

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

OA.No.2017 of 1998

New Delhi, this 5th day of January 2001

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

Jaipal Singh
S/o Shri Maharaj Singh
R/o Vill. & P.O. Maimcha
P.S. Dadri Dist. Gautam Budh N, UP .. Applicant

(By Advocate: Shri Ajesh Luthra)

versus

1. Union of India
Through Secretary
Ministry of Home Affairs
North Block, New Delhi-110001
2. The Commissioner of Police
M.S.O. Building, Police Headquarters
I.P. Estate, New Delhi
3. The Addl. Commissioner of Police
(OPS) Police Headquarters
M.S.O. Building
I.P. Estate, New Delhi
4. The Deputy Commissioner of Police
I.G.I. Airport, New Delhi
5. The Deputy Commissioner of Police
(Vigilance) Police Headquarters
M.S.O. Building, I.P. Estate
New Delhi ... Respondents

(By Advocate: Mrs Jasmine Ahmed)

ORDER(Oral)

By Shri Shankar Raju, M(J)

Applicant, an Assistant Sub-Inspector in Delhi Police, has challenged an order of penalty passed by the Deputy Commissioner of Police on 4.7.1997 imposing the major penalty of forfeiture of one year's approved service permanently for a period of one year along with reduction of pay and withholding of increments as well as treating the suspension period from 17.10.1996 to 9.6.1997 as 'not spent on duty'. The applicant has also

challenged the order passed by the appellate authority on 11.11.1997 rejecting his appeal against the order of penalty.

2. Facts of the case in brief are that the applicant was posted at I.G.I. Airport and was entrusted duties with the security staff and deputed at 'X' Ray Security Check. On a preliminary enquiry conducted by Inspector D.V. Singh it has been found that the applicant demanded some money for "Chai Pani" from a British national Shri S.R. Sethi, who was bound for a flight to London. The aforesaid passenger had given a written complaint and thereafter on identification of the applicant a report was submitted by Inspector D.V. Singh. On the basis of the report of the preliminary enquiry the applicant was placed under suspension on 17.10.1996 and a departmental enquiry was ordered against him on 1.11.1996. After culmination of the enquiry major punishment has been awarded to the applicant, which was carried to in an appeal but was maintained.

3. The applicant has challenged the impugned order firstly on the ground that no prior approval of the Additional Commissioner of Police had been sought under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980. In D.E., a cognizable offence has been made against the applicant in discharge of his duties in relation to the public as reported by the complainant. To counter the plea, the learned counsel for the

applicant has drawn our attention to Section 7 of the Prevention of Corruption Act 1988 and stated that it is a cognizable offence if a public servant admits or receives from any person any gratification as a motive or reward with a view to doing or forbearing to do an official act. In this conspectus he has stated that the allegation of alleged demand of money as "Chai Pani" by the applicant being on duty and dealing with public person would amount to an offence under aforesaid provision. We have applied our mind to this plea of the applicant and also perused Section 17 of the Act where we find that the offence is non-cognizable as the investigation was not to be taken up without the order of a Metropolitan Magistrate. The respondents, in their counter reply, have also refuted this contention by stating that the allegation does not constitute a cognizable offence. We are of the view that as no cognizable offence has been made out from the allegations levelled against the applicant, the requirement of seeking approval under Rule 15(2) ibid would not apply to the facts and circumstances of the present case. As such, the plea of the applicant is not legally sustainable and is rejected.

4. The applicant has further contended that the departmental enquiry has been initiated against him on the alleged complaint made by a passenger regarding payment of money to him. Complainant was not named as a witness in the list of witnesses and no efforts have been made to

procure his presence in the departmental enquiry to get his evidence. It has been further contended by the applicant that as per Rule 16(iii) of the Delhi Police (Punishment & Appeal) Rules, 1980 in order to prove an allegation the evidence of a witness should be recorded directly in presence of the delinquent official. The applicant in this regard contends that due to non-examination of the said witness, he has been deprived of a reasonable opportunity to defend himself effectively in the departmental enquiry. The respondents refuting this plea, have contended that the witness was the last passenger to board the flight and as his complaint was submitted to the Inspector and attested by him, the same would be admissible in evidence. It has been further contended that the other evidence is also there to sustain the charge against the applicant and in view of this by resorting to Rule 16(iii) ibid, the respondents' counsel contended that as the presence of the witness could not have been procured without undue delay or expenses, the statement recorded during the preliminary enquiry, was very much admissible under the Rule.

