

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.134/2001

Hon'ble Shri V.K.Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 4th day of July, 2001

Shri Maluk Singh
(D-I/226)
s/o Shri Tarlok Singh
r/o C-38, Police Colony
Mehram Nagar
New Delhi - 110 037. ... Applicant

(By Advocate: Shri Shyam Babu)

Vs.

1. Govt. of N.C.T. Delhi
through its Chief Secretary
5, Sham Nath Marg
Delhi - 110 054.
2. The Joint Commissioner of Police
(Southern Range)
Police Headquarters
I.P.Estate
New Delhi. ... Respondents

(By Advocate: Ms. Jasmine Ahmed)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant has assailed the enquiry report, Annexure-A, which was communicated to him by the disciplinary authority as well as the order dated 5.1.2001 issued by the respondents whereby he has been denied the copy of the previous report and he has been asked to file his reply within seven days failing which the orders will be passed ex-parte. The applicant submits that he was also prosecuted before the Special Judge, Delhi vide RC 77-A 95 DLI under Section 120-B IPC and Section 7 read with 13(2) read with 13(d) of Prevention of Corruption Act, 1988 which was registered against the applicant and he was placed under suspension on 29.6.1995. The allegations levelled in the case were regarding acceptance of

illegal gratification of Rs.50,000/- from Sh. Mohd. Salim Khatri through Shri Anil Bansal on 29.8.1995 for showing favour in case FIR No.481/95, P.S.Defence Colony registered under section 380 IPC on 11.8.1995. The Trial Court by an order and Judgement dated 26.5.1999 acquitted the applicant from the criminal charge by making certain observations in para 69 of the Judgement interalia that the public witnesses including police witnesses, turn hostile with impunity and joins hands with the accused persons and matter has been referred to the Commissioner of Police, Delhi Police to enquire and investigate and take suitable and remedial measures in this regard. On acquittal in the criminal case the applicant was reinstated on 17.9.1999 without prejudice to the further departmental action and period of suspension was ordered to be decided later on. In the meanwhile, the departmental action against the applicant has been considered by the respondents in view of Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 and ultimately the departmental enquiry has been approved against the applicant by the concerned authority and the applicant was served upon the summary of allegations and other documents in pursuance of the order dated 3.11.1999.

2. In the departmental enquiry, the applicant has been charged for gross misconduct and negligence as from the Judgment of the Trial Court it has been made clear that the witnesses have been won over directly and indirectly by the applicant who have come to give false evidence in order to shield the accused from prosecution. The enquiry officer proceeded by

examining the listed persecution witnesses and thereafter as alleged by the applicant, the enquiry officer finding no evidence regarding hostility of witnesses on behalf of the applicant recommended his discharge by exonerated him from the charges. It is alleged by the applicant that thereafter the enquiry was back to the Enquiry Officer and he was pressurised to frame a charge against the applicant which he accordingly framed. It is further alleged that after framing up of the charge and submission of defence statement by the applicant again the enquiry officer found no evidence to support the charge and exonerated the applicant in his findings. The applicant was served upon the finding of the enquiry officer to which he filed his interim reply interalia contending that to furnish a certified copy of the previous report along with the comments of the disciplinary authority to accord a reasonable opportunity for filing an effective representation. The respondents vide order dated 5.1.2001, impugned herein, directed the applicant to file complete reply within seven days otherwise ex parte order shall be passed against him. It is stated in the order that the Rules do not provide for furnishing of a copy of the previous report except the findings which have already been served upon the applicant. At this stage, the applicant has assailed the impugned order dated 5.1.2001 and the findings of the enquiry officer dated 16.1.2001. This Court, as an interim measure, stayed the further proceedings in the departmental enquiry.

3. We have heard the rival parties and perused the material on record including the departmental record. The applicant has challenged the findings of the enquiry officer and the action of the disciplinary authority by resorting to Rule 16(iv)(a) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter called as 'the Rules') to contend that the Rules provide that in the event the allegations are not substantiated and when there is no evidence to support the allegations and the enquiry officer recommends discharge of the police officer then at that stage the disciplinary authority has no jurisdiction and competence to send back the enquiry for framing up of charge and the only course left open to resort to either Rule 16(x) of the Rules ibid which requires the disciplinary authority to pass orders on each charge and if some importance evidence having a bearing on the charge has not been recorded or brought on record the same may be brought on record himself or sent back the enquiry to the same or some other enquiry officer and call for a supplementary enquiry, the accused officer would be given an opportunity to lead further defence or the other course with the disciplinary authority in such a situation is to disagree with the findings of the enquiry officer and after complying with the principles of natural justice to pass a final order. As the disciplinary authority in this case has not made use of any of the provisions available to him under the Rules, his action of sending back the enquiry for framing up of the charge is not legally sustainable. The learned counsel for the applicant has prayed to this Court to peruse the relevant orders passed by the disciplinary authority

sending back to the enquiry officer for framing up of the charge. The disciplinary authority after perusal of the findings of the DE has observed as follows in his order dated 28.3.2000:

"Please refer to your office letter No.39/SD A.DCP-II/SD, dated 13.2.2000 on the subject cited above.

