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Central Administrative Tribunal
Principal Bench

O.A. No. 2732 of 1999

New Delhi, dated this the 31st AUGUST, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Rajinder Singh
Ex-Constable No. 40291 PCR
S/o Shi Bakhtawar Lal,
R/o 355, Police Colony,
Ashok Vihar,
Delhi-110062. . . Applicant

(By Advocate: Shri Arun Bharwaj)

Versus

Govt. of NCT of Delhi through
the Police Commissioner of Delhi,
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi-110002. . . Respondent

(By Advocate: Mrs. Sumedha Sharma)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the disciplinary authority's order dated 1.4.99 (Annexure I) and the appellate authority's order dated 7.10.99 (Annexure VI) rejecting his appeal. He claims reinstatement with consequential benefits including full back wages.

2. Applicant was proceeded against departmentally on the allegation that on 11.9.98 while performing duty on PCR van C-17 as HC driver he physically assaulted i/c van ASI Ram Karan in full view of the public. He did not obey the order of his senior and refused to stand outside the van when asked to do so by i/c Van ASI Ram Karan.

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3. After examining the PWs the aforesaid charge was served upon applicant, and the I.O. in her report dated 10.2.99 (Annexure IV) held the same as proved.

4. A copy of the I.O.'s report was furnished to applicant on 18.2.99 for representation if any; which applicant submitted on 8.3.99. He was also given a personal hearing by the disciplinary authority on 30.3.99.

5. After considering the materials on record, including applicant's representation, the disciplinary authority agreed with the findings of the E.O. and in view of the gravity of the charge which included assaulting his senior, by impugned order dated 1.4.99 dismissed applicant from service. His appeal was rejected on 7.10.99 giving rise to the present O.A.

6. Heard both sides.

7. Applicant contends that he had a dispute with i/c van ASI Ram Karan who wanted to smoke inside the van, but denies that he disobeyed the ASI's orders, much less assaulted him. In support of his contention, he avers that there was no injury mark on the ASI's person; no medical report certifying to the assault was obtained because the ASI refused medical examination; the ~~method~~ ^{lathi} by which he is

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alleged to have assaulted the ASI was not taken possession of; no public witness was examined, although the assault is alleged to have taken place in full public view; and furthermore that it was not he, but one Ramesh Chand who was on duty. These contentions relate basically to the reappraisal of evidence, which we in the exercise of writ jurisdiction in the present O.A. are precluded from embarking upon. Suffice it to say that it is not a case of no evidence, as the statement of ASI Ram Karan has been duly corroborated by Constable Ramesh Chand, PW1. Hence these contentions are rejected.

8. During the course of arguments, applicant's counsel Shri Bhardwaj advanced two additional grounds. Firstly it was contended that there had been a violation of Rule 15 (2) Delhi Police (Punishment & Appeal) Rules in as much as the misconduct for which applicant was charged involved commission of a cognizable offence, but the prior approval of the Addl. Commissioner of Police was not obtained whether a criminal case should be registered and investigated, or a D.E. should be held. Secondly it was contended that there had been a violation of Rules 15(3) and 16(iii) Delhi Police (P&A) Rules in as much as statements of PWs recorded in the preliminary enquiry were allowed to be brought on record in the D.E. although they were available. In this connection the Tribunal's order dated 3.7.95 in O.A. No. 1152/91 Rishi Pal Vs. Delhi Administration &

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Others; dated 21.1.98 in OA-2089/97 Mahabir Singh Vs. Chief Secretary & Others; and order dated 9.2.2001 in O.A. No. 2203/98 Om Prakash Vs. Commissioner of Police & Others were cited in support of these arguments.

9. In so far as violation of aforesaid Rule 15(2) is concerned, the same is applicable in cases in which a preliminary inquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public (emphasis supplied). In the present case ^{the} misconduct with which applicant is charged has nothing to do with his official relations with the public. Hence it cannot be said that there has been any violation of Rule 15(2) Delhi Police (P&A) Rules.

