

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 458/2001

This the 21st day of April, 2003.

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HON'BLE SHRI GOVINDAN S.TAMPI, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

S.I.Vikram Singh Rathi,
S/o M.S.Rathi,
R/o 267, PTS Police Colony,
Malviya Nagar, Delhi
(By Advocate : Shri Arun Bhardwaj) ... Applicant.

-versus-

1. Commissioner of Police,
Police Head Quarters,
MSO Building,
I.P.Estate,
New Delhi.
2. Joint Commissioner of Police (Operation),
Police Head Quarters,
MSO Building,
I.P.Estate,
New Delhi.
3. Deputy Commissioner of Police/E.O.,
IGI Airport,
New Delhi.
4. Deputy Commissioner of Police (Vig.),
Police Head Quarters,
MSO Building,
I.P.Estate,
New Delhi. ... Respondents

(By Advocate: Sh.J.A.Chaudhary proxy counsel for
Sh.George Paracken)

O R D E R

Hon'ble Shri Govindan S.Tampi, Member (A) :

Following reliefs are sought by Vikram Singh Rathi,
applicant in this OA:

(a) quash and set aside the order at Annexure-A/1 and direct the respondents to pass a appropriate order in view of the reference of discharge made by the inquiry officer, and

(b) to set aside the fresh summary of allegations issued to the applicant and

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(c) to direct the respondents to remove the name of the applicant from the Secret list of Doubtful Integrity w.e.f. 6.9.99 i.e. the date it was so entered in the said list and

(d) to grant all consequential benefits, and

(e) to pass any further order/direction in favour of the applicant and against the respondents which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.

2. The applicant a Sub-Inspector of Delhi Police was on 15.7.1999 directed to be dealt with in joint proceedings along with Inspector Chandra Haas, on the allegation of suppression of facts, wilful delay in the process and attempt to hush up a seemingly case of murder. In the enquiry that followed, five P.Ws were examined, the Inquiry Officer turned in a report recommending that the proceedings be dropped and the officers be discharged. The Disciplinary Authority disagreed with the same and directed a fresh enquiry with additional witnesses and documents. On the basis of the above summary of allegation was issued once again but with more witnesses and additional documents. In terms of Rule 16(iv) of the Delhi Police (Punishment & Appeal) Rules, 1986, when an opinion of not guilty is filed by the I.O., the Disciplinary Authority has to accept the same and give effect to it Rules 16 (ix) and (x) also lay down the law as above Disciplinary Authority had neither competence nor jurisdiction to disagree before the chargesheet stage or order a fresh enquiry. The fresh enquiry has been ordered by the Disciplinary Authority with a pre-determined matter. Inquiry Officer has arrived at his decisions correctly and on appreciation of

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facts and circumstances brought on record. As such ~~the~~ the Disciplinary Authority could not have ordered a fresh enquiry. Applicant's representation against the above has not been responded to. Besides, the applicant's name has been placed in the Secret List. On the basis of the allegations in the same, for a period of three years. This has come in the way of the applicant's future prospects forcing him to come before the Tribunal.

3. Grounds raised in the OA are that

- i) impugned action of the respondents was illegal;
- ii) in terms of rule 16(iv) of the Delhi Police (Punishment & Appeal) Rules, once the rule for discharge is filed by the I.O. Disciplinary Authority was bound by it;
- iii) ^{After} Disciplinary Authority has no sanction in law;
- (iv) incorporation of additional documents and witnesses was improper;
- (v) Disciplinary Authority had decided to disagree with the Inquiry Officer, without affording an opportunity to the applicant to show cause;
- (vi) the fresh action by the Disciplinary Authority ^{is mostly} is only intended to fill in the gaps, that too at a belated stage;

(vii) the proceedings in respect of the co-delinquent Inspector Chandra Haas have already been stayed by the Tribunal and;

(viii) applicant was entitled to have his name rewarded from the Secret List.

