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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.646/98

Hon'ble Shri V.K.Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 14th day of March, 2001

Sub-Inspector Mahnider Singh
No.1249/D, Delhi Police
I.G.I. Airport, New Delhi
through Mrs. Avnish Ahlawat
Advocate, 143, Lawyers Chambers
Delhi High Court
New Delhi. ... Applicant

(By Advocates: Mrs. Avinash Ahlawat with Mr. Mohit
Madan)

Vs.

1. Union of India through
Lt. Governor of Delhi
Government of National Capital
Territory of Delhi
Raj Niwas
Delhi.
2. Additional Commissioner of Police
(Operations)
Delhi Police
Police Headquarters
MSO Building
I.P.Estate
New Delhi - 110 002.
3. Deputy Commissioner of Police
I.G.I. Airport
New Delhi.
4. Shri K.K.Arora
Enquiry Officer
Assistant Commissioner of Police
I.G.I.Airport
New Delhi. .. Respondents

(By Advocate: Shri George Paracken)

O R D E R(Oral)

Hon'ble Shri Shanker Raju, Member (J):

The applicant, a Sub-Inspector in Delhi Police, has assailed the impugned order passed by the disciplinary authority whereby a major penalty of forfeiture of three years approved service permanently along with reduction in pay and withholding of increments has been imposed upon the applicant and

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along with other officials in a joint department enquiry by an order dated 17.7.1996. The Additional Commissioner of Police, in an appeal filed by the applicant, vide order dated 13.1.1997 maintained and confirmed the above stated order which ~~has~~ also been challenged in this OA. The following charge has been framed against the applicant on the basis of complaint made by Shri Manish Verma, Traffic Assistant, Sahara India Airlines:

..... SI Mohinder Singh No.1249/D (PIS No.28660021) and ASI Nafe Singh No.3843/DAP (PIS No.28730037) and Const. Fatesh Singh No.594/A (PIS No.288611907) failed to check on 26.3.96 who passed through the Security Hold Area of Boeing AB Gate at about 11.45 Am carrying a loaded revolver with 10 live rounds and who reached up to the Tarmac Coach without searching/frisking of the said PAX. The said pax was noticed/checked by Mr. Manish Verma, Sahara India Airlines, (Traffic Assistant, near the Tarmac Coach, outside the boarding gate. On checking his boarding pass the same was not bearing security check stamp and further he was in possession of loaded revolver and the rounds. Thereafter the passenger was brought at the Security Counter by the him and his frisking was carried out by the security staff. Revolver of the pax alongwith the rounds was taken from him and sealed in the Sahara envelope and later-on handed over to the Sahara India Airline staff, which clearly indicates that You, SI Mohinder Singh No.1249/D and ASI Nafe Singh No.3843/DAP detailed at Ab Gate/Shift "A"/Dom. and Ct, Fateh Singh No.494/A detailed for duty at boarding gate were not present at that time at their respective duty points which is a major security lapse.

The above act on the part of You, SI Mohinder Singh No.1249/D and ASI Nafe Singh No.3843/DAP and Const. Fateh Singh No.494/A amounts to gross misconduct, negligence and carelessness in the discharge of your duties which renders you liable for departmental proceedings as envisaged under Rule 21 of Delhi Police Act, 1978."

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2. A Preliminary Enquiry(PE for short) was conducted by Shri Hardeep Singh, ACP who submitted the report to the disciplinary authority. On the basis of the PE report the respondents ordered a departmental enquiry against the applicant and he was served with a summary of allegations, wherein it has been alleged that the applicant along with others committed a gross misconduct as one passenger, namely, Shri V.Khanna, passed through the Security Hold Ara of Boeing 'AB' Gate carrying a loaded revolver with 10 live rounds and reached upto the Tarmac Coach without searching/frisking by the staff of the gate. The said pax was noticed/checked by the said Mr. Manish Verma who thereafter brought this fact to the notice of the security personnel and thereafter the revolver of the pax alongwith the rounds was taken from him and sealed in the Sahara envelope and later on handed over to the Sahara India Airline staff. The applicant was served along with summary of allegations and list of witnesses listing two witnesses to prove the allegations against the applicant and also a list of documents containing a preliminary enquiry statement of Shri Munish Verma. The applicant on receipt of the summary of allegations made a request to the enquiry officer to furnish certain material documents required for the defence vide application dated 6.6.1996. This application inter-alia contained a reference of preliminary enquiry report of ACP Hardeep Singh and statements recorded therein. The applicant has also asked for a copy of the original complaint made by Shri Rajeev Saxena as well as the Photocopy of Boarding Card of Passenger Shri S.K.Sharma/V.Khanna. The enquiry officer vide his noting dated 12.6.1996

