

(6)

New Delhi this the 15th day of November, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

(1). OA 2430/1998

Ex. Constable Devi Dass
S/o Shri Raj Kishore
R/o 125, Rani Garden, Shastri Nagar
Trans Yamuna, Delhi- 31

(2). OA 2165/1999

Ex. Constable Badri Narain Meena
S/o Shri Har Chander
R/o Village & P.O. Sehlawas Via Paprada
Distt. Dohsa, Rajasthan ... Applicants

(By Advocate Shri Shanker Raju)

-versus-

1. Union of India
Through Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Commissioner of Police,
Police Head Quarters
I.P. Estate, M.S.O. Building
New Delhi.
3. Addl. Commissioner of Police
Armed Police
New Police Lines,
Kingsway Camp, Delhi.
4. Dy. Commissioner of Police
3rd Bn, D.A.P.
New Police Lines, Kingsway Camp
Delhi. ... Respondents

(Shri Ashwani Bhadrwaj, proxy for
Shri Rajan Sharma, counsel for the
respondents in OA No. 2430/98 and
for Shri Ajesh Luthra, counsel for
the respondents in OA No. 2165/1999)

O R D E R (ORAL)

Justice Ashok Agarwal:-

OA No. 2430/1998 and OA No. 2165/1999 raise
similar questions of law and fact. They are,

therefore, being disposed by this common order.

(X)

2.. Applicant in OA No.2430/1998 is ex-constable Devi Dass and applicant in OA No.2165/1999 is ex-constable Badri Narain Meena. Both have impugned a common order of removal from service dated 19.8.1997 issued against them in disciplinary proceedings conducted against them. Both of them along with another co-delinquent were proceeded departmentally with the following summary of allegations:-

"It is alleged against HC Shardha Nand, No.1550/DAP.(2022/DAP), Const. Devi Dass, No.1433/SD, (2223/DAP) and Const.Badri Narain, No.902/ED, (2724/DAP) that on 23.8.96, they were detailed at Gaddi Guard Duty at Patiala House Courts, New Delhi. After bringing the UTPs from Tihar Jail at N.D. lock-up, they were performing duty at Dakhla and receiving the UTPs, who had been produced in the courts. HC Shardha Nand was receiving UTPs and recording entry in the Dakhla Register. Constables Devi Dass and Badri Narain were detailed for searching/frisking and Mulakat duty at Dakhla. UTP Mohd.Saleem s/o Abdul Gaffar R/O Village & P.O. Biratu, District 24 Pargana, West Bengal came out of the Dakhla behind UTP Shashi Shekhar, who was being taken by const.Badri Narain to Mulakat Kaksha for Mulakat under the order of the court. UTP Zakir Husain was also taken out for Mulakat with Shashi Shekhar without any order of the court for ulterior motive, 3rd UTP Mohd.Saleem also came out of the Dakhla behind UTPs Shashi Shekhar and Zakir Hussain. This UTP slipped/escaped from the gate after walking a few steps behind these UTPs. The HC has failed to have proper supervision and vigil over his staff detailed to perform such an important duty.

The above act on the part of HC Shardha Nand, No.1559/SD (2022/DAP), const.Devi Dass, No.1433/SD (2223/DAP) and const.Badri Narain, No.902/ED (2724/DAP) amounts to gross negligence, dereliction of duty, misconduct and indiscipline as UTP Mohd.Saleem escaped from their lawful custody, which renders them liable for Departmental Action under the Delhi Police (Punishment & Appeal) Rules, 1980."

W.J.

Along with the summary of allegations, applicants were furnished with a list of witnesses as also a list of documents. List of witnesses includes the name of Inspector Ramesh Pal Singh, who has conducted a preliminary/searching enquiry and has submitted a report. The said report submitted by Inspector Ramesh Pal Singh, however, does not find place in the list of documents.

3. The incident which forms the basis of the aforesaid enquiry took place on 23.8.1996. Applicants as also the other co-delinquent were suspended on the very day. Their suspension was, however, revoked and they were reinstated in service on 11.11.1996. An enquiry officer was thereafter appointed. He has proceeded to examine as many as 6 Prosecution Witnesses and several Defence Witnesses who were produced by the delinquents. By his report of 16.6.1997, the enquiry officer found the applicants guilty of the charge levelled against them. A copy of the aforesaid report of the enquiry officer was duly served by the disciplinary authority on the applicants, who in turn have submitted their representations. The disciplinary authority by his order passed on 19.8.1997 has accepted the findings of the enquiry officer and has proceeded to impose a penalty of removal from service upon the applicants. Aforesaid order was carried by the applicants in appeals and the appellate authority by his order passed on 10.2.1998 and 22.2.1998 respectively has maintained the order of penalty imposed upon the applicants and has dismissed their appeals. Aforesaid

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orders are impugned by the applicants in the present OAs.

4. Sh. Shanker Raju, the learned advocate appearing on behalf of the applicants in his characteristic vehemence has submitted that the applicants have not been served with a copy of the preliminary/searching enquiry report. According to him, this has seriously prejudiced his right to effectively cross-examine Inspector Ramesh Pal Singh who has been examined as PW-2 before the enquiry officer. As a consequence, according to Sh. Shanker Raju, the entire disciplinary proceedings should stand vitiated.

