

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1147/96

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T.A.No.

DATE OF DECISION . 17.1.2000

Sumer Singh

....Petitioner

Shri Shanker Raju

....Advocate for the
Petitioner(s)

VERSUS

Union of India & Ors.

....Respondent

Shri Rajinder pandita

....Advocate for the
Respondents.

CORAM

The Hon'ble Mrs. Lakshmi Swaminathan, Member(J).

The Hon'ble Mrs. Shanta Shastry, Member(A).

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

(6)

Central Administrative Tribunal
Principal Bench

OA 1147/96

New Delhi this the 17th day of January, 2000

Hon'ble Smt. Lakshmi Swamianthan, Member(J).
Hon'ble Smt. Shanta Shastry, Member(A).

H.C. Sumer Singh No. 142/A,
S/o Shri M.R. Yadav,
R/o FRRO, Police Lines,
Safdarjung Airport,
New Delhi.

... Applicant.

By Advocate Shri Shanker Raju.

Versus

1. Union of India/Lt. Governor,
through Commissioner of Police,
PHQ, MSO Building,
I.P.S. Estate,
New Delhi.

2. Addl. Commissioener of Police,
Crime P.H.Q.,
MSO Building, IPS Estate,
New Delhi.

... Respondents.

By Advocate Shri Rajinder Pandita.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 21.8.1995 forfeiting three years of service permanently entailing reduction in his pay during which period he will also not earn increments (Annexure A-1). The period of suspension from 6.9.1994 to 17.5.1995 has also been treated as period not spent on duty. He has challenged the show cause notice dated 18.5.1995 before this order was passed as well as the appellate authority's order dated 4.3.1996 rejecting his appeal.

2. While the applicant was posted at Police Post Hazrat Nizamuddin Railway Station, he was placed under suspension by order dated 9.9.1994. He was proceeded departmentally under

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Section 21 of the Delhi Police Act, on a complaint made by one Shri Atul Sharma, by order dated 27.10.1994. The relevant portion of the summary of allegations against the applicant reads as under:

"It is alleged against HC Sumer Singh No. 295/Cr. that while posted at PP Hazrat Nizamuddin on 4.9.94 at about 10.15 PM Shri Atul Sharma S/o Shri Brij Mohan r/o 4609 Charkhewalan, Delhi who travelled from Agra and got down at H.N. Din. Rly. Station, New Delhi alongwith handicraft articles, was accosted by a Home Guard and taken to P.P.H.N. Din, Delhi as per directions of HC Sumer Singh No. 295/Cr. who was sitting outside the police post. At the police post HC Sumer Singh No. 295/Cr., put several questions with regard to the handicraft articles and threatened to detain him in the police post. At this the complainant Shri Atul Sharma produced Railway freight receipts for inspection. But he demanded Rs.100/- and then settled down for Rs.30/- which the complainant paid ^{under} fear of detention/duress".

3. The Inquiry Officer after examining the Prosecution Witnesses and other evidence submitted his report on 13.1.1997 giving his conclusion that there was no ground to frame the charge against the defaulter. Shri Shankar Raju, learned counsel has contended that on receipt of the Inquiry Officer's report, the disciplinary authority had illegally issued the impugned show cause notice (Annexure A-3). He has disagreed with the findings of the Inquiry Officer and has provisionally proposed to forfeit three years approved service permanently and other consequential effects for which he issued the notice and ~~given~~ ^{by} the applicant 15 days time to give his reply. He has submitted that the respondents have not followed the procedure laid down in departmental inquiries ^{by} under sub-rules (iv), (ix) and (x) of Rule 16 of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Rules'). According to him, under Rule 16 (iv), when the Inquiry Officer considers that the allegations are not substantiated, he can either discharge the accused himself, if he is empowered to

punish him or recommend his discharge to the Deputy Commissioner of Police or other officer, who may be so empowered or proceed to frame a formal charge or charges in writing and call upon the accused to answer them. He has contended that this has not been done. Further, under sub-rule (x) of this Rule, he has submitted that on receipt of the Inquiry Officer's report, the disciplinary authority has to consider the record of the inquiry and the charge. If in his opinion, some important evidence having a bearing on the charge has not been recorded or brought on the file, he may record the evidence himself or send back the inquiry to the same or some other Inquiry Officer. Learned counsel has contended that none of these procedures have been followed in accordance with the Rules, but the disciplinary authority has straightway, without himself holding the inquiry or ordering any further inquiry by the Inquiry Officer, proceeded to issue the show cause notice proposing the punishment of forfeiture of three years approved service.