4. Respondents stoutly defended the action taken by themselves in the matter. According to them, Disciplinary Authority has correctly remanded the proceedings in terms of Rule 16(x) of Delhi Police (Punishment & Appeal) Rules. While it is true that in the impugned order fresh documents and additional witnesses have been brought in. The same was done after putting the party on notice. As the enquiry proceedings had certain patent deficiencies, the Disciplinary Authority had correctly held that a fresh look was called for. It was incorrect to hold that findings can be given by the I.O. only after the charge is framed. Disciplinary Authority has cogently ^{recorded} ~~documented~~ his reasons for differing from the report of discharge proposed by the E.O. and the same deserves endorsement. Respondents also agree that the proceedings against the co-delinquent has been stayed by the Tribunal in OA 2013/2000 and that the applicant's name has been brought as D.I. Secret List for a period of three years w.e.f. 14.3.2000. This representation is under consideration.

5. During the oral submissions, learned counsel for the applicant and the respondents - S/Shri Arun Bhardwaj and J.A. Chaudhary reiterated their above pleas.



6. We have carefully considered the matter. We find that summary of allegations have been served on Vikram Singh Rathi (the applicant) and another for alleged misconduct by them in dealing with a dead body of a murder victims. The Inquiry Authority had turned in a finding which reads as follows:

"Keeping in view the above facts and material on record in DE proceeding I am of the view that the allegations levelled against Inspc. Chandra Haas and SI Vikram Singh Rathi could not be proved and as such no charge is made out. Since there is no material to frame charge against the defaulters, it is preferred to submit finding under Rule 16(iv) of Delhi Police Punishment and Appeal) Rules 1980."

However, on perusal of the above on 11.4.2000 the disciplinary authority felt that certain deficiencies and discrepancies have crept in the proceedings in that list of documents and list of documents were not prepared keeping in view the allegations against the defaulters. After listing the deficiencies, the disciplinary authority recorded as below:

In view of the above, I do not agree with the findings and in exercise of the powers under Section 169 (iv), I revert back the DE for conducting prayer from the stage of summary of allegations to the defaulters afresh along with awarded list of documents and list of witnesses as mentioned above."

The applicant is aggrieved by the above and is alleging that the action of the disciplinary authority was improper, impermissible and hit by violation of principles of natural justice.

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7. In this connection, we note that the issues in this very OA have already been considered and decided by another Court in this Bench itself on 22.11.2002 while considering the OA No. 2013/2000 filed by Inspector Chandra Haas, who was the co-delinquent of the applicant in this OA (Vikram Singh Rathi). After examining the issues in detail the Bench has partly allowed the OA holding that the report of the Inquiry Officer, whether submitted that any time would be an enquiry report to the disciplinary authority. Relevant portions of this order are reported as below:

8. The Rules also provide the procedure to be adopted in departmental enquiries. Rule 16 of the Rules comes into play with respect to the procedure to be adopted primarily in cases of major punishments to be awarded. Sub-rule (i) to Rule 16 of the Rules provides that the inquiry officer shall prepare a statement summarising the misconduct alleged against the accused officer to give full notice to him of the circumstances appearing against him. Where the police officer who is accused of misconduct does not admit the misconduct, the inquiry officer shall proceed to record the evidence. However, sub-rule (iv) to Rule 16 reads as under:-

"16(iv). When the evidence in support of the allegations has been recorded the Enquiry Officer shall-

(a) If he considers that such allegations are not substantiated, either discharge the accused himself, if he is empowered to punish him or recommended his discharge to the Deputy Commissioner of Police or other officer, who may be so empowered or,

(b) Proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them."

It clearly provides that if the inquiry officer finds that allegations are not substantiated after recording evidence, he can recommend the discharge of the said person to the concerned disciplinary

authority. Otherwise if the allegations in his opinion are substantiated, he can frame a charge. Thereafter, the accused officer is required to state the defence witnesses whom he wishes to call and examine. Sub rule (x) of Rule 16 of the Rules further unfolds itself into the following words:-

"(x) On receipt of the Enquiry officer's report the disciplinary authority shall consider the record of the inquiry and pass his orders on the inquiry on each charge. If in the opinion of the disciplinary authority, some important evidence having a bearing on the charge has not been recorded or brought on the file he may record the evidence himself or sent back the enquiry to the same or some other enquiry officer, according to the circumstances of the case for such evidence to be duly recorded. In such an event, at the end of such supplementary enquiry, the accused officer shall again be given an opportunity to lead further defence, if he so desires, and to submit a supplementary statements, which he may wish to make."

