

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.1936/95

New Delhi, this the 31st day of January, 2000.

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)  
HON'BLE MR. M.P.SINGH, MEMBER (A)

Head Constable (Driver) Om Bir Singh  
No.264/DAP, S/O Sh. Bhoop Singh, aged  
about 34 years, presently posted in Ist  
Bn. DAP, R/O 52-A, Phool Prahladpur,  
P.S. Okhla, Delhi - 110 044.

.....Applicant.

(By Advocate: Sh. Shankar Raju)

VERSUS

1. Lt. Governor of N.C.T. of Delhi/  
Union of India, Service through its  
Commissioner of Police, Police  
Headquarters, M.S.O. Building,  
I.P.Estate, New Delhi.
2. Addl. Commissioner of Police,  
Armed Police & Training, Police  
Headquarter, M.S.O. Building,  
I.P.Estate, New Delhi.

....Respondents

(By Advocate: Ms. Jasmine Ahmed through  
learned proxy counsel Sh. Anil Singal)

O R D E R (ORAL)

By Hon'ble Mrs. Lakshmi Swaminathan, M (7):-

The applicant is aggrieved by the penalty orders passed by the respondents dated 9.6.94 and 7.10.94. These orders have been passed by the disciplinary authority and the appellate authority after holding the departmental enquiry proceedings against the applicant under Section 21 of the Delhi Police Act, 1978, and the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as "the Rules").

2. The brief relevant facts of this case are that the applicant alongwith ASI Gajraj Singh were detailed for duty on PCR Van, V-61 at Suraj Kund Turning on 7.3.91. It
- 18

(2)

was alleged against the applicant and ASI, Gajraj Singh that while they were on duty, they had stopped truck No. DL-IG-1529 belonging to M/S. United Builders at about 6.30 AM which was going towards Badarpur. The truck was loaded with ballies, scaffolds and steel shuttering plates for the use of construction site at Kosi. According to the respondents, the staff of PCR Van, V-61 had demanded Rs.10,000/- to let the truck pass. They had beaten the truck driver/ supervisor, Pitamber Singh and snatched Rs.500/- from him. The complaint had been made by Sh. Rajiv Jain of M/S. United Builders, who has stated that he has received 2/3 telephonic calls from some police-men at his residence and he had reached the spot along with money but it was too late. The night shift staff had left the place and the relieving staff had joined there and the truck had also been allowed to go. On these allegations, a departmental enquiry was held against the applicant and ASI, Gajraj Singh. The Inquiry Officer in his report dated 3.5.94 had reached the conclusion that the charge against the applicant, stood proved. The disciplinary authority passed an order dated 9.6.94 dismissing both the defaulters. Against this order, an appeal was filed. The appellate authority after examining the relevant documents, by his order dated 7.10.94, set aside the dismissal order, stating that in the circumstances of the case, it would be harsh and not commensurate with the quantum of default. The punishment of dismissal from service was, therefore, reduced to forfeiture of three years approved service permanently for a period of three years entailing proportionate reduction in his pay during which period he would not earn increment till the expiry

18

(3)

of three years. The intervening period from the date of dismissal, i.e. 9.6.94 and the date of re-instatement was also treated as leave of the kind due.

3. The applicant has filed this OA impugning the validity of the aforesaid penalty orders passed by the disciplinary authority and the appellate authority on a number of grounds. Sh. Shankar Raju, learned counsel has submitted that the departmental enquiry held against the applicant has been vitiated because the same has not been held in accordance with the provisions of the Rules, and in particular Rules 15 & 16. He has submitted that under Rule 16 (i), the respondents ought to have given, not only the list of prosecution witnesses and the list of documents by which they intend to prove the charge but they ought to have also given the brief details of the evidence to be led by the witnesses and the documents that they rely upon. He has submitted that the lists of documents and prosecution witnesses attached to the summary of allegations, does not contain the brief details of the evidence as required under Rule 16 (i) of the Rules.

