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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1721/98

New Delhi, this the 23rd November, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

Constable Anoop Kumar No.4324/DAP, S/O
Sh. Umrao Singh, aged 29 years,
presently posted in 5th Bn. DAP, R/O
Vill & P.O.-Nogaon, Distt. Jhajhar,
Haryana, presently residing in Barrack
No.14, 5th Bn. DAP, New Police Lines,
Delhi.

...Applicant.

(By Advocate: Sh. Rajeev Kumar, proxy for
Sh. Shanker Raju)

VERSUS

1. Union of India & through its
Secretary, Ministry of Home
Affairs, North Block, New Delhi.
2. Addl. Commissioner of Police,
Northern Range, Police Head
Quarters, I.P.Estate, MSO
Building, New Delhi.
3. Addl. Dy. Commissioner of
Police, Central District, Darya
Ganj, Delhi.

....Respondents.

(By Advocate: Sh. Ajesh Luthra)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, Member (A):-

The applicant Constable has been tried
departmentally on the charge of having been found
drinking and misbehaving with a Sub-Inspector at Police
Booth, Badsa Bulla Chowk on 30.8.95 at about 9.30 PM.

2. The summary of allegations was duly served and
the enquiry officer conducted the enquiry in the
prescribed manner and gave his report on 28.5.96 saying
that the charge against the applicant and his
co-delinquent was not proved. Not agreeing with the
conclusion drawn by the EO, the disciplinary authority
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served a show cause notice on the applicant which reads as under:-

"....., I am not agree with the findings of the E.O., as both the Consts. were found taking liquor on duty in public and there is no reason to dis-believe on the report/complaint of a Prob. Sub-Inspector & do believe that defaulter misbehaved and indulged in indiscipline act with SI Jagminder Singh."

3. The proceedings were thereafter completed and the disciplinary authority passed his final order in the proceedings on 27.11.96 punishing the applicant as well as the co-delinquent with withholding of increment for a period of two years without cumulative effect. The matter was taken to the appellate authority who in turn rejected the appeal filed by the applicant by his order dated 2.9.97.

4. The learned proxy counsel for the applicant contends that the enquiry is vitiated due to the gist of evidence to be given by the only witness in this case having not been indicated in the list of witnesses enclosed with the summary of allegations. He also contends that the relevant rules have been violated due to the examination of another witness not included in the list of witnesses supplied with the summary of allegations by the EO. The rule referred to in this context is Rule 16 (1) of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter for the sake of brevity "Rules").

5. Dealing with the questions of law raised by the learned counsel for the applicant first, our attention

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has been drawn by the learned counsel for the respondents to the judgement dated 13.9.2000 in Ex. Head Constable Vijay Singh Vs. Union of India & Ors. (OA-825/99 with other connected two OAs) on the following question:-

"Whether the enquiry is vitiated on account of violation of Rule 16 (1) of Delhi Police (Punishment & Appeal) Rules, 1980, in case the brief details of the evidence to be led by the witnesses were not given along with the summary of allegations, even though no prejudice was shown by the delinquent in effectively cross-examining the prosecution witnesses?"

6. The aforesaid question has been answered by the F.B. in the following terms:-

"29. In view of the aforesaid discussion, we are of the considered view that the requirement of supplying brief details of evidence to be led by the prosecution witnesses together with the lists of prosecution witnesses is not a mandatory requirement but is directory and the reference is answered in the negative."

It is thus clear that the aforesaid provision is not mandatory but is rather directory in nature.

7. In regard to the other issue raised by the learned counsel for the applicant, we will first advert to the provisions of Rule 16 (viii) of the Rules which provides as follows:-

"(viii) After the defence evidence has been recorded and after the accused officer has submitted his final statement, the Enquiry Officer may examine any other witness to be called "Court witness" whose testimony he considers necessary for clarifying certain facts not already covered by the evidence brought on record in the

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presence of the accused officer who shall be permitted to cross-examine all such witnesses and then to make supplementary final defence statement, if any, in case he so desires."

