CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(11)

OA NO. 2098/2001

New Delhi, this the 5th day of February, 2002

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

Ompal Singh
S/o Shri Ram Singh
R/o H.No.276, Gali No.6
Rameshwar Nagar,
Azadpur,
Delhi-11003. .... Applicant
(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Union of India
Through Commissioner of Police
Police Headquarterss,
I.P.Estate,
New Delhi.

2. Addl. Commissioner of Police
Armed Police
Police Headquarters,
I.P.Estate,
New Delhi.

3. Dy. Commissioner of Police,
1st Bn. DAP, Kingsway Camp,
Delhi. ....Respondents
(By Advocate: Sh. George Paracken)

O R D E R (ORAL)

By Sh. Shanker Raju, Member (J)

Applicant, an Ex Constable, impugnes order dated 3.11.99 imposing the penalty of dismissal as well as appellate order dated 7.9.2000 modifying the penalty of dismissal to removal from service.

2. Applicant has been proceeded against in a departmental enquiry on the allegations that he has remained unauthorisedly and wilfully absent from duty w.e.f. 10.2.99 despite receipt of the absentee notice dated 22.3.99 by the wife of applicant and another notice by his mother, he has not responded to the communications and on his information regarding medical rest messenger has been sent to serve a memorandum dated 7.4.99 at

(12)

his residence for subjecting himself to second medical examination. In its reply it has been stated by the brother of the applicant that applicant is not coming home for the last one month and his whereabouts are not known. The previous bad record of the applicant on earlier occasions has also been made an allegation to show him a habitual absentee. Applicant has not participated in the enquiry and failed to put up his defence. Ultimately the enquiry has been proceeded ex parte and the enquiry officer has held the applicant guilty of the charge. Despite noting down the communication and accorded an opportunity to file representation against finding, he failed to avail the same and ultimately the disciplinary authority by an order dated 3.11.99 ex parte dismissed the applicant from service and treated the absence from 19.2.99 to 3.11.99 as dies non. On appeal the appellate authority by recording reasons though maintained the finding of guilt but on the quantum of punishment taking a lenient view modified the order and awarded the punishment of removal from service which gives rise to the OA.

3. Applicant has also impugned the vires of Rule 16 (i) to (xi) of Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referring to as Rules) which deals with the procedure of departmental enquiry and has sought to declare the same as ultra vires and unconstitutional.

4. Learned counsel of the applicant though not impugned Rule 16 in para 1 of the OA but makes a request to declare Rule 16 ibid as ultra vires on the following grounds:

(i) The applicant states that in Delhi Police the enquiry officer does not act impartially and by assuming the role of a presenting officer acts as a prosecutor. The role of the enquiry officer is unfair and amounts to having become judge in its own cause.

(ii) By referring to Rule 16 (i) ibid of the rules it is contended that the enquiry officer is appointed with a closed mind without any presenting officer being deputed to present the case of the department. According to him the enquiry officer has been left the task to prepare the statement summarising the misconduct whereas he is only competent to attach with the summary of misconduct the details of the evidence which the witness depose in the enquiry and also the relied upon documents. According to him it is department who has to provide the list of witnesses and documents to the enquiry officer but his role of preparing the same certainly shows that he is acting more towards the department and such a role takes away the impartiality and fairness in the departmental enquiry.

(iii) By referring to Rule 16(iii) of the rules ibid it is contended that the enquiry officer examines the witness and record evidence to support the charge. In this backdrop it is stated that the charge stage comes after the evidence is recorded in support of summary of allegation. Enquiry officer pre-supposes the charge framed under the enquiry

and is pre-determined to record evidence shows that the recording of evidence is only an empty formality and the charge has already been decided by the enquiry officer. It is also stated that the enquiry officer has been bestowed with an arbitrary power to bring on record earlier statement of a witness recorded during the course of preliminary enquiry which has not been subjected to cross-examination by the delinquent police official as provided under Rule 15 (3) of the rules ibid.