9. Perusal of sub-rule (x) of Rule 16 of the Rules reveals that when the report of the inquiry officer is received, the disciplinary authority can, if in his opinion, some important evidence having a bearing on the charge had not been recorded, may record the evidence himself or sent back the enquiry to the inquiry officer. In such an event, at the end of such supplementary enquiry, the accused officer shall again be given an opportunity to lead further defence in this regard.

10. The learned counsel for the applicant had argued that in the present case, there was no report of the inquiry officer contemplated because the charge even had not been framed. We have no hesitation in coming to the conclusion that the said argument is totally devoid of any merit. We have already reproduced above the penultimate paragraph of the report of the enquiry officer. The inquiry officer reported that the allegations were not substantiated and thus there was no material to frame a charge against the applicant. Once such is the finding, it must be taken that it was the report of the inquiry officer and, at any time, it may be submitted and will not make any difference if it is submitted before the charge is framed.

11. It has further been urged that a de novo enquiry could not have been ordered even in exercise of Rule 16(x) of the Rules. We have already referred above to the provisions of Rule 16 (x). It provides in unambiguous terms as already referred to above, that if there is evidence which has a bearing on the charge, further enquiry could

be directed. When in this background, the impugned order is viewed, we have no hesitation in concluding that it is not a de novo enquiry that had been ordered. Certain witnesses who had been mentioned in the impugned order had been directed to be examined who were earlier not examined. It was directed that summary of allegations should be re-drawn. Thus it becomes necessary for the reason that a reference has to be made to one order of the Deputy Commissioner of Police and certain witnesses. It is not a de novo enquiry but it would be a supplementary enquiry in face of the powers given under Rule 16(x) of the Rules.

12. Our attention was drawn to the fact that such a power under Rule 16(x) could be exercised only in case where the charge had been framed. The learned counsel for the applicant referred to the words "on receipt of the Enquiry Officer's report the disciplinary authority shall consider the report of the inquiry and pass his orders on the inquiry on each charge". Reading of the aforesaid Rule 16(x) clearly shows that emphasis is "on receipt of the Enquiry Officer's report". Rule 16(x) has to be read along with Rule 16(iv) of the Rules because as already referred to above, whenever the report of the inquiry officer is submitted, the disciplinary authority applies its mind and can act. It could even exercise the powers under sub-rule (x) to Rule 16 if no charge had been framed and the report of the inquiry officer is received and even in those cases further evidence can be directed to be recorded if it falls within the ambit of Rule 16(x) of the Rules.

13. In that even, our attention was drawn to the fact that some of the witnesses already examined are being re-examined. We do not find this to be a part of the impugned order but by way of abundant caution, we make it clear that the witnesses already examined need not be re-examined because that would be beyond the scope of sub-rules (iv) and (x) to Rule 16 of the Rules.

14. For these reasons, we accordingly partly allow the application and it is held that the report of the enquiry officer whether submitted at any time would be an enquiry report to the disciplinary authority. Under Rule 16(iv), the disciplinary authority could direct the witnesses for re-examination, who were not earlier examined. Witnesses already examined cannot be directed to be re-examined. In Rule 16(x), the words "pass his orders on the enquiry on each charge" have to be read along with preceding sub-rule (iv) of Rule 16 and it would include cases where the charges had not been framed. It would be over-emphasising that de novo enquiry has not been ordered and it would be in Rule 16 (x). The order is made accordingly. No costs."

8. The above being the findings in the order

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issued by the Principal Bench itself in another OA but challenging the same impugned order dated 11.4.2000, we follow the same for disposing of this OA also.

9. In the above view of the matter, OA succeeds partly and is accordingly disposed of. While upholding the competence of the Disciplinary Authority to disagree from the findings of the Inquiry Officer to order further enquiry, we direct that the enquiry shall be undertaken only with reference to the fresh documents adduced and new witnesses brought in. No re-examination of witnesses already examined of the documents already brought in, shall be permitted. E.O. may complete the enquiry proceedings as directed above and submit his report to the Disciplinary Authority within three months from the date of receipt of a copy of this order. Disciplinary Authority shall take the decision thereon within one month from the date of receipt of the I.O.'s report. No costs.

S. Raju
(Shanker Raju)
Member (J)

(Govindan S. Tamai)
Member (A)

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