denied the documents to the applicant by stating that as none of the documents is being relied upon, copies of which could not be supplied to the applicant. The applicant contends that due to non-supply of the preliminary enquiry report and the statements recorded therein, whereas the preliminary report was got exhibited in the testimony of PW-2, the applicant had been prejudiced in the matter of his defence as he could not effectively defend his case. It is further alleged that the applicant had been deprived of an opportunity to effectively cross-examine the preliminary enquiry officer and to bring out his defence. The learned counsel for the applicant, Mrs. Avinash Ahlawat resorting to the ratio laid down by the Hon'ble Apex Court in State of U.P. Vs. Shatrughan Lal & Anr., JT 1998(6) SC 55 contends that denial of the documents of the preliminary enquiry, including the statements recorded therein, amounts to the denial of a reasonable opportunity and mere availability of documents for inspection will not be a sufficient compliance to the principle of natural justice. The applicant has also took resort to ratio laid down by this Tribunal in Vijay Singh Vs. Govt. of NCT, Delhi and Ors., 1999(3) ATJ CAT(PB) 562 wherein it has been held that if the preliminary enquiry officer is examined in the departmental enquiry, then his report should have been furnished to the delinquent official irrespective of any specific request ^{having} been made by him or not. She ^{has} further drawn our attention to Rule 15(3) of the Delhi Police (Punishment and Appeal) Rules, 1980 and contended that if the enquiry officer brings on record of the DE a document from the file of the preliminary enquiry then

the same should be necessarily supplied to the charged officer. Our attention has also been drawn to the averments made by the applicant in para 4.19 of the OA where it has been stated that neither the preliminary report of ACP Hardeep Singh nor the preliminary enquiry statements were supplied to the applicant. To which the respondents, on the other hand, in reply to para 4.19 specifically averred that file of the PE shall not form part of the departmental record. As such no prejudice has been caused to the applicant. The denial of the preliminary enquiry report and statement therein are of no avail. It is further contended by the respondents that the applicant while putting question to PW-2 the preliminary enquiry officer had made a specific reference to the PE report and this clearly proves that the applicant was in ~~possession~~ ⁱⁿ of the same at the time of cross examination of the witnesses. The learned counsel for the respondents Shri George Paracken had drawn our attention to a noting made by the enquiry officer on the request of the applicant for supply of preliminary enquiry report and there we find that the enquiry officer on the application had recorded that the preliminary enquiry report is being supplied to the applicant. We have seen these remarks of the enquiry officer and find that neither there is any date mentioned in the noting nor the signatures of the enquiry officer exists. Apart from it, the learned counsel for the respondents has failed to show any proof of acknowledgement of preliminary enquiry report and the statements received by the applicant in the departmental enquiry record.

3. We have heard the rival contentions of the parties and perused the material on record. In our considered view, as per Rule 15(3) of Delhi Police

Rules 17(2) which is a substantive provision, it is mandated upon the enquiry officer to supply a document which has been taken from the file of the preliminary enquiry and brought in the departmental enquiry record. After perusal of the record, we find that the preliminary enquiry report of ACP Hardeep Singh who was examined as PW-2 was taken on record by the enquiry officer and exhibited as PW-2/A. There is nothing on the record to show that the said Preliminary Enquiry report has been supplied to the applicant as requested by him vide his application dated 6.6.1996. Apart from the substantive provisions we are also of the confirmed opinion that as per the circular dated 1.5.1980 and the ratio laid down by the Tribunal in Shri Vijay Singh's case supra it was incumbent upon the respondents to supply a copy of the PE in the event that the PE officer is examined in the DE. The contention of the applicant's counsel that she has been deprived of a reasonable opportunity as the applicant failed to effectively cross-examine the preliminary enquiry officer appears to be sound. We also found from the record of the Enquiry Officer while cross examining the preliminary enquiry officer a specific question has been put to this witness by the defence assistant of the applicant regarding proof of statements during the course of the DE and the non supply to the applicant. The PE officer had reproduced the testimony given by some of these witnesses and where it had transpired that the defence of the applicant had come out in the form of statement