(iv) It is also by referring to Rule 16(iv), stated that though it has not been provided that the charge framed after recording the evidence is to be approved by the disciplinary authority but yet framing of charge by the enquiry officer and rushing to disciplinary authority clearly shows that the exercise is only mechanical and the disciplinary authority has no opportunity to independently apply its mind to the evidence recorded on which the charge framed at that stage.

(v) It is also stated that in the summary of allegation the police official is after the imputation is described has been alleged to have committed the acts amounting to the misconduct and in this view of the matter it is stated that the enquiry officer pre-determines the issue and without even recording the evidence and his finding on the charge and without taking into the defence of the applicant has formed a definite opinion regarding the guilt

of the applicant which offend the principle of fair play and is not in consonance with the principles of natural justice.

(vi) By referring to Rule 16(v) and Rule 16(viii), it is contended that the enquiry officer has been bestowed with an arbitrary power to refuse examination of any defence witness whose testimony he considers irrelevant but on the other hand the PWs are summoned by the enquiry officer and the DWs are not being summoned by the enquiry officer despite request. No gist of DWs is given and also the enquiry officer has jurisdiction to call any witness as court witness under the garb of supplementing the enquiry and filling up the gaps therein. It is in this context stated that the enquiry officer acts more in favour of the department and the summary of allegation and the charges are invariably identical shows closed mind of the enquiry officer as well as the disciplinary authority.

(vii) It is also stated that the enquiry officer in absence of any presenting officer acts on behalf of the department by cross examining the defence witnesses and also cross examines the prosecution witnesses.

The applicant further referring to rule 14 of the CCS (CCA) Rules, 1965 stated that the enquiry in Delhi Police should be held in accordance with this rule where a definite charge is framed against a

delinquent officer at the outset and thereafter the evidence is recorded through the presenting officer who presents the case of the department.

By referring to the decision in Hans Raj Gupta vs. State of Punjab 1992 (1) SLR 146 as well as in M.A.N.Shetty vs. DM LIC 1991 (8) SLR 682, it is contended that if in the allegations it is alleged that the act amounts to a misconduct it has been held to be a mere farse and the issue has already been pre-judged the issue and these conclusions influence the mind of the disciplinary authority and rendering the enquiry a mere formality.

5. The learned counsel on merits stated that the applicant on account of his mental illness had undergone treatment at Ram Manohar Lohia Hospital where he had been advised bed rest and was ultimately declared fit to join duty on 6.12.2000. According to him in February 1999 he had sent a request to the competent authority to accord him leave of the kind due and has also sent his medical record. According to him none of the absentee notices or notice for second medical examination has ever been served upon the applicant. The service on his relative would not account to an effective service as being mentally deranged he could not have been forced to appear in the enquiry and the proper course would have been to adjourn the enquiry. The applicant in this regard referred to a letter sent by him on 21.2.99 wherein it is stated that his brother took him to the hospital. It is also stated that the enquiry proceedings have been drawn ex parte in violation of Rule 18 of the rules ibid and the applicant has neither refused to present in the enquiry nor absented but had not

participated in the enquiry on account of a reasonable cause of being mentally unfit and undergoing treatment. Applicant in this manner has been deprived of a reasonable opportunity to defend. It is also stated that the medical record of the applicant has not been taken into consideration by the respondents.

6. It is further stated that the punishment imposed is disproportionate and not commensurate with the charge. By referring to the appellate order it is stated that while taking a lenient view the appellate authority should have inflicted a lesser punishment other than the removal as the medical record of the applicant has not been observed either manipulated or not genuine. It is stated that the applicant has been taken to the hospital on each occasion by his family members and the medical certificates are very much admissible under rule 19 of the CCS (CCA) Rules, 1972.

