

Central Administrative Tribunal  
Principal Bench

O.A. 1206/96

New Delhi this the 8 th day of February, 2000

Hon'ble Smt. Lakshmi Swaminatha, Member(J).  
Hon'ble Shri M.P. Singh, Member(A).

Inspector Shri Rishi Ram,  
R/o 136, Sector 28,  
Faridabad,  
Haryana.

Applicant.

By Advocate Shri Shanker Raju.

Versus

1. Union of India through  
Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi.

2. Addl. Commissioner of Police,  
Operation PHQ,  
IPS Estate,  
New Delhi.

Respondents.

By Advocate Shri Anil Singhal proxy for Ms. Jasmine  
Ahmed.

O R D E R

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

The applicant is aggrieved by the order passed by the disciplinary authority, the Addl. Commissioner of Police dated 2.9.1994, imposing on him a major penalty and the order passed by the appellate authority, the Commissioner of Police dated 28.11.1995, rejecting his appeal. These orders have been passed after the departmental inquiry had been held against him and the applicant has also impugned the findings of the Inquiry Officer in his report dated 5.5.1994.

2. The applicant was proceeded against in a departmental inquiry under Section 21 of the Delhi Police Act, 1978. The charge against the applicant was on the allegations that he had used his official position to cheat the

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complainant by getting his Car worth Rs. 39,000/- transferred in the name of his brother Dal Chand. The disciplinary authority had imposed a major penalty of withholding of increments for a period of five years which will have the effect of postponing his future increments which penalty had also been upheld by the appellate authority. The suspension period was also treated as not spent on duty which the applicant has alleged, is also too harsh. The learned counsel has taken a number of grounds to challenge the validity of these orders. Some of the grounds are mentioned below.

3. One of the grounds taken by Shri Shanker Raju, learned counsel is that the inquiry is vitiated on the ground that although a cognizable offence of cheating was levelled against the applicant, but the disciplinary authority did not get the prior approval of the Addl. Commissioner of Police under Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Rules').

4. Another ground taken was that the respondents have acted in violation of the provisions of Rule 15(3) and 16(3) of the Rules. He has very vehemently submitted that the respondents had neither given the statements recorded in the preliminary inquiry under Rule 15(3) or read over the statements or given copies of the same which were, therefore, illegally brought into the departmental inquiry thereby causing him prejudice. He has, therefore, submitted that such a procedure adopted by the respondents is in clear violation of the Rules which has also caused the applicant prejudice and irreparable loss and hence the whole inquiry should be quashed

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and set aside, including the impugned punishment orders. Certain other grounds had also been taken by the learned counsel that there has been total illegality in the procedure adopted by the Inquiry Officer in conducting the inquiry as he had proceeded to cross-examine the witnesses, including the prosecution witnesses and, therefore, acted not only as prosecutor but as judge which again vitiates the inquiry. In this regard, he has relied on a recent judgement of the Tribunal in Pradeep Kumar Vs. Govt. of NCT & Ors. (OA 455/96), decided on 19.1.2000, copy placed on record. He has also submitted that the competent authority has also not considered all the relevant evidence, including his written statement.

5. The respondents in their reply have controverted the above submissions. Shri Anil Singhal, learned proxy counsel has submitted that the applicant has tried to mislead the Tribunal in a number of ways in this O.A. He has also produced the relevant departmental inquiry file during the hearing.

6. With regard to the first contention under Rule 15(2) of the Rules, he has submitted that the ground is baseless and it has been brought in only to mislead the court as the applicant was well aware that the disciplinary authority in this case was the Addl. Commissioner of Police himself who had initiated the proceedings against the applicant. He has, therefore, submitted that there is no violation of the provisions of Rule 15(2) of the Rules.

