

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.292/99

New Delhi this the 10th day of May, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMN)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Devender Singh,
S/o Shri Satpal Singh,
R/o Qr. NO.2, Police Colony,
Nangloi,
Delhi-41.

...Applicant

(By Advocate Shri Ajesh Luthra)

-Versus-

1. Union of India through the
Secretary, Ministry of Home Affairs,
North Block,
New Delhi-110001.
2. The Commissioner of Police,
M.S.O. Building, Police Head Quarters,
I.P. Estate, New Delhi.
3. The Addl. Commissioner of Police,
(Armed Police), NPL,
Kingsway Camp,
Delhi.
4. The Deputy Commissioner of Police,
IIIrd Bn. DAP, Vikas Puri,
Delhi.

...Respondents

(By Advocate Shri Rajinder Pandita)

ORDER

By Mr. Shanker Raju, Member (J):

The applicant in this case has assailed an order passed by the disciplinary authority on a joint enquiry, whereby two future increments have been stopped for a period of three years with immediate and cumulative effect vide an order dated 16.1.98, which was confirmed by the appellate authority on filing an appeal by the applicant through an order dated 12.6.98.

2. The applicant on a searching enquiry and after according permission by the Additional Commissioner

of Police has been ordered to be dealt with departmentally along with nine other police officials after being placed under suspension vide an order dated 27.11.96. The applicant in the summary of allegation has been charged for not physically handing over the UTPs to the incharge of Kharja and calling another jail vain for unloading the UTPs deployed at the lock-up. It is further alleged that the applicant manipulated and tempered with the entry of 53 UTPs to 52 in the rough register maintained by applicant by way of over-writing to conceal the negligence and responsibilities. On the basis of the evidence recorded during the course of the departmental enquiry the enquiry officer had framed a charge, which is reflected from his findings wherein the applicant has been charged for manipulating and tempering with 53 UTPs to 52 UTPs by over-writing. While awarding the punishment to the applicant the disciplinary authority has also taken into account the additional charge of manipulating time from 10.35 A.M. to 10.55 A.M. in the relevant register.

3. The applicant has raised various legal pleas in his OA, but mainly he relied upon that the disciplinary authority while awarding punishment has taken into consideration an extraneous material and imposed the punishment on an allegation which has neither been alleged against him nor was he charged for the same but alleged him on this additional charge without according a reasonable opportunity to him and without the said charge being put to the applicant for his denial. Placing reliance upon Rule 16 (ix) of the Delhi Police (Punishment & Appeal) Rules, 1980, it is contended that in case any different charge is made other than what has been alleged against the police

official the enquiry officer is mandated to put the same to the delinquent official with an opportunity to deny the same and against which a reasonable opportunity should be afforded to the official. In this background, it is contended that the applicant has not been charged for manipulating time from 10.35 A.M. to 10.55 A.M. in the relevant register to save his escape. Referring to the searching enquiry report, it has been contended that this part of the charge has been admitted by constable Shyam Lal in his statement by admitting that he altered the arrival time of jail van and number of UTPs from 53 to 52 respectively. On the other hand, the respondents refuted the contentions of the applicant and stated that in view of the ratio laid down in Kuldeep Singh v. Commissioner of Police, JT 1998 (8) SC 603, the Tribunal has no jurisdiction to act an appellate authority or to re-appraise the evidence and to come to a conclusion different from what has been arrived at by the departmental authorities. To the specific plea of the applicant regarding punishment on a different charge it is contended that the same has not been specifically controverted in para 5.9 of the reply.

4. We have carefully considered the rival contentions of the parties and perused the departmental record also. It is true that the applicant has been charged for a misconduct of manipulating the entry in the rough register by over-writing on figure 53 to 52 to save his escape from the alleged negligence. The charge framed against the applicant does not disclose the charge of interpolation in the time as stated by the disciplinary authority and on which the punishment has been imposed. The enquiry officer also in his findings has only proved

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the charge against the applicant of tempering with the figure of 53 to 523 regarding UTPs. The action of the disciplinary by imposing the punishment on a charge of interpolating with the time 10.35 to 10.55 amounts to consideration of an extraneous matter. Admittedly neither the summary of allegation quoted the charge framed against the applicant incorporating such a charge on which the applicant was ultimately punished. The applicant has not been accorded an opportunity to deny the same or to effectively defend it during the course of departmental enquiry. As such the procedure is contrary to Rule 16 (ix) of the Delhi Police (Punishment & Appeal) Rules, 1980 and also against the norms of principles of natural justice according to which a Government servant cannot be punished on a material which has not been put to him. As the respondents have not specifically controverted this plea of the applicant and from the record it is apparent that the applicant has been deprived of an opportunity to effectively defend this part of the charge which was not framed against him we find that the applicant has been prejudiced in the matter of his defence and has been taken unaware of this part of the charge against which he has not been given an opportunity to defend effectively.

5. Having regard to the above discussion and reasons we find force in the contention of the applicant. It would be in the fitness of things and in the interest of justice that the matter should be remanded back to the disciplinary authority to provide an opportunity to the applicant to effectively defend the extraneous material/additional charge taken into consideration by the disciplinary authority. The OA is allowed. The impugned

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order of punishment and the appellate order are quashed and set aside. The matter is remanded back to the enquiry officer, if so advised, to initiate the enquiry from the stage of charge by incorporating the charge of manipulation in time in the relevant register by the applicant and thereafter to afford him a reasonable opportunity of defence as provided under the rules. On conclusion of the enquiry the disciplinary authority shall pass final order and the applicant shall also be at liberty to assail the same, if aggrieved, before the appellate authority. The respondents are directed to complete the enquiry as expeditiously as possible and preferably within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member(J)

"San."

V.K. Majotra

(V.K. Majotra)
Member(A)