After perusal of the findings of the D.E. the Joint CP/SR, Delhi has observed as Under:-

"There is so much material to suggest that determined effort was made to influence, even threaten the witnesses, resulting in the acquittal. These witnesses had given complaints in writing as well. Can they deny this fact?. The E.O. has made no efforts to go into the circumstantial evidence to examine the allegations. He must remember that it is a departmental enquiry and not a trial. The trial has already been done and judge had to acquit with clear conclusions that the witnesses have been won over, which is the subject matter of this D.E. E.O. must go in great details and not hold this perfunctory enquiry."

It is, therefore, requested that necessary action may be taken accordingly. The D.E. file received vide your office letter under reference alongwith D.E. proceedings and the finding are return herewith.

Encl.: D.E. File.

(Nihal Singh)ACP/HQ
for Dy. Commissioner of Police
(Vigilance), Delhi"

4. In this back ground the enquiry officer was sent back the file and has ultimately framed the charge against the applicant. The contention of the applicant that before resorting to this action the findings which have been communicated to the disciplinary authority by Enquiry Officer was necessary to be furnished along with the disagreement arrived at and additional material taken into consideration by the disciplinary authority. Referring to the provisions of Delhi Police (Punishment and Appeal) Rules, 1960 ibid, it is contended that at the stage of Rule 16(iv) ibid, the

disciplinary authority has no option but to concur with the findings of the enquiry officer in case discharge has been recommended.

5. On the other hand, the respondents in their reply took exception to the contentions of the applicant and stated that as there were certain shortcomings in the findings of the enquiry officer the necessary directions have been issued to reconsider the same. It is further contended that the finding of the enquiry officer recommending discharge and disagreement note is an internal communication and there is no occasion for the applicant to have an access to the same and as the applicant has been accorded an opportunity to submit his defence the reasons for disagreement are to be made in the final order of the disciplinary authority. But the applicant resorted to this OA prematurely without awaiting the final outcome of the departmental enquiry. It is further contended that as the disciplinary authority has relied upon the later report there was no requirement to supply any previous report on which the disciplinary authority has not placed any reliance.

6. We have applied our mind to this contention of the applicant. No doubt under Rule 16 (iv) (a) ibid in the event there is no evidence to support the summary of allegation the enquiry officer, if not the disciplinary authority, recommends discharge of the delinquent police officer to the disciplinary authority, who in turn has to act upon the recommendations and pass order exonerating the

applicant from the charge. But if this course is not adopted by the disciplinary authority then the course left open is to record his reasons from the charge and then either to order supplementary enquiry or to record his disagreement and according an opportunity to the applicant to show cause and thereafter to pass an order of penalty. The course adopted by the disciplinary authority in this case to send back the enquiry for framing up of charge on the ground that the enquiry officer has not gone in great details and held the enquiry in perfunctory manner would not be in consonance with the Rules *ibid*. Although the disagreement on charge was an internal communication between the enquiry officer and the disciplinary authority but yet we find that the course adopted by the disciplinary authority is rather in breach of the procedure rules. The disciplinary authority having failed to exercise his option under Rule 16(x) and 16(xii) which are the only provisions where he is empowered to act upon in the event a favourable finding is given by the enquiry officer, he cannot resort to any other procedure beyond the Rules.

7. The learned counsel for the applicant has placed reliance on the ratio of Hon'ble Apex Court, K.R.Deb Vs. The Collector of Central Excise, Shillong, AIR 1971 SC 1447 wherein in para 13 it has been laid down as under:

"It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule

15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority has enough powers too reconsider the evidence itself and come to its own conclusion under rule 9." (B)

8. Para 13 of the Judgement referred supra has akin to procedure rules laid down under Rule 16 and more particularly Rule 16(x) and (xii). The action of the disciplinary authority by completely setting aside the previous finding of the enquiry officer as not appealed to him is not within his competence and that too without following the rules would not be sustainable. The learned counsel for the applicant in furtherance of this contention has also relied upon the ratio of this Tribunal in Sh. Jaipal Singh Vs. Delhi Administration and Others, ATR 1988(2) CAT 506 to contend that a de-novo enquiry cannot be ordered and the only course open to the disciplinary authority is to either take recourse to Rule 16(x) or 16(xii) ibid. From the perusal of the reasons recorded in letter dated 28.3.2000, we find that the finding of the enquiry officer recommending the discharge of the applicant has not been furnished by the disciplinary authority to the applicant and only on the grounds that the DE was conducted in perfunctory manner and the Enquiry Officer has not gone in details, recommended for framing up of charge.

