

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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HON. DR. A. VEDAVALLI, MEMBER (J)  
HON. SHRI R.K. AHOOJA, MEMBER (A)

O.A. NO.757/1995

New Delhi, this 7th day of August, 1997.

Ex-Head Constable (Ministerial)  
Suresh Chand No.6/DAP  
S/o Shri Bhagirath Sharma  
aged about 35 years  
R/o Village & P.O. Bali Brahmanan  
Tehsil Gohana,  
Distt. Sonapat  
Haryana

...Applicant

(By Advocate - Sh. Shankar Raju)

VERSUS

UNION OF INDIA, THROUGH

1. Lt. Governor of NCT Delhi  
Rajnivas Marg  
5 Alipur Road  
Delhi - 110 054.
2. Additional Commissioner of Police  
(Armed Police & Training)  
Police Headquarters  
MSO Building,  
I.P. Estate  
New Delhi.

...RESPONDENTS

(By Advocate - Shri D. Mukerjee)

TO BE SENT TO THE REPORTER

*de*  
(R.K. AHOOJA)  
MEMBER (A)

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The applicant, a Head Constable in the Delhi Police, was proceeded against in a departmental enquiry for carrying on private trade of organising committees for the purpose of so called Chit Fund without any permission. It was also alleged that he had collected a sum of Rs.50,000/- from one Shri R.K. Pathak, retired Sub-Inspector, as subscription of the committee but later did not return the maturity sums despite lapse of many months. Similar amounts were alleged to have been collected from Head

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Constable Rajbir Singh, Kaptan Singh and many others of the police force. A criminal case against him on the same grounds was also registered under FIR No.163 dated 3.9.1992 under Section 406/168-IPC at P.S. Mukerjee Nagar and the applicant was also arrested. The applicant was placed under suspension w.e.f. 16.9.92. The criminal case is pending in the court of Metropolitan Magistrate. However, the disciplinary proceedings have been concluded. The enquiry officer held the applicant guilty of the charge under Rule 15 and 18 of CSS (Conduct) Rules 1964 for running private business without permission. The disciplinary authority imposed the penalty of dismissal from service. The applicant preferred an appeal but the same was also rejected. The applicant has now come before the Tribunal impugning the order of dismissal A-1 and the appellate order A-2, and seeking his reinstatement in service with all consequential benefits.

2. The main grounds on which the imugned orders are challenged are that the departmental enquiry was conducted in violation of Rule 16(1) of the Delhi Police (Punishment & Appeal) Rules 1980 (referred to as Rules), as the relied upon documents were not provided to the applicant even though the same were exhibited in the course of the departmental enquiry (D.E. for short) and relied upon by the enquiry officer and also by the disciplinary authority. Further, it is alleged that there was a violation of Rule 15(2), because on a preliminary enquiry by the Crime Branch, an FIR on identical allegation was registered against the applicant on the directions of the Additional Commissioner of Police but at the same time without seeking approval of the Addl. Commissioner a D.E. was ordered against the applicant involving common witnesses and documents. The initiation of D.E. simultaneously with the criminal case on the same set of documents is also stated to be in violation

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of Rules 11 and 12. The request of the applicant to hold the proceedings in abeyance so that he was not compelled to disclose his ~~his~~ defence through cross-examination of witnesses and protection of his defence witnesses was also rejected. Finally, the applicant submits, the extreme punishment of dismissal from service can only be imposed in the case of a grave misconduct, which is not the case here.

3. The respondents in their counter reply have stated that the approval of the Additional Commissioner was not required to be obtained as no formal <sup>preliminary</sup> ~~criminal~~ enquiry was conducted against the applicant and the D.E. was initiated only on a reference from the Crime Branch. They also deny the allegation that copies of relied upon documents were not supplied to the applicant. The applicant was also afforded full opportunity to cross-examine the witnesses and he had in fact examined PW-3. The D.E. was on allegation of violation of Rules 15 and 18 of CCS (Conduct) Rules whereas the criminal case was registered for misconduct under Section 406/168 IPC. The applicant had never approached the disciplinary authority to stay the D.E. though he had given in writing to the enquiry officer that he was not in a position to give his defence statement before the decision of the criminal court.

4. We have heard the counsel on both sides. Shri Shankar Raju, ld. counsel for the applicant, submitted that as per Rule 15(2), the D.E. was to be ordered only after obtaining the approval of the Additional Commissioner concerned. Rule 15(2) reads as follows:-

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"In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

5. Shri Raju relied upon the judgement of this Tribunal in O.A. No.402/1992 Prakash Chand Vs. UOI in which it was held that where no approval has been obtained in cases where the summary of allegation indicated that a cognizable offence had been committed, the order for D.E. was liable to be quashed.

6. The ld. counsel for respondents argued that the requirement of approval under Section 15(2) arises only where criminal enquiry under Rule 15 has been conducted. Rule 15(1) reads as follows:-

"A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter(s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above mentioned points exists a preliminary enquiry need not be held and departmental enquiry may be ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally proceed a departmental enquiry.

7. The ld. counsel for respondents submitted that in the present case specific information had been made available by the Crime Branch of the Police and therefore there was no occasion or need for conducting a preliminary enquiry and hence there was no occasion either for obtaining the sanction of the Additional Commissioner under Rule 15(2).

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8. Having given consideration to the arguments for both sides, we are of the opinion that the impugned order of dismissal is liable to be quashed on the ground of non-compliance of Rule 15(2). The purpose of the preliminary enquiry, as stated in Rule 15(1), is to establish the nature of default and identity of the defaulter, to collect prosecution evidence, to judge the quantum of default and to bring relevant documents on record to facilitate the regular D.E. Admittedly, in this case enquiries were conducted by the Crime Branch of Delhi Police. It is not necessary that to be a preliminary enquiry under Rule 15, such enquiry should be done only by the vigilance branch. So long as there is an enquiry for the purpose of finding out the facts, it would constitute a preliminary enquiry in terms of Rule 15(1). The respondents state in para 4(ii) of the reply that a report was received from the Deputy Commissioner of Police, Crime & Railways, dated 16.9.1992. The respondents, however, tried to distinguish between "cursory" preliminary enquiry and "formal" preliminary enquiry. We are unable, however, to appreciate the distinction. The preliminary enquiry under Rule 15 is in any case not a formal enquiry, since it is only a fact finding enquiry. Obviously, the so called 'cursory' enquiry in the present case disclosed the commission of a cognizable offence which led to the registration of an FIR against the applicant. In view of this, a simultaneous D.E. required the prior approval of the Additional Commissioner of Police under Rule 15(2). This admittedly was not done. The omission, as already held by the <sup>coordinating</sup> ~~learned~~ Division Bench in OA 402/92 (Supra), would be fatal. In view of the fact that the preliminary objection of Shri Raju is upheld, we do not consider it necessary to go into the other points raised by the applicant against the impugned order.

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Accordingly, the impugned order of dismissal is set aside. The applicant would be reinstated in service within one month, but would be deemed to be under suspension for the intervening period. The respondents would be at liberty to place the applicant under suspension and also to conduct the disciplinary proceedings against him after fulfilling the requirements of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules.

The O.A. is disposed of accordingly. No costs.

~~R.K. ANOJIA~~  
(R.K. ANOJIA)  
Member(A)

/avi/

A. Veda Valli  
(DR. A. VEDAVALLI)  
Member (J)