7. Learned counsel of the respondents Sh. George Paracken rebutted the contentions of the applicant and stated that he has taken a preliminary objection that the applciant has not participated in the departmental enquiry without any just cause and has been proceeded ex-parte. It is not open to the applicant to assail either the vires of the rules and the decision taken by the respondents. Having failed to submit the defence despite opportunity the applicant has been rightly held guilty of the charge. It is also stated that an absentee notice has been sent to the applicant to resume duty which was duly received by his wife but despite this he had not reported for duty. However, it is admitted that a registered letter was received wherein the applicant has informed about his illness but to ascertain the genuinity of medical record the

applicant has been sent a notice for second medical examination which has been served upon the mother of the applicant who stated that the applicant has left the house at some unknown place for last one month. In this view of the matter the enquiry officer finding no alternative as the applicant has been without any just cause was avoiding the enquiry, ex-parte orders have been issued by taking approval of the disciplinary authority. On another communication received by the brother of the applicant on 7.10.99 the applicant was also not found at his residence. This clearly indicates that the applicant's plea of being treated for his mental ailment is concocted and is not correct. Besides this, it is stated that the applicant has absented for a long period of about 8 months continuously without sending any information to the enquiry officer to keep the enquiry in abeyance and despite the fact that he has been attending the hospital on the days when he has been called as alleged by him he should have come to the competent authority to inform about his illness or should have sent information through other sources. His failure to comply with the relevant instructions clearly indicates conclusively towards his guilt. It is also stated that the previous bad record of the applicant where he has been absented on 13 different occasions in the past and was earlier dismissed on being involved in a criminal case but later on reinstated by this court indicates his incorrigibility and complete unfitness for Delhi Police. It is also stated that under rule 19 of the CCS (Leave) Rules ibid the mere grant of medical certificate would not be sufficient for accord of leave. The applicant has not sought any prior permission to avail the medical rest at his residence and if he could have attended dispensary and Ram Manohar Lohia Hospital from his home at Azadpur the place of

duty was not far enough. He could have visited the office and informed the authorities. The charge levelled against the applicant has been amply proved from the record and his medical record was also taken into consideration by the disciplinary as well as the appellate authority. Applicant has also not availed an opportunity to prefer a written representation to the disciplinary authority against the findings and his absence from his house clearly is an antithesis to his story of being mentally sick and taking rest at his residence.

8. As regards the vires of the rules ibid, it is stated that Rule 16 ibid which lays down procedure for holding the departmental enquirie is very much constitutional and is intra vires. In this backdrop by referring to Rule 14 of the CCS (CCA) Rules, 1965 it is contended that therein also the disciplinary authority is empowered himself to draw up the imputation or cause the same to be drawn up. The disciplinary authority therein is also empowered to act as an enquiring authority. Coming to Rule 16 (i) of the rules ibid, it is stated that the disciplinary authority can act himself as an enquiry officer or may appoint any enquiry officer. Enquiry officer does not act on his whims and fencies. By ordering a departmental enquiry wherein the enquiry officer is appointed who has to act in accordance with rules. As such the substance of imputation has already been framed by the disciplinary authority and the enquiry officer has to prepare the summary of allegation in that context and ambit. Enquiry officer has not been authorised to go beyond the imputation alleged in the order initiating departmental enquiry. The enquiry oficer is empowered to prepare the list of prosecution witnesses and bring details of the evidence to be led by them

and the documents to be relied upon for prosecution and the same are to be attached with the summary of misconduct which is given to the delinquent police official who is required to deny or admit the allegations and to indicate whether he want to produce defence evidence to rebut the allegations. According to him the documents and witnesses are made available from the record maintained by the respondents. It is not that the enquiry officer is unguided and without any context prepares the list of witnesses and details of the evidence to be laid by them. Thus material is provided by the department having regard to the imputations alleged in the order of departmental enquiry. It is further stated that the summary of allegation which contains that the act alleged amounts to a misconduct, does not show the pre-determination of the enquiry officer or the disciplinary authority but it is in the context that on these imputations the delinquent official is liable to be dealt departmentally. It is denied that the enquiry officer acts as a prosecutor and with bias or is impartial. As regards the contention that the enquiry officer is to record evidence in support of acquisition to support the charge would not be conclusive to show that the charge has already been pre-determined by the enquiry officer. Enquiry Officer neither promise him the witnesses nor put words in their mouth to be deposed in the enquiry. This rule envisages examination of evidence directly in presence of accused with an opportunity to him to cross-examine the witnesses. As regards bringing on record the earlier statements on record, the same does not suffer from any infirmity as on non-availability of a witness and the fact that enquiry should not be delayed and put to inconvenience the safeguard has been

provided that such statement should be read over and to be proved through the person who has recorded the same during an investigation judicial enquiry or trial.