In our view the tenor of this letter is that the disciplinary authority has not liked the findings of the enquiry and without resorting to the relevant rules, and without any jurisdiction, and competence under the relevant rules, directed the enquiry officer to frame a charge. Although the applicant was later on accorded an opportunity to produce his defence but yet the violation of procedural law/rules and acting

without any jurisdiction in derogation of the principles of natural justice has certainly prejudiced the rights of the applicant of fair hearing, and also he has been denied a reasonable opportunity to comment upon such an action as this letter dated 28.3.2000 as well as the findings wherein he has been exonerated by the enquiry officer has not been furnished to him. (A)

9. It has been next contended that the enquiry officer after framing up of charge and on receipt of a defence statement of the applicant exonerated him in his finding and only furnished to the disciplinary authority, the same was sent back to the enquiry officer with a direction to hold applicant guilty has not been borne out from the perusal of the record submitted by the respondents. In fact, after the finding on the charge at the stage of Rule 16(iv) ibid there is only one finding subsequently submitted to the disciplinary authority wherein the applicant had been held guilty of the charge and the same has been furnished to the applicant. As such this contention of the applicant is not legally justifiable and tenable in view of the records produced by the respondents. It is further contended that the applicant has been deprived of a reasonable opportunity as along with the findings, whereby he has been held guilty of the charge, the disciplinary authority while asking the applicant to represent against the findings, has not attached the copy of the findings of the enquiry officer whereby he has been recommended for discharge which has resulted in denial of a reasonable opportunity to him, as the material relied by the disciplinary authority has not been

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furnished to the applicant. The learned counsel for the applicant has drawn our attention to the ratio laid down in Constitutional decision of apex court in Managing Director, ECIL, Hyderabad Vs. B.Karunakar, JT 1993(6) SC 1, wherein it has been held with regard to the furnishing of the finding that it has to be construed as a document, supply of which by the disciplinary authority is in consonance of principles of natural justice. An employee shall have to be accorded a fair opportunity to explain before he is condemned. The disciplinary authority takes into consideration the finding recorded by the enquiry officer and it was an important material before the disciplinary authority which is likely to influence his conclusion. According to which the same is an additional material unknown to the applicant but is taken into consideration while arriving at his conclusion.

10. In this conspectus, it is contended that although the finding referred to in the decision supra would be the finding on which the disciplinary authority has to take a final decision but yet the ratio supra applies to the present case. Although the respondents have admitted that there was a previous finding but their decision of not furnishing the copy to the applicant has resulted in great prejudice to him. As the enquiry has been concluded with the submission of finding by the enquiry officer exonerating the applicant from the allegations and recommending his discharge, and if at that point of time the disciplinary authority had acted in accordance with the Rules, the applicant would have

been accorded an opportunity to meet out the disagreement arrived at by the disciplinary authority as in accordance with the Rules 16(xii) ibid. As this finding of the enquiry officer has been disagreed by the disciplinary authority and his action of sending back the same to frame a charge against the applicant despite no evidence would be an additional material before the disciplinary authority and this could have been brought to the notice of the applicant at the time when the findings of the enquiry officer holding the applicant guilty has been forwarded to him. The applicant could have effectively defended the charge against him and could have an opportunity to question the propriety of action taken by the disciplinary authority at that stage. In our view, though while admitting that there was a finding of the enquiry officer recommending discharge of the applicant as the allegation could not be proved which is also borne from the record, non-furnishing the copy of the finding of the enquiry officer exonerating the applicant from the charge has caused grave prejudice to the applicant and is neither justifiable nor legal. Although we are conscious of the jurisdiction of this Tribunal to interfere at the interlocutory stage in a disciplinary proceedings but yet we are also fortified in this view of ours by the ratio laid down in Punjab National Bank and Others Vs. Kunji Behari Misra, (1998) 7 SCC 84. We find that the charges framed by the disciplinary authority and procedure adopted is contrary to law. We are not going into the correctness or the truth of the charges and as the order passed by the disciplinary authority and the procedure adopted is without jurisdiction, we have no

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hesitation to interfere with the same and in this view of ours we are also fortified by the ratio of Hon'ble Apex Court in Union of India and Otrs. Vs. Upendra Singh, (1994) 3 SCC 357 wherein it has been held that the enquiry can be interfered at the charge stage if the same is contrary to law. 17

11. In the result, we are of the considered view that the course adopted by the disciplinary authority was in derogation of the procedural rules *ibid.* We, therefore, set aside the Enquiry Report (Annexure-A) as well as the show cause notice issued on 21.11.2000, at Annexure-B and also the letter dated 5.1.2001. We remand back the case to the disciplinary authority with a direction to take up the departmental enquiry from the stage of framing up of charge, if so advised, and thereafter to take an appropriate action in accordance with the procedure laid down under the Delhi Police (Punishment & Appeal) Rules, 1980 as well as keeping in view our observations made above. The respondents shall complete the enquiry within a period of three months from the date of receipt of this order. With the above directions the OA is disposed of but without any order as to costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

/RAO/

V.K. Majotra
(V.K. MAJOTRA)
MEMBER(A)