

Central Administrative Tribunal
Principal Bench

O.A. No. 3210 of 2001

9

New Delhi, dated this the 4th September, 2002

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

1. Ex.Constable Jasbir Singh
No.803,
S/o Shri Chander Bhan,
R/o Village Ladpur, fficer
P.O. Bamnola,
Police Station Jajjar,
Distt. Rohtak,
Haryana

...Applicant

(By Advocate: Mrs.Avnish Ahlawat)

Versus

1. Govt. of NCT of Delhi,
through Commissioner of Police,
Police Headquarters,
I.P.Estate,
New Delhi.
2. Joint Commissioner of Police,
Southern Range,
New Delhi.
3. Dy. Commissioner of Police,
South West District,
New Delhi.

...Respondent

(By Advocate: Mrs.Sumedha Sharma)

ORDER(ORAL)

Shanker Raju, Member (J)

Applicant, a Constable in Delhi Police, impugns respondents' order dated 27.10.98 imposing upon him punishment of removal from service as well as appellate authority's order dated 17.5.99 upholding the punishment and also the order passed in revision dated 31.5.2001. He seeks his reinstatement in service with all consequential benefits.

2. Applicant, who was posted at P.S. Dabri, on

a complaint by one Ravi Kumar, proceeded against in a preliminary inquiry conducted by Inspector Sushil Kumar during course of which number of statements were recorded and finding was submitted to the Disciplinary Authority who, in turn, after perusing all the material on record, ~~ordered a departmental en-~~^{qu} ~~quiry against the~~ⁱⁿ applicant.

3. Applicant was served with summary of allegations alleging gross misconduct of receiving a sum of Rs. 75,000/- from one Ravi Kumar Sharma to get his name enlisted in Delhi Police on sports basis and further he proposed him to deal in illegal trafficking in liquor. It is also alleged that the applicant got the complainant introduced to one Rajinder Sharma and had neither provided employment to the complainant nor returned his money back.

4. A charge was framed against the applicant who produced his defence in inquiry and after going through the statements of PWs and defence statement, the Inquiry Officer found the applicant guilty of charge and submitted his findings to the Disciplinary Authority substantiating the charge, to which applicant had filed his reply.

5. The Disciplinary Authority imposed upon the applicant a punishment of removal by taking into account the fact that a part of money was given back to the complainant establishing transaction.

(11)

6. The appeal, preferred against the order of punishment of removal, was rejected. The revision petition against that order was not entertained for want of any competence with the Commissioner of Police, giving rise to the present OA.

7. Though the learned counsel for the applicant Mrs. Avnish Ahlawat has taken several contentions to assail the impugned orders but at the outset the following contentions have been taken.

1. The Inquiry Officer has violated the principle of natural justice in so much as in contravention of provisions of Rule 15(iii) and 16(iii) of Delhi Police (Punishment & Appeal) Rules, 1980 by adopting the novel methodology in bringing on record the earlier statements of the witnesses recorded during preliminary enquiry and treating the same as substantive evidence without supplying the copies of the statements of the witnesses recorded in the preliminary enquiry and the same has been authenticated by the evidence. This has deprived of an opportunity to the applicant to cross-examine the prosecution witnesses.

2. It is stated that though the applicant was charged for receipt of Rs. 75,000/- on the pretext of enlistment of complainant's name in Delhi Police and further proposed him to deal in illegal trafficking in liquor. The same has not been proved by the Inquiry Officer by any evidence on record and the findings of the Inquiry Officer are totally perverse. The order passed by the Disciplinary

7

(12)

Authority is based on surmises and conjectures. The Inquiry Officer took into consideration the extraneous evidence in proving the transaction that a part of money was returned to the complainant. This fact has not been brought to the notice of applicant and no opportunity has been afforded to him to rebut the same.

8. On the other hand, respondents' counsel Mrs. Sumedha Sharma denied all these contentions of the applicant and stated that the inquiry has been held in accordance with Rule 16 of Delhi Police (P & A) Rules and as the statements of witnesses were recorded in the preliminary inquiry, the Inquiry Officer has rightly taken into consideration the earlier statements recorded in the preliminary inquiry while concluding the findings and proving the charges.

9. In so far as supplying the additional documents i.e. preliminary enquiry report and statements of witnesses is concerned, the applicant had not made any request after the summary of allegations was served upon him and no prejudice has been caused to him.

10. On merit, it is contended that the allegations against the applicant were grave and the charges against him have been fully proved and ⁱⁿ judicial review ^{it} does not lie within the jurisdiction of the Tribunal to interfere with the matter or reappraise the evidence. Moreover Smt. Sharma

stated that the orders passed by the Disciplinary Authority as well appellate authority are reasoned one as per rules.