9. The respondents have further stated that in cases where the evidence which is recorded in support of allegation is not sufficient to link the delinquent official in all such cases the discharge of the accused is recommended and the charge against the accused is dropped even at that stage. The charge framed in the enquiry by the enquiry officer is not at his ipsi dixit. The same is on the basis of the evidence recorded in support of the summary of allegation and the charge is placed before the disciplinary authority who after application of mind approves the same. As regards the examination of defence witnesses is concerned in case of prosecution witnesses a gist of evidence is given likewise the accused has a right to give a list of defence witnesses with the summary of facts which they will testify and the enquiry officer is empowered to refuse to hear any witness if it is found that the witnesses have been produced are irrelevant or are unconnected with the charge levelled against the applciant and his defence. The corollary put by the applicant is not justifiable. The defence witnesses are made to depose before the enquiry officer and with a view to clear ambiguities and to test the veracity the enquiry officer is empowered to ask questions. It is stated that the procedure is neither arbitrary nor unconstitutional. As regards court witnesses are concerned, it is stated that if there is any ambiguity or any clarification to be sought regarding facts not brought the court witnesses can be examined with a right to accused to cross examine and then to make supplementary defence statement. In this view of the matter it is stated that the

rules are very much within the framework of constitution incorporating and safeguarding the interest of accused and inter alia incorporates the principles of natural justice and fair play.

10. The respondents have further taken a plea that the enquiry has been proceeded against in accordance with these rules which are neither arbitrary nor unconstitutional and despite accord of reasonable opportunity to defend at every stage the applicant having failed to avail the same cannot complain about violation of principles of natural justice or fair play and he is estopped from taking such a plea.

11. We have given careful thought to the rival contentions of the parties and perused the material on record.

12. In our considered view, Rule 16(i) to Rule 16(xi) of the Delhi Police (Punishment & Appeal) Rules, 1980 though not assailed by the applicant in para 1 of the application but yet as he has in the prayer clause sought declaring the rules as ultra vires. In our consideration, the rules framed under the Delhi Police (Punishment & Appeal) Rules which have been framed by the Lt. Governor under Delhi Police Act, 1978 are valid, intra vires and not in derogation of principles of natural justice or fair play. The disciplinary authority who initiates the proceedings by passing an order initiating the departmental enquiry which contains the substance of imputation against the accused appoints an enquiry officer who in turn prepares the summary of misconduct on the basis of the imputations in the order of departmental enquiry. The details of the evidence alongwith list of prosecution witnesses to show that the witness is to depose which gives an opportunity

to the caused to prepare his defence accordingly. As regards the documents are concerned it is not the enquiry officer who prepares these documents but the documents are provided in context and within the ambit of imputations settled by the competent authroity. The contention of the applicant that Enquiry Officer attaches the list of witnesses and documents with the summary of misconduct shows that he himself prepares the document is not correct. Although there is no illegality if the enquiry officer prepares the summary of misconduct which he prepares not on his ipsi dixit but he is guided by the order of the departmental enquiry. The accused is also afforded an opportunity to cross-examine the witnesses and to deny the charge and to state whether he wishes to produce his defence. In CCS (CCA) Rules, 1965 also the disciplinary authority can cause the imputation to be drawn through anyone else other than himself. Apart from it, unless a prejudice is caused to the accused a substantive procedure cannot be declared ultra vires. In this view of ours, we are fortified by the decision of the apex court in a constitutional bench in **ECIL, Hyderabad vs. B.Karunakar (1993) 25 ATJ 704.** Regarding the issue of enquiry officer assuming the role of a prosecutor and to act with bias and his role as a judge of his own cause is concerned we do not find from the perusal of Rule 16 that such a role is played by the enquiry officer. Merely because in the summary of allegation it is alleged against the accused that the act of imputations amounts to a misconduct would not be conclusive of the fact that the enquiry officer has pre-determined the charge against the applicant. In view of the imputation it is indicated to the accused that the aforesaid misconduct alleged amounts to a misconduct for the purpose of holding a disciplinary proceedings. The accused officer throughout the proceedings is accorded an opportunity