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of ASI Nafe Singh and Inspector Sarup Singh who had clearly deposed that the applicant was not at fault and ASI Nafe Singh immediately noticing the arms etc. reported the matter to the higher officials and the same were handed over to the Sahara Airlines. Whatsoever may be we are not reappraising the evidence recorded during the course of the departmental enquiry and also not substituting our own version by way of judicial review. What has to be seen is whether non supply of the statement and PE report prejudiced the case of the applicant or not. In this regard, the learned counsel for the applicant has drawn our attention to the ratio laid down by the Calcutta High Court in Dola Gobinda Das Vs. Union of India and Others, 1981(2) SLR (Cal.) 185, where it has been held that the preliminary investigation report if it ^{is} not supplied and there is a denial to its supply that would amount to violation of principles of natural justice and also denial to a reasonable opportunity. The rule 15(3) ibid has also ^{been} considered by the Hon'ble Apex Court in Kuldeep Singh Vs. Commissioner of Police, 1998(8) JT 603. As regard the prejudice we find from the record that the appellate authority while maintaining the punishment of the applicant, has categorically observed that the testimony of preliminary enquiry officer ACP Hardeep Singh is adequate to prove the charge against the applicant. Apart from this, had the applicant been given the preliminary enquiry statements and the copy of the PE report, he could have more effectively ^{been} able to defend the charge framed against him and particularly in the circumstances where PE record produced has been pointing towards the innocence of the applicant. In

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fact, the entire material on ^{which} the prosecution is relying upon, has been drawn from the file of the PE report. With holding of these documents would not be in consonance with the principles of the natural justice. In this view of the matter and having regard to the claim and the reasons recorded, we are of the considered view that non supply of the documents like PE report and PE statements ^k has prejudiced the applicant in his defence which amounts to denial of reasonable opportunity and is in violation of the principles of natural justice.

4. It is next contended that after submitting the list of defence witnesses to the respondents, the applicant vide on application dated 1.10.1996 requested the disciplinary authority to call Head Clerk/IGIA along with the record of Daily Diary of 26.3.1996 by which it could have been proved that the version of the applicant taken in defence was found correct by the Inspector and as such the Revolver with cartridges as recovered by Security Police forwarded to the higher authorities. The applicant has taken this plea in his departmental communications as well as in para 4.30 and 4.31 of the OA. It is contended that due to non production of this witness ^h the applicant had been greatly prejudiced in the matter of his defence, denying him the reasonable opportunity. The respondents with regard to this contention, in Para 4.30 and 4.31 stated that as per the rules, the defence is to be produced by the applicant. Although under Rule 16(v) the accused officer shall be required to state the defence witnesses whom he wishes to call and may be given time, not exceeding two working days,

to prepare a list of such witnesses together with a summary of the facts they will testify and to produce them at his expense in 10 days. In our view when an official witness is required in the defence, by an accused Police Officer, on which he has no control the respondents being the employers have a bounden duty to summon the official witnesses working under them for the purpose of defence of a delinquent official. Denial of the authorities taking resort to Rule 16(v) to our mind would be inconsistent with the principles of fair play and natural justice. By non summoning of this witness and non production of the documents which were in the possession of the respondents, the defence of the applicant has been greatly prejudiced. On this ground alone the enquiry is not legal and is vitiated.

5. Having regard to the above discussion, we allow the OA. The impugned order of punishment dated 17.7.1997 and appellate order dated 14.8.1997 are quashed. The respondents are directed to restore the applicant's pay, within a period of three months from the date of receipt of a copy of this order, with all consequential benefits. No costs.

S.Raju
(SHANKER RAJU)
MEMBER(J)

/RAO/

V.K. Majotra
(V.K. MAJOTRA)
MEMBER(A)