5. We have given careful thought to the contention of the applicant and find that the complaint made by the passenger on 16.10.1996 has been duly attested by Inspector D. V. Singh who admittedly was a superior officer to the applicant. On the basis of his complaint an identification was held where the passenger had

also identified the applicant. The passenger who was British national, had left to London on the same date. As such, it was not possible for the respondents to summon him in the enquiry and that would have caused inconvenience and expenses. In our view, the respondents have rightly adopted the procedure laid down under Rule 16(iii) *ibid*. (17)

6. As regards the prejudice caused to the applicant on account of non-examination of the material witness, we find from the enquiry report that apart from the testimony of the passenger, the other evidence is also there to support the charge. We have carefully gone through the findings of the Inspector D.V.Singh who has conducted the preliminary enquiry and to whom the complaint was made by the passenger. He has clearly stated about the allegation of the demand of money and regarding identification of the applicant by the passenger.

7. In view of the aforesaid evidence existing on the record of the enquiry we cannot assume the role of an appellate authority and reappreciate the evidence or re-assess the same to come to a conclusion different from what the departmental authorities have taken. In view of the aforesaid discussion, we find that non-examination of the witness has not prejudiced the applicant and the other evidence is also existing on record to justify the findings of the enquiry officer.

8. The applicant next contended that the complaint of the passenger who was forming a part of the D.E. record has not been legally proved due to non-examination of the passenger. As we have held that the complaint was attested by the superior officer, the same is validly proved in the enquiry and this ground of the applicant also fails.

9. It has been lastly and vehemently contended by the applicant that though the P.E. officer was named as a witness and examined later in the enquiry and got his preliminary enquiry report exhibited, the copy of the preliminary enquiry report was neither forming a part of the list of documents nor was served upon the applicant. The learned counsel for the applicant to substantiate his plea, has relied upon the provision of Rule 15(3) of Delhi Police (Punishment & Appeal, 1980 which mandates supply of copy of any document from the file of preliminary enquiry if the said document is brought on record by the enquiry officer. Admittedly the enquiry officer has brought on record the preliminary enquiry report which was forming part of the formal departmental record as an evidence in the enquiry and also as a document, but without furnishing the copy to the applicant. The applicant further contended that due to non-availability of P.E. report he has been prejudiced in the matter of effective cross-examination to the enquiry officer who had conducted the preliminary enquiry and in its

course took into record the complaint of the passenger and conducted test identification proceedings. We feel that provision of Rule 15(3) ibid are substantive in nature and mandates supply of copy of any document from the D.E. file if it is taken on record by the enquiry officer. This view of ours is also fortified by the ratio laid down by a coordinate Bench of this Tribunal in Vijay Kumar Vs. Commissioner of Police 1999(3) ATJ 502. (19)

10. In view of the above discussion, we feel that the enquiry officer has not acted in accordance with Rule 15(3) ibid and deprived a reasonable opportunity to the applicant. As the applicant has been denied reasonably opportunity in violation of the principles of natural justice and in violation of the statutory rules, we declare the action of the enquiry officer as illegal. As a result the findings of the enquiry officer is liable to be set aside on this ground. As a consequence the OA is allowed and the impugned order of punishment as well as the appellate order are also quashed and set aside. The applicant would also be entitled to the consequential reliefs as a result of it. But however, this will not preclude the respondents from proceeding the applicant afresh from the stage of supplying a copy of the preliminary report and taking of further proceedings, if so advised. No order as to costs.

S. Raju
(Shankar Raju)
Member(J)

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