5. In support of his contention, he has placed reliance on the provision contained in Rule 15 (3) of the Delhi Police (Punishment & Appeal) Rules, 1980 (for short "the Rules") which provides as under:-

"Rule 15. Preliminary enquiries-(3)
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 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."


Aforesaid provision, according to Sh. Shanker Raju

mandates that a copy of the preliminary/searching enquiry report should be served upon the delinquent. Aforesaid provision, according to him is mandatory, breach of which will necessarily vitiate the entire enquiry. In our view, aforesaid contention cannot be accepted for more than one reasons. The aforesaid provision is contained in Rule 15 which deals with preliminary enquiries. The same contains procedure to be followed in general departmental enquiries. As far as the present case is concerned, the same deals with misconduct concerning escape of prisoners from police custody. For disciplinary proceedings concerning escape of prisoners from police custody, a separate and distinct provision is to be found in Rule 29 of the Rules. Aforesaid provision in the circumstances, contained in Rule 15 (3), in our view, cannot be incorporated and supplanted in Rule 29. We further find that even if one has regard to the provision of Rule 15 (3), we do not find that the same mandates service of a copy of the preliminary/searching enquiry report upon the delinquents. The Rule ~~merely~~ lays down that the file of preliminary/searching enquiry report shall not form part of the formal departmental record (emphasis supplied). The Rule merely permits statements forming part of the preliminary/searching enquiry report to be brought on record and that too when witnesses are no longer available. The provision thereafter proceeds to lay down that there shall be no bar to the enquiry officer bringing on record any other documents from the file of the preliminary/searching enquiry report, if the enquiry

N.C.

officer considers it necessary. This he could do after supplying copies to the delinquent officer. In our view, aforesaid provision, nowhere refers to the report of the preliminary/searching enquiry to be brought on record. On the contrary, if at all, the same bars bringing on record of the said report in the formal disciplinary proceedings conducted by disciplinary authority. The reason is apparent and it is not for us to see. The disciplinary authority is expected to arrive at his own independent conclusion based on the evidence adduced before him without in any manner being influenced by the report of preliminary/searching enquiry. Even if we were to accede to the contention of Sh. Shanker Raju that the aforesaid provision mandates the requirement of bringing on record the report of the preliminary/searching enquiry and further furnishing a copy thereof to the delinquent, the same will not vitiate the orders impugned in the present OAs. The Supreme Court in the case of **Managing Director ECIL Vs. B. Karunakar & Others**, JT 1993 (6) SC 1 has observed that the delinquent employee is entitled to a copy of the report of the enquiry officer which is considered as an essential part of the reasonable opportunity. Nevertheless, the court said that courts should not set aside the order of punishment on the ground that it was not supplied, unless prejudice was shown to have been caused to the delinquent on the ground of its non-supply.

6. In **State Bank of Patiala & Ors. Vs. S.K.**

Sharma, JT 1996 (3) SC 722, the Supreme Court has laid down the following principles:-

"(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should inquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz. whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for."

7. Point raised, it cannot be disputed, is in respect of the procedural provision and hence, the principle enunciated in para 3 of the aforesaid order would be applicable. In the circumstances, it will be necessary to find out whether this is a case of non-supply of copy of the preliminary/searching



enquiry report and whether non-supply thereof has caused prejudice. For this purpose, we have to peruse the copy of the enquiry report which amongst others contains the statement of PW-2 Inspector Ramesh Pal Singh who has conducted the preliminary/searching enquiry. The same shows that the said witness has been duly cross-examined by each of the applicants in the present OAs. The same further shows that no grievance in regard to the non-supply of the report was even remotely made. We have further perused a copy of the defence statement submitted by the applicants. As regards, the aforesaid witness concerned, this is what has been submitted by the applicants in their defence statements:

" PW.2 Inspector Ramesh Pal Singh conducted the Preliminary Enquiry into the facts and circumstances leading to the escape of UTP Mohd. Saleem. However, his enquiry report suffers various lacunas rendering the deposition of the PW unreliable and unworthy for consideration. (emphasis provided)

- a) His enquiry report does not discuss the clarification/explanation of Const. Nawab Singh as why he had left his duty without permission and could not check the escape of the said UTP. (emphasis provided)
- b) This PW did not seek explanation of the sentry or the Constable of said gate through which the UTP escaped. (emphasis provided)

N.C.

c) This PW did not record the statement of Inspector Hawa Singh incharge of the lock-up to ascertain the specific duties detailed to each constable performing duties of Gaddi guard, which would establish that Const. Badri Narain was assigned duties of the UTS for Mulakat and Khana purposes and not Const. Devi Dass who was only detailed to search and check the UTC and taking them into lock-up back after their production in the Court.
(emphasis supplied)

d) This PW failed to ascertain the facts from the duty roster showing the duties of the Constables individually. (emphais supplied)

