

Central Administrative Tribunal
Principal Bench

O.A.No.2614/2001

Hon'ble Shri Govindan S. Tampi, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 20th day of January, 2003

Constable Satender Sharma
s/o Shri Ramsinghasan Sharma
No.10971, DAP
9th Battalion
Fatehpura
New Delhi - 110 034. Applicant

(By Advocate: Shri Amitesh Kumar)

Vs.

1. Commissioner of Police
NCT of Delhi
Police Headquarter
New Delhi.
2. Deputy Commissioner of Police
Central District
NCT of Delhi
Delhi.
3. Joint Commissioner of Police
Northern Range
NCT of Delhi
Delhi. Respondents

(By Advocate: Sh. George Parackin)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant, in this OA, impugns respondents' penalty order dated 19.11.1999 imposing upon him a punishment of temporary forfeiture of two years approved service without cumulative effect, as well as appellate order dated 12.7.2000 rejecting his appeal.

2. Applicant, while deputed at Police Station, Nabi Karim, hit truck Driver, Rajinder Singh. He was placed under suspension and a preliminary enquiry has been conducted by ACP Gurmukh Singh, who recorded statement of witnesses and submitted his

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Preliminary Enquiry Report to the disciplinary authority, which accordingly ordered a departmental inquiry against applicant on 4.3.1999.

3. After the examination of prosecution and defence witnesses and submissions of the written statements, submitted by the applicant, inquiry officer held applicant guilty of the charge. Applicant submitted reply to the findings of the inquiry officer. Disciplinary authority agreeing with the findings, imposed upon applicant a major penalty which on an appeal by applicant has been upheld by the appellate authority, giving rise to the present OA.

4. Though several contentions have been taken by Shri Ametesh Kumar, counsel for applicant, at the outset, in view of the averments made in Para 5.6 of the OA, it is contended that applicant has been deprived of an effective cross-examination. It is further stated that preliminary inquiry report has not been made available to him despite the inquiry officer was examined in the inquiry and exhibited the report.

By resorting to Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules, 1980 which is reproduced as under:

"The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it

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necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer."

5. It is contended that the Preliminary Inquiry Report has been taken in the departmental inquiry and as such the same cannot be admissible unless a copy of the same has been served upon applicant. Due to non-supply of a copy of the same, he has been deprived of an effective cross-examination to the Preliminary Inquiry Officer. It is, in this background, stated that the list of documents along with summary of allegations does not include the Preliminary Inquiry Report.

6. By referring to the circular issued by respondents in 1980, which provides furnishing of a copy of Preliminary Inquiry Report in the event the PE Officer is examined in the inquiry and exhibits its report, it is contended that the circular is not yet been revised and as such it is incumbent for the respondents to have served upon him a copy of the PE Report.

7. On the other hand, respondents' counsel Sh. George Parackin, vehemently passed the contentions and in reply to Para 5.6 it is stated that the PE Report has not been supplied to applicant as it was meant for disciplinary authority to arrive at a decision to hold a departmental proceedings against applicant.

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8. We have carefully considered the rival contentions of the parties and perused the material on record.

9. In view of the statutory Rule 15(3) of the Rules ibid, if the inquiry officer takes into record any documents from the PE File, and PE Report is also a document pertaining to PE and has been exhibited through the testimony PW-8, ACP Gurmukh Singh, who conducted the preliminary inquiry, non-supply of PE Report is certainly in derogation of the circular of the respondents which is still in vogue.

10. Non-supply of the aforesaid PE Report is a procedural illegality which has prejudiced applicant as he has been deprived of an opportunity of effective cross-examination of the preliminary inquiry officer.

11. The following observations have been made by this Tribunal in Vijay Singh v. Govt. of NCT of Delhi, 1999(3) ATJ(Vol.29) Page 562:

"The question whether the non-supply of a copy of the PE report to the delinquent, where the author of that report was examined as a PW in the P.E., was sufficient to vitiate the departmental proceedings was examined by a Division Bench of this Tribunal in O.A.874/96 Prem Pal Singh Vs. Union of India & Others in which one us (Shri S.R.Adige, Member(A) as he then was was a member. In its order dated 5.3.97 while allowing that O.A., the Bench noticed that Respondents own instructions dated 1.5.80, Para (11) of which ran of follows.

The officers who had conducted the preliminary enquiry was cited and examined as P.W., but copy of his preliminary enquiry report was not furnished by the E.O. to the defaulter denying him an opportunity to cross-examine the witness. That has affected a proper cross-examination

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of such witness and goes against the principles of natural justice vitiating the departmental enquiry ab initio. Copy of P.E. Report in such cases should have been supplied suo-moto at the initial stage along with the summary of allegations even if no specified request is made by the defaulter.

In the present case we have noticed that in spite of a specific request made by applicant for a copy of the P.E. the same was not supplied to him.

17. Relying upon several other ruling the Bench in Prem Pal Singh's case (Supra) held that non-supply of the PE Report to the delinquent when Respondents own circular dated 1.5.80 required it to be supplied, was and infirmity grave enough to vitiate the entire D.E. Nothing has been shown too us to establish that the aforesaid order in Prem Pal Singh's case (Supra) has been stayed, modified or set aside."

12. If one has regard to the aforesaid ratio, the same in all four covers the case of applicant. We respectfully agree with the same. Non-supply of PE Report is sufficient to vitiate the inquiry and consequent orders passed by respondents.

13. Other legal issues raised by the applicant have not been adjudicated.

14. In the result and for the foregoing reasons, impugned punishment and appellate order are quashed and set aside. However, this will not preclude the respondents from drawing up the proceedings, if so advised, from the stage of supply of PE Report to the applicant. OA is disposed of accordingly. No costs.

S. Raju
(Shanker Raju)
Member(J)

/rao/

(Govindan S. Tamari)
Member(A)