

(24)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1645/1995

Wednesday, this the 22nd day of January, 2003

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)  
Hon'ble Mr. Govindan S. Tampi, Member (A)

Abhimanyu (508/L) son of Shri Parma Nand  
(Ex-Constable), resident of  
Village Pahadpur (Bangar), Post  
Office Bangar, P.S. Samaipur Badli  
Delhi

..Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Commissioner of Police, Delhi  
Police Headquarters, I.P.  
Estate, New Delhi
2. Addl. Commissioner of Police  
Rashtrapati Bhawan, New Delhi
3. Deputy Commissioner of Police  
(Provisioning & Lines), Rajpur

..Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R (ORAL)

Hon'ble Mrs. Lakshmi Swaminathan:-

This application has been heard at length in pursuance of the Hon'ble High Court's order dated 26.11.2001 in CWP-441/2000. In this order, the Hon'ble High Court had stated that they had found that the applicant had specifically complained of the fact that the respondents had not observed the requirements of Rule 16 (v) & (vii) of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as "the Rules"), but the Tribunal had failed to deal with this plea at any stage in its earlier order dated 18.8.1999. By Tribunal's order dated 18.8.1999, the present OA as well as the other three other cases were disposed of, wherein the present application was listed at Sl.No.4.

18

2. Shri Shyam Babu, learned counsel has drawn our attention to the following paragraph contained in the inquiry officer's report dated 30.5.1994:-

"The copy of the charge duly approved by the punishing authority served upon the defaulter on dtd. 12.5.94 and explained to him in Hindi. The delinquent was asked to submit his written statement as well as list of the DWs if any he wants to produce in his defence by 16.5.94, the defaulter has not submitted any list of DWs as well as any defence statement. It is presumed that he has nothing to say in his defence except the medical paper he had already produced during the D.E."

3. In order to appreciate more fully the contentions of the learned counsel for applicant regarding non-compliance of the relevant rules mentioned above, it is necessary to quote the Rules, which provide as follows:-

"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. The Enquiry Officer is empowered to refuse to hear any witness whose evidence he considers to be irrelevant or unnecessary in regard to the specific charge. He shall record the statements of those witnesses whom he decides to admit in the presence of the accused officer who shall be allowed to address question to them, the answers to which shall be recorded; provided that the Enquiry Officer may cause to be recorded by any other Police Officer superior in rank to the accused officer the statements of a witness whose presence cannot be secured without delay, expense or inconvenience and may bring such statements on record. When such a procedure is adopted, the accused

officer may be allowed to draw up a list of questions he wishes to be answered by such witnesses. The Enquiry Officer shall also frame questions which he may wish to put to the witnesses to clear ambiguities or to test their veracity. Such statements shall also be read over to the accused officer and he will be allowed to take notes.

Rule 16 (vii)

At the end of the defence evidence or if the Enquiry Officer so directs, at an earlier stage after the framing of charge the accused officer shall be required to submit his own version of facts. He may file a written statement for which he may be given a week's time, but he shall be bound to answer orally all questions arising out of the charge, the recorded evidence, his own written statement or any other relevant matter, which the Enquiry Officer may deem fit to ask."

4. Learned counsel for applicant has vehemently submitted that by the aforesaid directions given by the disciplinary authority, which have been reproduced in the inquiry officer's report, the respondents have clearly violated the time frame provided in Rule 16 (v) & (vii) of the Rules. He has submitted that admittedly the competent authority had served on the applicant the charge-sheet on 12.5.1994 which was explained to him in Hindi and he was asked to submit his written statement as well as the list of DWs, if any, he wanted to produce in his defence by 16.5.1994. According to the learned counsel, this means that the applicant should have been given time firstly of two clear working days to prepare a list of defence witnesses and ten days to produce them, as provided in sub-Rule (v) of Rule 16. Thereafter, he was to be given one week to produce his defence statement in writing. He has vehemently contended that none of these provisions have been complied with and all that the

Yours

30

applicant got was a period of about four days to submit his written statement which is, therefore, clearly in violation of the aforesaid Rules. He has, therefore, contended that as there is a clear violation of the Rules, a prejudice has been caused to the applicant and hence, the disciplinary proceedings held against him should be quashed and set aside.

5. On the other hand, Shri Ajesh Luthra, learned counsel has submitted that at no time, whether before or after 16.5.1994, till the inquiry officer submitted his report, the applicant had submitted any list of defence witnesses or defence statement in writing. He has, therefore, submitted that the conduct of the Departmental inquiry proceedings cannot be quashed only on this ground, as the applicant has not spelt out any prejudice which has been caused to him by lapse, if any, on the part of the respondent authorities to comply strictly with the provisions of Rule 16 (v) & (vii) of the Rules. He has relied on the judgment of the Full Bench of this Tribunal in Ex. H.C. Vijay Singh & Others, etc. etc. Versus Union of India & Others (1997-2001) A.T.F.B.J. 340. He has also relied on the judgment of the Hon'ble Supreme Court in State of U.P. Versus Harendra Arora & Another (2001) 6 SCC 392. Shri Shyam Babu, learned counsel has stated that the facts in Harendra Arora's case (supra) are not applicable to the facts in the present case and are distinguishable. Learned counsel for applicant has submitted that once it is shown that there has been any violation of the Rules regarding the

8.