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

12. Rule 16(iii) of Delhi Police (P & A) Rule mandates the Inquiry Officer to record evidence in support of the accusation as is available and necessary to support the charge if the accused police officer does not admit the charge and as far as possible the witnesses shall be examined direct and in the presence of the accused. The only exception available to the Inquiry Officer is that he can bring on record the earlier statement of any witness whose presence cannot be procured without undue delay, inconvenience or expenses.

13. Rule 15(3) of the Delhi Police (P & A) Rules also provides that though the file of preliminary inquiry shall not form part of the formal departmental record, but statements therefrom can be brought on record of the departmental proceeding when the witnesses are no longer available and there shall be no bar to the Inquiry Officer to bring on record any other document from the file of the preliminary inquiry.

14. It is not disputed that along with the summary of allegations, the statements of witnesses recorded in the preliminary inquiry had not been served upon applicant and his ~~later~~^{late} request to the Inquiry Officer has not been acceded to.

15. At the time of cross-examination of witnesses, applicant was not aware of earlier deposition of the witnesses in the preliminary inquiry as during the course of preliminary inquiry the accused police officer was not given participation and the statements of the witnesses recorded in the preliminary inquiry were not served upon him. It was incumbent upon the Inquiry Officer to have served upon the applicant those statements irrespective of the fact whether it had been demanded or not. In view of Rule 16(iii) *ibid* if any document is relied on by the Inquiry Officer, the same is to be served upon the accused police officer. On that account alone as the applicant has been deprived of opportunity to effectively cross-examine the witnesses in the absence of statements of witnesses recorded in preliminary inquiry, prejudice has been caused to applicant and this is also a violation of substantive provisions as contained in the rules.

16. Moreover, in so far as the procedure and methodology adopted by the Inquiry Officer is concerned, the same is not in accordance with the rule that if a witness is available in the Departmental inquiry irrespective of his earlier statement, the Inquiry Officer shall have to record his oral statement afresh which would give

opportunity to accused officer to challenge the demeanour of the witness and impeach him. The only exception available to the Inquiry Officer is that the inquiry officer can bring on record the earlier statement of any witness whose presence cannot be procured without undue delay, inconvenience and expense incurred, and if the witnesses were very much available, the procedure adopted is clearly in contravention of the rules and is not consistent with the rules.

17. The Apex Court, while dealing with the similar situation in a Delhi Police case, in *Kuldip Singh Vs. The Commissioner of Police & Ors.* reported in JT 1998(8)SC 603 placing the reliance on several decisions of the Apex Court, held that when the facts set out in Rule 16(iii) did not exist, Rule 16(iii) cannot be invoked and the earlier statements of the witnesses, recorded in the preliminary inquiry, can not be brought on record if the witnesses were available and the factors i.e. undue delay, inconvenience and expenses incurred are the conditions precedent for invoking the provisions under rule 16(iii) *ibid*. This decision covers the case of the applicant.

18. Learned counsel for the applicant has placed reliance on *State of UP Vs. Shatrughan Lal & Anr.* reported in JT 1998 (6) SC 55 to contend that no effective opportunity has been afforded to applicant to cross-examine the witnesses as he was not supplied the copies of statements recorded in the preliminary inquiry. Though the applicant had prayed

for supplying the statements of the prosecution, recorded earlier, but the same had been rejected without any justified reason. In that event, in the absence of the statements of the prosecution witnesses, applicant has been prejudiced in not affording an effective opportunity to cross examine the witnesses which violates the principles of natural justice vitiating the departmental inquiry.

19. We find that on the charge of demand of Rs.75,000/- for enlisting the name of complainant in the Delhi Police list and alluring him to deal in illegal trafficking in liquor, the Disciplinary Authority has taken cognizance of extraneous circumstance without agreeing with the Inquiry Officer to punish him. The applicant was not given an effective opportunity to cross-examine the witnesses whose statements were recorded earlier in the preliminary inquiry, prejudice has been caused to applicant and in that event he should be given a reasonable opportunity to cross-examine the witnesses.

20. In our considered opinion, apart from other legal contentions, which we have not dealt with, these procedural illegality of substantive procedure is enough to vitiate the findings of the Inquiry Officer.

17

21. Accordingly for the foregoing reasons, OA is partly allowed. Impugned orders dated 27.10.98 and 17.5.99 are quashed and set aside. Applicant shall be reinstated in service as a suspended employee. The respondents are at liberty to proceed with the inquiry from the stage of cross-examination of the witnesses by the applicant, within a period of six months from the date of receipt of a copy of this order. The intervening period and the benefits shall be decided by the respondents thereafter in accordance with rules and instructions. No costs.

S. Raju
(Shanker Raju)
Member (J)

M.P. Singh
(M.P. Singh)
Member (A)

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