4. Another ground taken by Shri Shanker Raju, learned counsel, is that there is a material illegality in the punishment order imposed by the disciplinary authority. He has submitted that in the list of witnesses and documents attached to the summary of allegations served on the applicant, no gist of the allegations has been given as to why the witnesses or the documents have been attached, as required under Rule 16(i) of the Rules. He has relied on the judgement of the Tribunal in Subey Singh Vs. Union of India & Ors. (OA 1217/96 with connected case) decided on 22.12.1999 (copy placed on record). He submits that in that case the Tribunal has remitted the case

for further proceedings in accordance with Rule 16(i) of the Rules and if the same order is passed in the present case also, he will have no objection.

5. On the evidence, he has submitted that there was no reason for the respondents to come to the conclusion in the departmental inquiry that the applicant was guilty when the Prosecution Witness, Atul Sharma who had made the complaint, had deposed in the departmental inquiry that he was not the person who had demanded the money from him. He has submitted that for these reasons, the disciplinary authority's order and the appellate authority's order are illegal as they have been passed without application of mind by these authorities, whereas the Inquiry Officer had rightly exonerated him after considering the evidence and had not recommended framing of charge against him.

6. The respondents in their reply have submitted that even though the Inquiry Officer had concluded that there was no circumstance to frame charge against the defaulter based on the deposition of Shri Atul Sharma that the person who had demanded the money was Head Constable S.S. Yadav and not the applicant, the disciplinary authority had not agreed with the findings for which he had given five reasons as set out in the show cause notice. Shri Rajinder Pandita, learned counsel, has submitted that the applicant has been given notice and sufficient opportunity to give his reply and the disciplinary authority, after fully considering the materials on record and giving the applicant an opportunity to appear in the Orderly Room imposed the punishment. They have also submitted that during the DE proceedings the identity of the Head Constable was proved before the ACP Railways and besides this, there was no other

Head Constable at the police post at the time of the incident which had been inquired into. Shri Pandita, learned counsel has also submitted that the applicant's counsel cannot on the one hand state that there was no inquiry on the allegations/charge-sheet and on the other hand submit that the respondents have failed to give the brief details of the evidence to be led by the witnesses and documents which are attached to the summary of allegations, as required under Rule 16(i) of the Rules. He has contended that the disciplinary authority has after going through the evidence on record, including the statements of the witnesses, differed with the findings of the Inquiry Officer for reasons which have been set out, after which a show cause notice had also been issued to the applicant. The respondents have also submitted that the Inquiry Officer had also not fully exonerated the applicant as he has clearly opined that PW-4 complainant, had been won over by the applicant and as there was no other Head Constable posted at the police post at that time by the name of Shri S.S. Yadav except the applicant who was then Head Constable, the allegations against him have been proved in the departmental proceedings. He has further submitted that there is no infirmity in the procedure adopted by the respondents as reasonable opportunity has been given to the applicant to submit his reply before the penalty order forfeiting three years of his service which entailed reduction in pay for the period was imposed. The learned counsel has, therefore, submitted that the O.A. may be dismissed as the findings of the disciplinary authority and the appellate authority ^{is} passing the final orders are supported by evidence on record.

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7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. The respondents have also submitted the departmental file dealing with the case against the applicant for our perusal.