Aforesaid rule clearly permits the EO to examine any other witness to be called "Court witness" whose testimony he considers necessary for clarifying certain facts not already covered by the evidence brought on record but he is required to do so in the presence of the accused officer who shall be permitted to cross-examine all such witnesses. Incidental, the FB in the aforesaid judgement, has made an important observation on this very question and the same is reproduced below:-

"25....It is also necessary to bear in mind that the fundamental requirement of any enquiry is to enquire into the truth or otherwise of the allegations, in the interest of both the parties in the enquiry, i.e., prosecution as well as the charged officer. The prosecution is entitled as a matter of law, to examine all the witnesses that are required to be examined in the enquiry, no matter that their names have been initially omitted in the list of witnesses. In Union of India v. T.R. Verma, AIR 1957 SC 882, the Constitution Bench of the Supreme Court explained the ambit and scope of rules of natural justice where it is observed:

"that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies,...."

(Emphasis supplied)

The words 'a party' include both the prosecution as well as the charged officer. Hence the mere omission of naming a witness in the list of witnesses does not preclude the prosecution to examine a witness at a later stage when his deposition is found necessary in the interest of justice. In fact it is permissible under Rule 16 (viii) of the Rules for the enquiry officer to examine additional witnesses, who were not named

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in the list of witnesses, who are called 'court witnesses', to clarify the evidence of the witnesses who are named in the list of witnesses. If considered, in this context the supply of brief details of evidence alongwith the list of witnesses would lose their entire significance. It should also be borne in mind that it is not impermissible in the rules to the charged officer to seek time, if necessary, to make enquiry of any witness who was not named to facilitate him to cross-examine."

There is no substance, therefore, in the contention raised by the learned counsel for the applicant that additional witness could not be examined in accordance with the aforesaid rule.

8. We now have to see whether any prejudice has been caused to the applicant during the course of the proceedings due to the examination of the aforesaid witness not listed in the list of witnesses and also whether any prejudice has been caused to him due to the gist of evidence not having been disclosed in the list of witnesses in respect of the only witness who had been included therein. We have with the help of the learned counsel gone through the statements made by the complainant-Sub-Inspector who has been included in the list of witnesses and also the SHO who has deposed at the instance of the EO though not initially included in the list of witnesses. After perusing the statements of the said witnesses, we are not left in any doubt about the veracity of the charge levelled against the applicant. The complainant-SI clearly states that the applicant as well as the co-delinquent both misbehaved with him and he had found them consuming liquor at the time he reached the aforesaid Hauz Quazi, P.S., Badsa-Bulla Chowk. As a

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matter of fact, at one place, during his cross-examination, the complainant-SI has gone on to say that the applicant was holding a glass in his hand with a quarter bottle of liquor placed in front of him along with some salties. The other witness, namely, the SHO has affirmed the fact that the complainant-SI brought the aforesaid misbehaviour of the applicant and his co-delinquent to his notice. On being cross-examined by the applicant, he reiterated that the complainant-SI had conveyed it all to him. The applicant's plea that in his cross-examination, the said SHO has affirmed the fact of misbehaviour only and not that of consumption of liquor, will not really assist him in view of the other evidence clearly pointing to the fact of consumption of liquor. Even this witness has not anywhere stated that the fact of consumption of liquor was not correct. Clearly, therefore, no prejudice can be said to have been caused to the applicant by the examination of the aforesaid additional witness.

9. In regard to the question of prejudice being caused due to the non-indication of the gist of evidence in the list of witnesses, we have thought it worth our while to glance through the summary of allegation which brings out in good detail all that had happened when the complainant-SI had arrived at the police booth in question. In view of this, the learned counsel cannot validly argue that non-inclusion of the gist of evidence in the list of witnesses could cause any prejudice to the applicant. The aforesaid gist is fully disclosed in the summary of allegations and the applicant has availed the


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opportunity to cross-examine the same witness. This contention also, therefore, fails.

10. Both the issues raised by the learned counsel for the applicant having been dealt with by us and decided against him in the preceding paragraphs, we are now left with the only option available to us and that is to dismiss the OA. We order accordingly. No costs.


(Ashok Agarwal) -
Chairman


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

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