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7. On the second issue very vehemently raised by the applicant's counsel, learned counsel for the respondents has shown us a note dated 17.2.1989 in the original departmental inquiry file which was also shown to the applicant and his counsel at the time of hearing. This note has been signed by the applicant on 17.2.1989 showing that he has received 13 documents, including the statements made by the witnesses in the preliminary inquiry held by the respondents in 1988. Shri Anil Singhal, learned proxy counsel has submitted that in page 8 of the O.A. (Ground (G)), the applicant has made a categorical statement that none of the statements was read over to him nor their copies served upon him as there was no indication in the list of documents along with the summary and this was also reiterated by the learned counsel for the applicant stating that even at the inquiry he relied upon documents were never given to the applicant. The learned counsel for the respondents has submitted that this is not the correct position as the Inquiry Officer had given the applicant the copies of the statements relied upon in the inquiry. He has, therefore, submitted that similarly the other grounds taken by the applicant are also nothing but an effort on the part of the applicant to mislead the court. According to him, the applicant has been provided adequate opportunities to put forward his case and the departmental inquiry has been held in accordance with the relevant Rules and instructions and, therefore, there is no infirmity of any kind in the impugned penalty orders. He has also submitted that the disciplinary authority as well as the appellate authority have considered all the relevant facts and documents, including the defence statement given by the applicant before passing the penalty orders.

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8. It is seen that the applicant has not <sup>14</sup> filed any rejoinder controverting the averments made by the respondents, but the above arguments were pressed <sup>again 13</sup> during oral arguments by Shri Shanker Raju, learned counsel.

9. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. We have also seen the departmental file which has been submitted by the respondents.

10. The first ground taken by the applicant's counsel on the objection that prior approval of the Addl. Commissioner of Police has not been obtained under Rule 15(2) of the Rules is baseless, taking into account the facts and circumstances of this case where the Addl. Commissioner of Police has himself issued the impugned order as the disciplinary authority. This ground is, therefore, mentioned only to be rejected.

11. Regarding the other ground taken by the applicant that he had not been shown the documents or given copies of the relied upon documents and statements which have been recorded in the preliminary inquiry, although these statements were brought on record in the departmental inquiry by the Inquiry Officer, we find that these allegations are also baseless. During the hearing on 4.2.2000, when the note dated 17.2.1989 in the departmental file submitted by the respondents was shown to Shri Shanker Raju, learned counsel who in turn showed it to the applicant who was present in court, they immediately admitted the fact that copies of the 13 documents mentioned in the note have been supplied to the applicant. The note is under the heading of "Received the

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following documents" which number 13, with the signature of the applicant below, which has been acknowledged by the applicant as his signature and confirmed by Shri Shanker Raju, learned counsel. If that is so, we find the averments to the contrary taken in Ground 'G' of the O.A. are not only incorrect but agree with the submissions of the learned counsel for the respondents that they have been made with a view to misleading the court. The learned counsel for the applicant had also very vehemently submitted during the hearing that the non-supply of the relied upon documents to the applicant has caused great prejudice to him which vitiates the inquiry justifying setting aside the penalty orders. It is also relevant to observe here that the applicant and his counsel, on being shown the relevant original records vis-a-vis, this ground taken in the O.A., readily agreed during the hearing that the applicant has, in fact, received these documents and at this stage Shri Shanker Raju, learned counsel submitted that he does not press these arguments any further, although earlier he had stressed on this so called lacuna on the basis of which he had claimed that the whole of the proceedings should be quashed and set aside.

12. Taking into account the relevant facts and circumstances of the case, therefore, we find that the applicant has indeed tried to mislead the court by not making correct statements in the O.A. When confronted with the departmental inquiry records, he has tried to resile from this position which he cannot do and the applicant's counsel also cannot at a later stage turn round and say that he does not persist with this argument any further. Therefore, it is clear that the applicant has not approached this Tribunal with clean hands and has tried to misuse the process of law and

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hence he is not entitled to get any relief, on this ground alone. Apart from this, we find that even on merits of the case, the penalty orders have been issued by the respondents after holding a proper inquiry under the provisions of Section 21 of the Delhi Police Act read with the relevant Rules, wherein the applicant had been given a reasonable opportunity of hearing at all stages. The contentions of the applicant's counsel to the contrary are, therefore, liable to be rejected.

13. In the result, for the reasons given above, we find no merit in this application and O.A. is accordingly dismissed. In the facts and circumstances of the case, we consider it appropriate to impose a cost of Rs.1000/- (Rupees one thousand only) against the applicant and in favour of the respondents.

*M.P. Singh*  
(M.P. Singh)  
Member(A)

'SRD'

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member(J)