8. From the records submitted by the respondents, it is noted that the applicant was Head Constable posted at police post, Hazrat Nizamuddin Railway Station, on the date of the incident inquired into, that is on 4.9.1994 and there was no Head Constable by the name of Shri S.S. Yadav posted there. It is also seen that the disciplinary authority before issuing the penalty order has, after going through the record of the departmental proceedings, come to the conclusion which was different from the findings of the Inquiry Officer for which he has also given detailed reasons as set out in the show cause notice. We find force in the submissions made by Shri Rajinder Pandita, learned counsel that the applicant's counsel cannot make contrary ^{dicta} submissions, namely, (i) that on the one hand that no departmental inquiry has been held on the summary of allegations; and (2) on the other hand submit that the departmental inquiry proceedings are vitiated because the list of witnesses and the documents attached to the summary of allegations did not contain the brief details of the evidence to be led by the witnesses which is contrary to Rule 16(i) of the Rules. Taking into account the facts and circumstances of the case, we reject the first contention of Shri Shanker Raju, learned counsel.

9. In the summary of allegations against the applicant, the respondents have attached a list of witnesses and list of

documents, but it is correct that this has been done without giving any brief details of the evidence to be led by them and the documents to be relied upon for prosecution. Learned counsel for the applicant has relied upon the judgement of the Tribunal in **Subey Singh's case** (supra) and sought a similar order. However, neither in the O.A. nor in the submissions made by the learned counsel for the applicant, any submission was made that because of this lacuna in the procedure adopted by the respondents in this case, the applicant has suffered any prejudice. The question, therefore, arises that when the applicant has not made even a whisper that the procedure adopted by the respondents has caused prejudice to him, whether it is a fit case to remit the matter to the respondents for further proceedings from the stage of supplying the applicant the gist of the evidence to be led by each of the Prosecution Witnesses and the brief statements of the relevant documents, as required under Rule 16(i) of the Rules, ^{of this Rule 18.} which reads as follows:

"16. Procedure in departmental enquiries- The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where prima facie the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer:

(i) A police officer accused of misconduct shall be required to appear before the disciplinary authority. The Enquiry Officer shall prepare a statement summarising the misconduct alleged against the accused officer in such a manner as to give full notice to him of the circumstances in regard to which evidence is to be regarded. Lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution shall be attached to the summary of misconduct. A copy of the summary of misconduct and the lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution will be given to the

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defaulter free of charge. The contents of the summary and other documents shall be explained to him. He shall be required to submit to the enquiry officer a written report within 7 days indicating whether he admits the allegations and if not, whether he wants to produce defence evidence to refute the allegations against him".

(Emphasis added)

10. The Supreme Court in *State Bank of Patiala & Ors. Vs. S.K. Sharma* (JT 1996(3) SC 722), has held as follows:

"In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for..."

(Emphasis added)

See also the judgement of the Supreme Court in *Managing Director, ECIL, Hyderabad and Ors. Vs. B. Karunakar & Ors.* (1993 SCC (L&S) 1184) on the question of observance of the principles of natural justice where it has been held that 'they are not incantations to be invoked nor rites to be performed on all and sundry occasions'.

11. As mentioned above, in the present case, the applicant has neither shown how the non-observance of the aforesaid provisions of Rule 16(i) of the Rules has caused prejudice to him nor was this point even mentioned by the learned counsel for the applicant at the time of hearing. Therefore, the judgements of the Supreme Court are binding and

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applicable to the facts in the present case. There is no doubt that the alleged violation in the present case is one of the procedures and it cannot also be stated that the applicant had not been put to notice and given a reasonable opportunity of hearing in the inquiry held against him. In the circumstances, having regard to the judgements of the Hon'ble Supreme Court in S.K. Sharma and B. Karunakar's cases (supra), the violation of the procedural rules does not come within the exceptions and it is also clear that no prejudice has been caused to the applicant in defending himself properly and effectively. In the facts and circumstances of the case, therefore, the judgement of the Tribunal in Subey Singh's case (supra) relied upon by the applicant will not assist him in the light of the judgements of the Supreme Court governing the present fact situation.

12. In the result, for the reasons given above, we find no merit in this application and the O.A. accordingly fails and is dismissed. No order as to costs.

Shanta J.

(Smt. Shanta Shastri)
Member(A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'