8. Aforesaid contentions which have been raised by the applicants in their defence statements, in our view, suggest that applicants were very much in possession of the preliminary/searching enquiry report. Without being in possession of the same, they could not have raised the aforesaid contentions which ^{are} ~~seen~~ to have raised in their defence statements. It is true that the preliminary/searching report has been brought on record in the deposition of the aforesaid Inspector Ramesh Pal Singh who deposed as PW-2. The same has been exhibited as PW-2.A. However, if one has regard to the aforestated facts and circumstances, it cannot be said that the applicants were not in possession of the same and in any event, it cannot be held on the aforestated facts and circumstances that any prejudice has been caused to



the applicants. Aforesaid contention of Sh. Shanker Raju, in the circumstances, is rejected. (15)

9. Sh. Shanker Raju has contended that the report of the enquiry officer is sketchy and the same does not discuss or appreciate the evidence on record. The same does not give reasons why the evidence of the prosecution witness has been accepted in preference to that adduced on behalf of the delinquents. The order in the circumstances is nothing short of *ipse dixit*. The same in the circumstances cannot be sustained. He has made a similar criticism in regard to the order passed by the disciplinary authority. In support of his contention, he has placed reliance on a decision of the Supreme Court in the case of **Anil Kumar Vs. Presiding Officer and Others**, 1985 SCC (L&S) 815 wherein it has been, *inter alia*, observed as under:-

"5...It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the enquiry officer has a duty to act judicially. The enquiry officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his *ipse dixit* that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not creditworthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an *ipse dixit* of the enquiry officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In *Madhya Pradesh Industries Ltd. Vs. Union of India*, AIR 1966 SC 671, this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard...."

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10. We have considered the aforesaid criticism of Shri Shanker Raju in the light of the aforesaid decision of the Supreme Court. We have also considered the orders of the enquiry officer as also the disciplinary authority in the light of the evidence adduced in the disciplinary proceedings and we are not inclined to accept the aforesaid contention of Shri Shanker Raju. Facts leading to the initiation of disciplinary proceedings are few. Applicants, at the material time, were on Gaddi Guard duty. They were performing the duty at Dakhla and receiving the undertrial prisoners having been produced in the courts. Applicants were detailed for searching/frisking and Mulakat duty at the Dakhla. Only such undertrial prisoners were to be produced as were ordered by the court. Only one such undertrial prisoner was to be produced at a time. However, at the relevant time, several undertrial prisoners were produced together. Undertrial prisoners in whose case, no order of the court had been issued were also produced. An undertrial prisoner who was produced managed to make good his escape. Aforesaid applicants thus failed to have supervision and vigil over the undertrial prisoners. This in substance is the gravamen of the charge framed against the applicants. That the applicants were on duty at the relevant time is not in dispute. Similarly that several undertrial prisoners including an undertrial who was not ordered by the court was also produced and in the process an undertrial prisoner made good his escape is also not disputed and this escape was during the time when the present applicants were on duty for the purpose of



doing searching/frisking operations. In the circumstances, we do not find that much capital can be made out on the basis of the aforesaid orders of the enquiry officer and the disciplinary authority being not ~~proper~~, reasoned and speaking orders. Aforesaid contention of Shri Shanker Raju is also rejected.

11. Shri Shanker Raju has thereafter proceeded to raise a feeble plea in regard to the measure of penalty imposed upon the applicants. In our judgement, the aforesaid plea has merely to be mentioned for the purpose of rejection. As far as the misconduct which has been found proved, the same it cannot be disputed is of a very serious and grave nature for which a separate procedure in the form of Rule 29 has been prescribed. Aforesaid provision contains the following directions:-

"Dismissal or removal from service shall normally follow a judicial conviction, for finding of guilt in a departmental enquiry for negligence resulting in the escape of a prisoner."

Aforesaid provision, as we read it, mandates that the normal penalty in case of misconduct or negligence resulting in the escape of a prisoner is dismissal or removal from service. According to us, the aforesaid provision has to be read as under:-

"Dismissal or removal from service shall normally follow a finding of guilt in a departmental enquiry for negligence resulting in the escape of a prisoner."

12. In our view, this is the only construction which is possible to be given to the aforesaid

provision. Aforesaid provision, in the circumstances, cannot be given a restricted connotation. The same cannot be construed so as to flow from a judicial conviction only. The same will follow even on a finding of guilt in a departmental enquiry for negligence resulting in the escape of a prisoner. If the dismissal or removal from service was directed to follow only on a judicial conviction, the remaining part of the provision would not have been provided. If judicial conviction was to be made the only ground, there was no need to have the provision which follows "for finding of guilt in a departmental enquiry for negligence resulting in the escape of a prisoner". Hence, based on the aforesaid provision, we find that the impugned order of removal from service is fully justified and does not call for interference in the present OAs. No other contention has been raised on behalf of the applicants.

13. For the foregoing reasons, we find the present OAs devoid of merit. The same are accordingly dismissed. No costs.

(S.A.T.Rizvi)
Member (A)

sns

(Ashok Agarwal)
Chairman

Attested
Agarwal
CO CP