IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.2760/1999 Date of decision: 16.1.2001

Constable Jag Pravesh .. Applicant

(By Advocate: Shri Anil Singhal

versus

Union of India & Ors. .. Respondents

(By Advocate: Shri Vijay Pandita

CORAM:

The Hon'ble Shri V.K. Majotra, Member A)

The Hon'ble Shri Shanker Raju, Member J)

1. To be referred to the report or not? Yes

2. Whether it needs to be circulated to other Benches of the Tribunal?

S. Raju

(Shanker Raju)
Member(J)

Cases referred:

Ex-Constable Randhir Singh Vs. UOI 1991(5) SLR 731
Surjit Ghosa vs. CMD, United Commercial Bank & Ors. JT 1995(2) SC 74
Nandini Satpathy Vs. P.L. Dani & Anr. AIR 1978 SC 1025
Yoginath D Bagde Vs. State of Maharashtra & Anr. JT 1999 (6)SC 62

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

OA.No.2760 of 1999

New Delhi, this 16th day of January 2001

HON'BLE SHRI V.K. MAJOTRA,MEMBER(A)
HON'BLE SHRI SHANKER RAJU,MEMBER(J)

Constable Jag Pravesh
No.1573/E
R/o Vill. & P.O. Hewa
Dist. Bagpat
Tehsil Barout
U.P. ... Applicant

(By Advocate:Shri Anil Singhal)

versus

1. Union of India,
Through its Secretary
Ministry of Home Affairs
North Block, New Delhi

2. Commissioner of Police
Police Headquarters
I.P. Estate
New Delhi

3. Additional Commissioner of Police
New Delhi Range
I.P. Estate, Police Headquarters
New Delhi ... Respondents

(By Advocate: Shri Vijay Pandita, through
proxy counsel Shri T.D. Yadav)

ORDER(Oral)

By Shri Shanker Raju

Applicant, a Constable in Delhi Police, has challenged the order of punishment of forfeiture of five years' approved service with a consequent reduction of pay and withholding of increments passed by the Additional Commissioner of Police on 6.10.1997. The period of suspension with effect from 7.3.1996 to 6.10.1997 was also treated as not spent on duty. The aforesaid punishment had been arrived at by the disciplinary authority after disagreeing with the

findings of the enquiry officer where the applicant was exonerated from the charge and after issuing show cause notice to the applicant and on receipt of his reply to the same. The applicant has carried the order in an appeal but the punishment was upheld. The applicant has challenged the punishment on various legal pleas including non supply of the preliminary report, inflicting of punishment by the appellate authority, holding of common enquiry against the rules, using of his statement as material against him in the enquiry as well as final opinion formed by the disciplinary authority regarding the charge before inflicting the punishment. The applicant has also challenged the punishment on the ground that the reasons arrived at by the disciplinary authority in the disagreement note and as well as in the final order were not borne out from the record and are vague, arbitrary and based on presumption and surmises.

2. The respondents have refuted the contentions of the applicant by contending that the enquiry has been conducted in accordance with the Delhi Police (Punishment and Appeal)Rules,1980 (hereinafter referred to as Rules of 1980). There is no prejudice caused to the applicant by non supplying of the preliminary enquiry report. The respondents have contended that the disagreement has been arrived at by the

disciplinary authority on the basis of material adduced in the enquiry and lastly it has been contended that the Tribunal would not sit as a reviewing authority over the findings of the disciplinary authority.

3. We have carefully considered the contentions raised by the learned counsels for the parties and perused the record.

4. Before dealing with the legal contention and controversy the brief facts of the case are necessary to be elaborated. The applicant was posted as a Constable at Police Station, Anand Vihar. A complaint was made by one Shri V.K.Diwan alleging demand of money and illegal detention by 8 police officials of Police Station, Anand Vihar which inter alia included the applicant also. On the complaint, a vigilance enquiry was conducted and on the basis of the findings of the enquiry officer a departmental enquiry had been ordered against the applicant, an Inspector, a Sub-Inspecttor and four Constables. Some of the police officials who have been figuring in the complaint have not been dealt with departmentally. However an Inspector, a Sub-Inspector and other police officials have been made delinquent officials by ordering enquiry against them. In the facts and conspectus, the learned counsel for the applicant

contended that the preliminary enquiry report which was made the basis of the departmental enquiry has not been served upon him. According to him, due to non-furnishing of the preliminary enquiry report the applicant has been greatly prejudiced as he had been deprived of a reasonable opportunity to show that the action has been taken at the whims and fancies of the disciplinary authority and some of the police officials have been dropped from the enquiry whereas the same treatment has not been meted out to the applicant. The learned counsel for the applicant has drawn our attention to a judgement of this Tribunal in OA.173/94 decided on 28.6.1999 in Vijay Singh Vs Govt. of NCT & Ors as well as the ratio laid down by the Hon'ble High Court in the case of Ex-Constable Randhir Singh Vs UOI 1991(5)SLR 731 and contended that non supply of the preliminary report has vitiated the proceedings.

