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Central Administrative Tribunal, Principal Bench

Original Application No. 1145 of 1996

New Delhi, this the 7th day of February, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. M.P. Singh, Member (A)

1. H.C. Cheddi Oran,
No. 116/C
S/o Ghorri Oran,
Aged about 38 years,
R/o 141-B Block, Shanti Nagar,
Buradi, Delhi-9
Presently posted at P.S. Dariya Ganj,
New Delhi
2. Const. Naresh Kumar
No. 579/C,
S/o Karam Singh,
Aged about 36 years
r/o Vill. & P.O. Karala,
Delhi-81
Presently posted at Central Distt. Lines
Paharganj, New Delhi. - Applicants

(By Advocate - Shri Shankar Raju)

Versus

1. Union of India/Lt. Governor N.C.T.D.,
through Commissioner of Police,
P.H.Q., M.S.O. Building,
I.P. Estate, New Delhi
2. Addl. Commissioner of Police
Northern Range,
P.H.Q., M.S.O. Building,
I.P. Estate, New Delhi - Respondents

(By Advocate - Shri Rajinder Pandita)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicants, two in number, who are employed as Constables in Delhi Police have assailed the impugned order of punishment at Annexure A-2 and have prayed for quashing and setting aside the same and also to quash the impugned memo of the disciplinary authority at Annexure A-1.

2. Facts in brief are that both the applicants,
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alongwith three other police officials, were deployed at Chitli Quabar at the relevant time. They were proceeded departmentally on the allegation that riots had taken place within their sight and full view and they had failed to control it and these riots could have been averted. Despite the fact that they had been briefed about the communal situation in the walled city and the prompt and strongest action to be taken as soon as any trouble comes to their notice and on 27.1.93 at about 1.00PM a mob of agitated muslims came from Tiraha Behram Khan side and started indulging in shouting slogans and stoning on the Hindu shops and all these riots took place within the sight of the applicants, they had failed to respond to the situation and also failed to control the riots and had they reacted promptly, probably the riots could have been averted.

3. A departmental enquiry was held against the applicants. The Enquiry Officer returned the finding concluding that the allegations levelled against the applicants could not be proved beyond doubt with the available record and evidence in specific terms. However, the disciplinary authority on the basis of the statements recorded during the departmental enquiry, held the applicants guilty and awarded the punishment of withholding of one increment for a period of one year. Appeal against the order of the disciplinary authority was preferred and the same has

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not been replied to.

4. In the grounds to challenge the impugned order, the applicants have taken the ground that Rule 16 (12) (a) as well as Rule 16 (10) of Delhi Police (Punishment and Appeal) Rules, 1980 have not been followed in their case as the disciplinary authority had chosen to disagree with the findings of the Enquiry Officer and at the same time, before awarding the punishment to the delinquent officials, he had not given the reasons for disagreeing with the Enquiry Officer.

5. The applicants have taken another ground that the important documents like statement of witnesses recorded in the criminal case, had not been supplied to them despite their demand. It is also stated that the gist of evidence of the witnesses cited for the purpose of departmental enquiry has also not been supplied to the applicants and, therefore, the enquiry is vitiated under Rule 16 (12) (a) as well as Rule 16 (10) of Delhi Police (Punishment and Appeal) Rules, 1980.

6. We have heard Shri Shankar Raju, learned counsel for the applicants and gone through the records.

7. Shri Shankar Raju submitted that in this

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case, the disciplinary authority had not followed Rule 16 (i) of Delhi Police (Punishment & Appeal) Rules which enjoins upon the authorities that at the time of supplying documents, summary of allegations and gist of evidence is also to be supplied. To support his case, he referred to a judgement of this Tribunal in OA-1217/96 with OA-1113/96 delivered on 22.12.99. Besides that, he also submitted that according to Rule 16 (12) (a), the disciplinary authority was also required to furnish the accused officer a copy of the report of the Enquiry Officer together with reasons for disagreement, in case, the disciplinary authority was not in agreement with the findings of the Enquiry Officer.

8. It is evident from the pleadings available on record that at the time of supplying statement of allegations and other documents, though the list of witnesses was supplied but the gist of evidence was not supplied. The record also makes it clear that the disciplinary authority though supplied the copy of the enquiry report but the reasons for disagreement with the findings of the Enquiry Officer had not been supplied which definitely prevented the applicants to make an effective representation to the disciplinary authority for taking a view different than the Enquiry Officer and the principles of natural justice have thus been violated. So on both these accounts i.e. for non-supply of gist of evidence and non-supply of

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reasons by the disciplinary authority as to what prompted him to differ with the findings of the Enquiry Officer, we find that the order of punishment cannot be sustained and the same has to be quashed.

9. At this stage Shri Rajinder Pandita, learned counsel for the respondents appeared and submitted that in this case, the allegations against the applicants are of very serious nature as they had failed to act in time and protect the public life and property and inaction on the part of the applicants in preventing the riots, shows dereliction of duty on their part. He also contended that although violation of Rule 16 (i) of Delhi Police (Punishment & Appeal) Rules was there but that may not be taken into consideration since violation of this Rule had not caused any prejudice to the interests of the applicants.

10. We have considered the submissions of Shri Rajinder Pandita, learned counsel for the respondents. Since Delhi Police Rules and the language used in these Rules is of mandatory nature and non-following of these rules itself amounts to denial of proper opportunity to the applicants. As such we are of the opinion that the impugned order is liable to be quashed.

11. In view of the above discussion, the OA

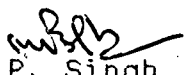
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succeeds and is allowed to the extent that the order of the disciplinary authority dated 26.4.95 is quashed and set aside. The pay of the applicants should be restored to them with arrears etc. which are admissible in accordance with the rules.

12. However, it will be open to the respondents, if they are so advised, to continue the D.E. from the stage of supplying to applicants the gist of evidence to be led by each of the PWs and the D.E. should be concluded as expeditiously as possible, preferably within six months from the date of receipt of a copy of this order.

13. O.A. is disposed of with the above directions. No order as to costs.


(M.P. Singh)
Member (A)


(Kuldip Singh)
Member (J)

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