(3)

conduct of the Departmental inquiry proceedings, then it is sufficient to show that prejudice has been caused to the applicant and nothing more is required.

6. We have carefully considered the pleadings and submissions made by the learned counsel for parties.

7. In the present case, no doubt from the portion of the inquiry officer's report dated 30.5.1994 reproduced in paragraph 2 above, it is noted that the copy of the charge was served on the applicant on 12.5.1994. He was asked to submit his written statement as well as the list of DWS, if any, whom he would like to produce in his defence by 16.5.1994. It has, <sup>however,</sup> ~~further~~ been stated in the inquiry officer's report that the defaulter had not submitted any list of DWS as well as any defence statement. He goes on to presume, therefore, that the applicant has nothing to say in his defence, except the medical paper he had already produced during the Departmental inquiry proceedings. During the hearing, to a query raised by one of us, learned counsel for applicant has submitted that at no stage before the inquiry officer had submitted his report or thereafter till the disciplinary authority passed the impugned penalty order dated 5.7.1994, the applicant had submitted any defence statement. His argument is that since the respondents have failed to fulfil in letter and spirit of <sup>15</sup> the requirements in Rule 16 (v) & (vii) of the Rules, he could not be expected to give any defence statement and that too within a period as prescribed by the respondents, i.e., upto 16.5.1994. Under Rule 16 (v) of

(32)

the Rules, the applicant was to be given time "not exceeding two working days" to prepare a list of defence witnesses together with a summary of the facts to be testified. A further period of ten days was to be granted to him to produce them at the inquiry at his expense. The question of production of the defence witnesses in the present case does not arise, as admittedly, the applicant himself has not submitted a list of defence witnesses within the prescribed period of two days after 12.5.1994 when the charge was served upon him. We are not impressed by the arguments of Shri Shyam Babu, learned counsel that reading sub-rules (v) & (vii) of Rule 16, the applicant ought to have been given a total of 2+10+7 days to submit his defence statement. We say so because the question of granting ten days to the applicant to produce the defence witnesses at the inquiry proceedings at his own expense for which time upto ten days is granted will not assist the applicant in the present case, as he has not submitted a list of such witnesses in the first instance, within the prescribed time. Under sub-rule (vii) of Rule 16, at the end of the defence evidence, the applicant could have been required to submit his own version of facts and he may file a written statement for which he may be given a week's time. No documents have been produced by him to show at any time when the Departmental inquiry proceedings were pending, the applicant had requested the authorities to grant him time to file his written statement. Indeed, what appears from the submissions made by the learned counsel for applicant is that, no such written statement was ever submitted by the charged officer at any time

31

till the inquiry officer's report was submitted or even upto the time when the disciplinary authority's order was passed on 5.7.1994. In this view of the matter, we find that the judgment of the Hon'ble Supreme Court in Harendra Arora's case (supra) is fully applicable to the facts of the present case. In that case, quoting from the earlier judgment of the Hon'ble Apex Court in Managing Director, ECIL Versus B. Karunakar, (1993) (4) SCC 727, the Hon'ble Supreme Court has held that "it would be plain that in cases covered by the constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. If for infraction of a constitutional provision an order would not be invalid unless prejudice is shown, we fail to understand how requirement in the statutory rules of furnishing copy of the enquiry report would stand on a higher footing by laying down that question of prejudice is not material therein".

8. In the facts and circumstances of the present case, we, therefore, reject the contention of Shri Shyam Babu, learned counsel that it was merely sufficient on the part of the applicant to show that the exact period of time specified in Rule 16 (v) & (vii) of the Rules has not been strictly complied with and there was no need at all to show any question of prejudice in such matters. We are unable to agree with this submission having regard to the facts and submissions of this case. The applicant has admittedly ~~not~~ <sup>18</sup> at any time, ~~not~~ produced any defence statement nor has he requested the authority for grant of

time. However, we may not be taken to condone in all such cases the non-compliance of statutory rules by the respondents which, needless to say, have to be complied with, which are rules made to apply to such cases generally. However, in the particular facts and circumstances of the case and having regard to the conduct of the applicant himself, we are unable to persuade ourselves to come to the conclusion that any prejudice has been caused to him. We, therefore, respectfully follow the observations and judgment of the Hon'ble Supreme Court in Harendra Arora's case (supra). The judgment of the Tribunal <sup>12</sup>(Full Bench) in Ex. H.C. Vijay Singh's case (supra) relied upon by the learned counsel for respondents is also relevant to the facts of this case.

9. It is also relevant to note that in para 5 of appellate authority's impugned order dated 27.1.1995, it has also been stated that the applicant has submitted a time barred appeal on 20.8.1994 while the punishment order was received on 7.7.1994. Admittedly, the appeal was to be submitted to the authorities for consideration within thirty days of the receipt of the disciplinary authority's order. That period has not been complied with by the applicant. The appellate authority has, however, further gone <sup>on 12</sup> to deal with the belated appeal submitted by the applicant on merits and found that there was no force in the matter.

10. In the result, for the reasons given <sup>above, 12</sup> we find no good grounds to justify any interference in the matter or

37

to quash the impugned penalty orders. As we find no merit in this application, the OA fails and is dismissed.  
No costs.

(Govindan S. Tampi)  
Member (A)

/sunil/

Lakshmi Swaminathan  
(Mrs. Lakshmi Swaminathan)  
Vice Chairman (J)