5. We have carefully gone through this contention of the applicant and perused Rule 15(3) of Rules of 1980. The preliminary enquiry report is to be supplied to a police official if the same is taken on the record of the departmental enquiry by the enquiry officer or if the preliminary enquiry official is examined in the enquiry to prove the same. The circular of Delhi Police dated 1.5.1980 stipulates the same

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which has been made the basis of judgement in Vijay Singh (supra). In the instant case, the preliminary enquiry report has neither been made part of the enquiry nor relied upon either by the enquiry officer or by the disciplinary authority to hold the applicant guilty of the charge. In such a situation non furnishing of preliminary enquiry report would not have caused any prejudice to the applicant. As such, the aforesaid alleged illegality would not vitiate the proceedings.

6. The applicant has also taken a plea that the enquiry has been ordered by the Additional Commissioner of Police who is the appellate authority of the applicant. As such, he has been deprived of a reasonable opportunity as he could not be able to file an appeal before the Additional Commissioner of Police who is his appellate authority. In support of his contention, the applicant relies on the ratio laid down by the Hon'ble Supreme court in Surjit Ghose Vs. Chairman and Managing Director, United Commercial Bank & Ors JT 1995(2) SC.74 and contends that if the appellate authority himself imposes a punishment upon the applicant he could not have filed an appeal against the same as for want of avenue of an appeal. As such, the right of employee for making the appeal would be lost. We have carefully considered this plea of the

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applicant and also perused Rule 25 and Rule 25A, 25B and 25C of the Rules of 1980. The applicant if punished by the Additional Commissioner of Police has a right to appeal to the Commissioner of Police and for revision to the Lt. Governor of Delhi. As such in our view, the applicant has not been prejudiced and his right of appeal has not been denied. The aforesaid ratio in Surjit Ghose (supra) would not be applicable in the facts and circumstances of the present case. Hence the plea of the applicant is not legally sustainable and is rejected.

7. It has been next contended that during the preliminary enquiry an explanation of the applicant was taken in the preliminary enquiry in the form of a statement which has been included as a list of documents. The applicant in these circumstances, assailed the proceedings on the ground that he was compelled to be a witness against himself and this course of action would be violative of Article 20 Sub Article 3 of the Constitution. For this, the applicant placed reliance on the ratio laid down by the Hon'ble Supreme Court in Nandini Sathpathy Vs P.L.Dani & Anr. AIR 1978 SC 1025 where in the context of a criminal trial the Hon'ble Supreme Court observed as follows:

> "Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of

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the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the court room. The phrase used in Art.20 (3) is "to be a witness" and not to "appear as a witness": It follows that the protection afforded to an accused in so far as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution. Whether it is available to other persons in other situations does not call for decision in this case (emphasis added):"

8. We have carefully considered this contention of the applicant and also Rule 15(3) Rules of 1980 which stipulates that a police officer may or may not be present at a preliminary enquiry but when present would not cross examine the witness. The applicant has not made any averment regarding that the statement was taken forcibly from him in the preliminary enquiry. This statement was in fact taken as his defence which was used by the applicant lateron in the departmental enquiry. We have gone through the record of the enquiry and find that this statement of the applicant has nowhere been used either by the enquiry officer or by the disciplinary authority to the detriment of the applicant. As such, we find that the ratio relied upon supra would not apply to the present case as the issue involved is a departmental

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enquiry where the strict rules of evidence would not be applicable and mere preponderance of probability is a rule. Apart from this, the Apex Court in a number of judgements has clearly laid down that even a confessional statement of a government servant would be admissible and to be relied upon to hold him guilty of the charge. In view of this, the contention of the applicant is not legally sustainable and is rejected.