to cross-examine the witnesses, to produce his defence and to submit a defence statement. The Finding of the enquiry officer is also furnished to the accused to make a representation. In this view of the matter, we are of the considered view that sufficient reasonable opportunity in consonance with the principles of natural justice and fair play is afforded to the accused and he is not prejudiced at all during the enquiry. Furthermore, the contention that enquiry officer records evidence in support of accusation to support the charge can not be inferred that the charge is pre-determined, once the evidence is recorded in support of the accusation in summary of allegation, the enquiry officer under Rule 16(iv) ibid, if the allegations are not substantitated recommend the discharge to the disciplinary authority who acts accordingly. But wherein the charge is framed having regard to the evidence in support of the accusation the charge framed is approved by the DA after due application of mind and thereafter the proceedings are continued. Merely because the Enquiry Officer records evidence in support of the charge would not be sufficient to doubt his role as a prosecutor. Ultimately, the charge is to be approved by the disciplinary authority. As such the grievance of the applicant is only an unfounded apprehension which cannot be countenanced. As regards the jurisdiction of the enquiry officer to bring on record the earlier statement from the file of the preliminary enquiry the same has an object sought to be achieved. The witnesses whose presence cannot be procured but for undue delay and inconvenience and if these statements are necessary the same are made admissible in the departmental enquiry. However a safeguard is provided in the rules that the statement should be recorded and attested by a police officer superior in rank to the police

officer and are recorded by such an officer during investigation, judicial enquiry or trial. These statements are read over to the accused officer who has an opportunity to cross-examine the witnesses proving these statements. The unsigned statements can also be brought by recording the statement of the person who recorded it and is also subjected to cross-examination. In this view of the matter, the accused is not at all prejudiced and his rights are protected by accord of a reasonable opportunity to confront these statements by cross-examination. Apart from it, the apex court in several rulings including that of State Bank of Bikaner and Jaipur Vs. Srinath Gupta & Anr. 1997 (1) SC SLJ 5 as held that even the statements during trial under Section 61 CRPC can be taken into the record of the disciplinary proceedings. Apex Court in Kuldeep Singh Vs. Commissioner of Police JT 1998 (8) SC 603 has upheld the vires of Rule 16 (iii) and it is no more res integra.

13. Another contention of the applicant that whereas all the prosecution witnesses are examined by the enquiry officer and even the court witnesses can be called by the enquiry officer Rule 16(v) and (viii) deprives the applicant to produce all his witnesses and arbitrary power has been given to the enquiry officer to reject any of his witnesses in defence. We are of the considered view that the aforesaid provision has a rationale behind it. In the event, the prosecution witnesses are to depose within the parameters of gist of evidence as such under the provisions of rule 16 (v) ibid the list of defence witnesses is to be submitted by the accused with the summary of facts to be deposed by them. If according to the enquiry officer the defence witnesses are to depose anything irrelevant or unnecessary with regard to the specific charge

levelled against and beyond the defence projected by applicant there is nothing wrong if the witnesses are refused to be heard. The purpose of the defence is to rebut the allegations and to produce the defence to outweigh the prosecution but if the witnesses named in the list by the accused from the gist of facts to the depose appear to have been cited to prolong the DE or are without any context the enquiry officer has a right to reject the same which will not show that the enquiry officer has acted as a prosecutor or was biased. The defence witnesses shall also be subjected to question to be put by the enquiry offficer to clear ambiguities and to test the veracity. However, it is not open to the enquiry officer to cross-examine the witnesses asking leading questions but as far as ambiguity is concerned he has right to clear the same and in this view of the matter he cannot be said to have assumed the role of a prosecutor. Nothing precludes the accused officer to even cross-examine his own defence witnesses. The court witnesses are produced by the enquiry officer when their testimony is considered necessary for clarifying facts not already covered by the evidence and in that event the accused is safeguarded by an opportunity to cross-examine them and to submit his supplementary final defence statement.