4. Another main ground taken by the learned counsel was that when the departmental enquiry was being conducted against the applicant, he had submitted a letter dated 13.05.93 to the respondents, i.e. the Inquiry Officer to give him certain documents, including the findings of the preliminary enquiry report and his statement given in the preliminary enquiry. He has submitted that none of these documents were supplied by the respondents. He has

22/

10

further invited our attention to the fact that the officer who conducted the preliminary enquiry, i.e. Inspector Kishan Singh has been called as PW-4 on behalf of the prosecution at the departmental enquiry to prove this report. He has submitted that no doubt the applicant had cross-examined PW-4, but this cannot be treated as effective cross-examination as the relied upon document i.e. the preliminary enquiry report, submitted by this very officer on the basis of which the departmental enquiry proceedings have been conducted, had not been supplied to him. In the circumstances, Shri Shankar Raju, learned counsel has submitted that the departmental enquiry is vitiated as the principles of natural justice have not been complied with and prejudice has been caused to the applicant. This ground of non-supply of the preliminary enquiry report has also been taken in the appeal filed by the applicant on 6.7.94, but the appellate authority has not dealt with this issue in his order dated 7.10.94. He relies on the judgement of this Tribunal in Vijay Singh Vs. Govt. of N.C.T. of Delhi & Ors. (1993 (3) ATJ Page 563). In the circumstances, learned counsel has pressed that the impugned order passed by the appellate authority is also vitiated which may be quashed and set aside with all consequential benefits.

5. We have seen the reply filed by the respondents and heard Shri Anil Singal, learned proxy counsel for the respondents. He has submitted that the non-supply of the preliminary enquiry report or the gist of evidence as provided in Rules 15 & 16 (i) of the Rules in the present case, is not of such a nature so as to cause prejudice to

B

the applicant. He has emphasised on the fact that the applicant himself has cross-examined the relevant witnesses. He has, therefore, submitted that the departmental enquiry has been held in accordance with the rules and the OA may, therefore, be dismissed.

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

7. In the present case, from the brief facts mentioned above, it is seen that in spite of the fact that the applicant had requested the Inquiry Officer in his letter dated 13.5.93, to give him a copy of the relevant statements made at the preliminary enquiry and the findings of the Officer in his report which had been received by the respondents, these relevant documents were not supplied to him. Rule 15 (3) of the Rules provides as follows:-

"The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar on the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer" (emphasised added).

JS

In this case, it is further noticed that not only the respondents have relied on the statements made at the preliminary enquiry but also on the enquiry report itself in the departmental enquiry proceedings, without supplying copies of the relied upon documents to the applicant, which is in violation of the provisions of the Rule 15 (3). It is also relevant to note that in the enquiry proceedings, Inspector Kishan Singh, Crime Branch, Delhi, was also called as PW-4, who had conducted the preliminary enquiry.

8. The applicant has also not been given the gist of the evidence at the time of giving him the list of documents and witnesses with the charge and summary of allegations. The contention of learned proxy counsel for the respondents that as the applicant had cross-examined PW-4, therefore, it should be taken that there is no violation of the principles of natural justice cannot be accepted, taking into account the totality of the facts and circumstances of this case. This issue has been raised specifically by the applicant in the appeal filed by him against the dismissal order passed by the disciplinary authority. However, we find no reference in the appellate authority's order on this point. The reliance placed by Shri Shankar Raju, learned counsel on Tribunal's judgement in Vijay Singh's case (Supra) in which one of us (Mrs. Lakshmi Swaminathan, M (J) was also a Member) is on similar facts and is applicable. The result, therefore, is that in the facts and circumstances of the case there has been violation of the principles of natural justice in

8.

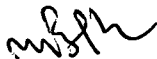
(13)


(7)

not affording the applicant a reasonable opportunity of hearing, which has also escaped the notice of the appellate authority when passing his order.

9. Regarding the other main issue raised by the learned counsel for the applicant about non-supply of the gist of evidence alongwith list of documents and witnesses as required under Rule 16 (i) of the Rules, we do not consider that this objection would survive in the facts and the circumstance of the case.

10. In view of what has been stated above, the OA succeeds and is allowed. The appellate authority's order dated 7.10.94 and the disciplinary authority's order dated 9.6.94 are quashed and set aside. However, liberty is granted to the respondents to proceed further with the disciplinary proceedings against the applicant under Section 21 of the Delhi Police Act, 1978, from the stage of supplying the relevant documents which they have relied upon, in accordance with law and rules. The competent authority shall also pass an appropriate order after conclusion of the disciplinary proceedings with regard to the consequential benefits in accordance with law. Parties to bear their own costs.

  
(M.P. Singh)  
Member (A)

  
(Smt. Lakshmi Swaminathan)  
Member (J)

/sunil/