9. It has been next contended by the applicant that the disciplinary authority in his disagreement note has nowhere indicated that the disagreement is tentative, rather the disciplinary authority has proved the charge and with a pre determined mind issued the show cause notice to punish the applicant. The applicant has taken resort to the ratio of Yoginath D. Bagde vs. State of Maharashtra & Anr. JT 1999 (6) SC 62. by contending that it was not included in the disagreement note that the disciplinary authority had come only to a tentative decision and also that the tentative reasons for disagreement are to be communicated so that the delinquent official may have an opportunity to defend the same and this could also show that the reasons arrived at for disagreement are germane to the findings. We have gone through the show cause notice dated 8.7.1997 it has been contended find that the

disciplinary authority after disagreeing with the findings of the enquiry officer almost concluded that the statement of the PW3 complainant was correct and he has proved the charge against the applicant without awaiting for his defence. According to the applicant, the disciplinary authority in its disagreement note believed the testimony of PWs regarding his unauthorised and illegal detention in the Police Station. The disciplinary authority in his disagreement note has come to the conclusion that the charge against SI Erus Tigga is established and with regard to the applicant it has been recorded in the concluding para that the charge stands proved. There is no indication as to the tentative conclusion arrived at by the disciplinary authority while disagreeing with the findings of the enquiry officer. We have carefully considered the ratio laid down by the Hon'ble Apex Court in Yoginath D. Bagade **(supra)** where the Apex Court has made the following observations:

> "In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the

delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed to the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as the final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

10. In our view, the disagreement arrived at by the disciplinary authority does not conform with the observation made by the Apex Court in **Yoginath's case (supra)**. The conclusion arrived at is rather final and is not a tentative one. The disciplinary authority by recording its own reasoning firstly has proved the charge against the applicant and only then given an opportunity to the applicant to answer the same as a post-decisional hearing, which is meaningless. It clearly smacks of bias of the disciplinary

authority and shows his pre-determined mind to punish the applicant. The aforesaid conclusion which does not indicate any tentative conclusion of the disciplinary authority would not sustain in law. We also find from the findings of the enquiry officer that the applicant has been exonerated from the charge of detaining the complainant at the Police Station. The aforesaid charge has been proved against SI Tigga who had brought the complainant to the Police Station and detained him for three hours. The charge of alleged demand and acceptance of money to the tune of Rs.2000 has also been proved against SI Tigga. Regarding the applicant, it has been recorded by the enquiry officer that he had brought the complainant on the directions of his superior SI Tigga and thereafter they returned back to their duty and were not a party to the alleged demand and the detention. The aforesaid findings has been given by the enquiry officer after meticulously going into the evidence on record and the defence produced by the applicant. In the disagreement note, it has been proved that the applicant had brought the complainant on the direction of SI Tigga. In fact it is on the alleged information which was later on found to be false. The SI had gone to the place of duty of the applicant and on whose direction the complainant was brought to the Police Station. The applicant was merely accompanying him and had

no role to play being a Constable. No evidence had come on record showing that the applicant had demanded or extorted money from the complainant. The disciplinary authority on mere suspicion presumed the illegal detention vis-a-vis the applicant as he was present at the Police Station for a while. In our view, while issuing the show cause notice for disagreement the evidence of the enquiry officer has been completely ignored and with a bias and malifides the notice had been issued after proving the charge and without awaiting the reply of the applicant to the show cause notice. Apart from this, we find that in para 5.10 of the OA the applicant has shown certain instances showing vindictiveness of the disciplinary authority and his pre determination to punish the applicant by contending that out of eight policemen only four had been picked up who were examined in the vigilance enquiry and were lateron placed under suspension and also their names were brought in the secret list of doubtful integrity. The applicant was amongst them. This allegation of the applicant has not been controverted by the respondents in their reply admitting it as a matter of record. This confirms the pre-determined mind of the disciplinary authority.

10. Apart from this, we have also considered the findings of the enquiry officer where the applicant has been exonerated from the charge on

the ground that no evidence have been adduced to sustain the allegations of alleged demand of money and illegally detaining the complainant at the Police Station. The disciplinary authority while imposing the punishment and while disagreeing with the findings took into consideration the extraneous matter to come to the conclusion of guilt against the applicant. The findings of the enquiry officer has been brushed aside which is not permissible under the law apart from the fact that the charge against the applicant has been shown to be purportedly proved on his alleged misconduct of non recording the Daily Diary entry. In this regard, explanation of the applicant has not been taken into consideration. The applicant was posted as a Beat Officer and in the morning he was to report for duty in the place of posting and thereafter arrival was to be recorded when duty ours are over and report to the Police Station. In between the applicant was took on a PCR call and was taken to the Police Station and from there he went back to the place of posting. In these circumstances, application of Punjab Police Rule would not hold the respondents to sustain their action. In our view, the disciplinary authority has not followed the legal reasoning to arrive at the findings of guilt against the applicant.

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12. In view of the above discussion, we set aside the impugned order of punishment as well as the appellate order and direct the respondents to restore to the applicant his reduced pay and withheld increments and also to treat the period of suspension as spent on duty, with all consequential benefits.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member(A)

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