14. In nutshell, none of the provisions from Rule 16 (i) to 16 (xi) of the rules ibid are in any manner unconstitutional or ultra vires. Rather sufficient avenues have been provided to the accused officer in consonance with the principles of natural justice and fair play to defend the charge. As such we hold that the rules ibid are intra vires and do not suffer from any legal infirmity.

15. Apart from it, the applicant who has been proceeded ex parte despite being accorded reasonable opportunity to defend and despite service cannot be allowed to take resort to these rules and its vires to assail the proceedings.

16. On merits too, the applicant has no case. Though the applicant informed the authorities, On receipt of notices for second medical examination by his mother as well as an absentee notice being served upon the brother, it has been stated that the applicant is not available and has not been residing there for last one month. It clearly demolishes his plea that he has been taken to the hospital by his brother and was suffering from mental ailment. If the applicant has no other place to live and his residential address given in the offical records is where the absentee notices have been served on his relations, he should have been present there, if he was actually ill. The applicant from time to time has been visiting Ram Manohar Lohia Hospital and also the CGHS dispensaries which are not too far from the place of his posting at 1st Bn. DAP. Nothing prevented him from visiting the headquarters and informing the competent authorities. During the course of enquiry also, despite service of the notices on the relatives of the applicant, he has not bothered to present his defence. No information has been sent to the enquiry officer even by his relatives to keep the enquiry in abeyance despite the fact that information regarding disciplinary proceedings has already been given to them by the officers of the respondents. Enquiry has been rightly proceeded against ex parte under Rule 18 as the applciant has without any just cause evaded his presence during the course of enquiry and the enquiry should not have been postponed indefinitely. Despite this due procedure has been adopted by

the enquiry officer as well as disciplinary officer. As such we are of the considered view that the applicant himself has abandoned the enquiry and has failed to produce his defence at the appropriate stage.

17. As regards the plea of the applicant regarding non-consideration of the medical record is concerned, we find that despite receiving the communication himself as to the finding of the enquiry officer he has not bothered to file his reply. As such the order has been passed ex parte by the disciplinary authority taking into consideration all the circumstances and having failed to produce any defence the charges being proved and the applicant was observed as unfit has been dismissed from service. The appellate authority has also meticulously gone into the defence of the applicant and after taking into consideration the medical record of the applciant upheld the finding of the enquiry officer and the decision of the disciplinary authority but taking a lenient view reduced the penalty to removal which is a lesser punishment and does not deprive the applicant from taking up any other employment.

18. Leave cannot be claimed as a right. Mere grant of medical record would not be sufficient under the Leave Rules 1972. The applciant despite having knowledge and served upon through his relatives has failed to comply the instruction to subject himself to the second medical examination. In this view of the matter, the certificates produced by the applicant which have not been tendered through out and before the enquiry do not inspire confidecne. Now at this stage, it would be difficult in the second medical examination to give any opinion about his medical record as he has already been

declared fit. Apart from it, from the persual of the record it transpires that the applciant kept on shifting the hospitals. Firstly, he took treatment at CGHS and thereafter went to Ram Manohar Lohia Hospital and thereafter he again shifted to CGHS dispensary and again to Ram Manohar Lohia Hospital. This does not inspire confidence on the record produced by the applicant. The respondents have taken into consideration the entire record, and therefore, taken a decision which cannot be found fault with. Apart from it, from the previous record of the applciant it is apparent that he has been a habitual absentee having misconduct in the past. The applicant was once dismissed on account of involvement in criminal case but later on reinstated. In a disciplinary force like Delhi Police the punctuality and discipline is the essence. Applicant who had remained absent for 9 months having regard to his previous record is rightly held to be incorrigible and the punishment imposed and reduced is commensurate with the charge levelled against him.

19. In the result and having regard to the reasons recorded above, we do not find any illegal infirmity in the orders impugned. OA lacks merit and is accordingly dismissed. No costs.

S. Raju

(SHANKER RAJU)
Member (J)

(M.P. SINGH)
Member (A)

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