next contention of the learned counsel for the applicant is this that in this case the preliminary enquiry was conducted by Sh. M.N.Tiwari, ACP and that it has been brought on record in an improper manner and the applicant had not been supplied with the copies of the report of the preliminary enquiry. Thus the enquiry officer has relied upon the evidence, the copy of which had not been supplied to the applicant. It is also submitted that the documentary evidence such as the record of Mal Khana, the version of the applicant that only 185 plates were deposited in case of FIR No. 309/93 and there was no evidence that any additional plates have been recovered which have not been deposited. Besides that the counsel for the applicant also submitted that two witnesses have not spoken anything against the applicant and the statement of Head Constable Dharam Pal supports the contention of the applicant. Similarly Inspector Abhay Ram has not levelled any allegations

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against the applicant nor he has seen any irregularity who were arrested by the applicant on the complaint of the owner of the steel plates.

13. In reply to this counsel for the respondents submitted that the enquiry officer has completely acted within the ambit of rules. He did not violate any rule. Rule 16 of the Delhi Police (Punishment & Appeal) Rules prescribes the detailed procedure for conducting departmental enquiries and Rule 16 (1) particularly says that the enquiry officer shall prepare a statement summarising the misconduct alleged against the rule in such a manner as to give full notice of the circumstances in regard to which evidence is to be recorded. The enquiry officer who has to supply the list of prosecution witnesses and also the documents which are to be relied upon by the prosecution are to be supplied with the delinquent official. The enquiry officer has also been authorised to frame questions even to the defence witnesses which he may wish to put to clear the ambiguities and also to test veracity of witnesses. Thus the counsel for the respondents submitted that while empowering the enquiry officer for preparing the summary of allegations, the statement of allegations, etc., the rules have also taken care that principles of natural justice are not violated as the delinquent official has been given sufficient opportunity to give his defence and also to submit to the enquiry officer a written report indicating whether he admits those allegations or not and where he wants to produce defence evidence to refute allegations. Thus, it is not a case where the enquiry officer is to act like a presenting officer or a prosecution officer who has been vested with uncontrolled powers. The rules also provide checks and balances which acts as safeguard on the exercise of power by

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the enquiry officer and take care of principles of natural justice. So it cannot be said that these rules are violative of principles of natural justice.

14. In our view also as regards the challenge to these rules are concerned we do not find any ground to hold that these rules are ultra virus because these rules are violative of principles of natural justice. As regards framing of rules, the same has not been challenged. It has only been suggested that these rules are violative of principles of natural justice. As the enquiry officer at that time acts as a presenting officer since he also cross examined the witnesses. But in our view this power has been specially given to the enquiry officer only to clear ambiguities and seek clarifications from the witnesses. It is rather necessary in the interest of justice since there is no provision in the rules for the appointment of presenting officer.

15. As regards the plea taken by the applicant that certain witnesses deposed in favour of the applicant and some other witnesses had not said anything against the applicant. This plea amounts to reappreciating of evidence and this plea cannot be entertained since this Tribunal while exercising its power in judicial review cannot reappreciate the evidence as submitted by the applicant because by exercising the power of judicial review the Court/Tribunal has only to see whether the process by which enquiry had been held and conclusion arrived at has been done in accordance with the procedure prescribed or not. And also to see, if any principle of natural justice is violated or not. But the Court or the Tribunal cannot reappreciate the evidence. It is only in the case the Tribunal may come to the conclusion that the findings arrived

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at by the enquiry officer are based on no evidence and may quash the findings arrived at by the enquiry officer. In this case though the applicant had taken a plea that it is also a case of no evidence but to our mind this contention of the applicant has no merits because evidence is available on record to arrive at such a findings. We had also call for the enquiry file of the department. We have gone through the enquiry file to see the evidence and it cannot be said that it is a case of no evidence rather the case would suggest that the factory owner had gone to the PP Wazirpur area but his report was not lodged. Then on 17.8.93 the factory staff apprehended three persons, produce the same before the PCR van alongwith certain material recovered from those thieves but still the case was not registered by the applicant and the stolen material which was recovered wasd also not deposited in the Malkhana. The case was registered only on 19.8.93 vide FIR No. 309/93 whereas the facts proved on record that the thieves as well as the stolen material were produced at the PP Wazirpur on 17.8.93 through PCR van. By no stretch on mind it can be said that it is a case of no evidence.

16. It was also contended that the appellate authority has not passed the speaking order nor it has discussed the contention raised by the applicant. And the order passed by the appellate authority have brought miscarriage of justice and the same should be quashed. However, on going through the order passed by the appellate authority we find that the appellate authority has mentioned that the appellant was also heard by the appellate authority in the O.R. on 25.8.96 and the explanation given by the applicant was that "he had done as alleged but he had done so in the interest of Government work. He had informed his SHO of every action taken by him

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and it was on his concurrence that plates were kept to plant them on the remaining accused to connect them in the case and he also prayed for a lenient view."


17. Besides that the appellate authority has also referred to his order that he has examined the record as well as the ground taken up by the appellant in his appeal and the plea taken orally before him was only an, after thought, so he upheld the order of punishment.

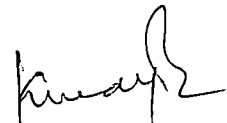
18. In our view also the submissions made by the appellant orally before the appellate authority show that the applicant had in a way admitted his guilt as he admits that he had not deposited the plates in the Mal Khana since some plates were kept by him to plant the same on remaining accused so that they may be connected in the case, which goes to show that the applicant has not taken up the investigation of the case in a proper manner. The law requires that whenever a complainant comes to the police station and if a statement discloses any cognizable offence then FIR must be lodged promptly. In this case the complainant went to police station on 15.8.93 but no FIR was lodged. Then on 17.8.93 the complainant produced the thieves as well as the stolen plates through PCR Van at the police post where the applicant was the incharge, still no case was registered nor any accused was arrested. It is only on 19.8.93 the case was registered and the case property was deposited in the Mal Khana on 22.8.93 whereas the law requires that the case property should have been deposited in the Mal Khana immediately after the recovery and on 22.8.93 also the full case property was not deposited and some of the plates were produced later on and the explanation coming from the applicant is that he had kept the same to plant by the

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remaining accused so as to connect them with the theft. This is again a most illegal procedure adopted by the applicant for planting of a case property upon some person from whom the property has not been recovered. Thus, we find that the appellate authority has rightly passed the order in which it had even considered the oral explanation given by the applicant which amounts to pleading guilty to the charges as proved by the enquiry officer.

19. In these circumstances we find that there is no violation of principles of natural justice and the applicant had been given full opportunity to defend his case and the charges levelled against him are such which does not require any interference. OA is dismissed. No order as to costs.

  
( S.A.T. RIZVI )  
Member (A)

  
( KULDIP SINGH )  
Member (J)

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