10. In so far as the alleged violation of Rules 15(3) and 16 (iii) Delhi Police (P&A) Rules are concerned, it is clear that the[?] objective behind incorporating these provisions is that as far as possible, the witnesses shall be examined directly and in the presence of the accused person, and previous statements made by those witnesses either during the course of a preliminary enquiry or elsewhere will be permitted to be brought on record only when the presence of those witnesses cannot be procured without undue delay, inconvenience or expenses[?]. Where such previous

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statements are allowed to be brought on record of the D.E. they shall be read out to the accused person.

11. In the present case we find from a perusal of the E.O's report that there were five PWs, all of whom were examined directly and were also subjected to cross-examination. Merely because the earlier statements made by some of these PWs were also exhibited in the D.E. does not in our opinion constitute violation of Rule 15(3) and 16(iii) Delhi Police (P&A) Rules. While no doubt Rules 15(3) and 16(iii) permit the authorities to bring on record the previous statements made by witnesses, where their presence is required, but cannot be procured without undue delay, inconvenience or expense, it does not necessarily follow that where their presence have been procured, and they have been subjected to examination and [?]cross-examination, the entire enquiry is vitiated ~~merely~~ because in addition to their examination and cross-examination, their previous statements were also allowed to be brought on record. It must be remembered that their previous statements were exhibited; applicant had full access to them; and he was given an opportunity to cross-examine the witnesses upon those statements. We are supported in our view by the Hon'ble Supreme Court's ruling in State Bank of Bikaner & Jaipur Vs. Srinath Gupta & Anr. 1997 (1) SCSLJ Page 5. In that case the question for adjudication was whether statements made under Section 161 Cr. P.C. produced in a disciplinary proceeding

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could be taken on the record of those proceedings. The Hon'ble Supreme Court after noting that the person who made those statements was examined before the E.O. and full opportunity was given to the delinquent to cross-examine the said witnesses held that the Rajasthan High Court was not justified in concluding that the disciplinary proceedings stood vitiated.

12. In our view the aforesaid ruling in Srinath Gupta's case (supra) is squarely applicable to the facts and circumstances of the present case, and in the light of the aforesaid Apex Court ruling, those orders of the Tribunal relied upon by Shri Bhardwaj do not advance applicant's claim.

13. Furthermore in Managing Director, ECIL, Hyderabad Vs. B. Karunakar a five judge Constitution Bench of the Hon'ble Supreme Court has observed thus:

"The theory of reasonable opportunity and the principle of natural justice have been evolved to uphold the rule law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

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14. It is true that the ruling from which the aforesaid extracts have been drawn, was handed down in the context of the supply of a copy of the Enquiry Officer's report in a disciplinary proceeding before the disciplinary authority took a decision on that report, but in our view the aforesaid extracts are equally applicable in the present case also. Applicant has not succeeded in establishing that any prejudice was caused to him merely because at the time the PWs were subjected to examination and cross-examination, the statements given by them earlier were also brought on record.

15. Indeed a perusal of applicant's representation dated 8.5.99 addressed to the disciplinary authority (Ann. VIII) on the findings of the E.O. reveals that he has nowhere denied that he refused to stand outside the van when asked to do so by van incharge ASI Ram Karan. Furthermore he himself admits in Para 5 of the aforesaid representation that he had an exchange of words with ASI Ram Karan who according to applicant wanted to smoke inside the van to which applicant had objected. As pointed out by the E.O. and indeed by the disciplinary authority also even if it is presumed that the van incharge wanted to smoke inside the van, it did not justify or authorise applicant to refuse to perform the duties as per van incharge's direction or to pick a quarrel with him.

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16. In view of the above, the impugned orders warrant no interference, and the rulings relied upon by applicant's counsel do not avail the applicant. The O.A. is dismissed. No costs.

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A. Vedavalli

(Dr. A. Vedavalli)

Member (J)

S.R. Adige

(S.R. Adige)

Vice Chairman (A)

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