

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.No. 1406/96

(9)

New Delhi the the 4th day of December, 1998.

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER(A).

Shri Jitender Pal Singh,
Ex. Constable(1821/W),
Son of Shri Dharamvir Singh,
Village Nasirpur, PO Haldor,
District Bijnaur(UP).

..Applicant

(By Shri Shyam Babu)

vs.

1. Additional Deputy Commissioner of Police,
(West District),
P.S.Rajauri Garden,
New Delhi.

2. Additional Commissioner of Police,
(Southern Range),
Police Headquarters,
I.P.Estate,
New Delhi.

..Respondents

(By Shri Rajinder Pandita)

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant Jitender Pal Singh was dismissed from service by order dated 9.11.92 by the disciplinary authority without holding an enquiry invoking the provisions of Article 311(2) (b) of the Constitution on the allegation that he has involved in some grave misconduct. In appeal that dismissal was set aside and the disciplinary authority was directed to hold a regular departmental enquiry against the applicant. Pursuant thereto, respondent No.1 ordered a departmental enquiry against the applicant. The applicant was served with a

10

summary of allegations(Annexure-E) which reads as follows:

" It has been alleged against you(constable Jitender Pal Singh No.1323/W and constable Ashok Kumar No.826/W) that while posted at P.S. Hari Nagar on 24.10.92 , spotted one Dharam Pal s/o Sh.Uttam Chand R/o J-17 Beri Wala Bagh, Tihar village and questioned him as to why he was moving about at this time of the night. There after you (constable Jitender Pal Singh No.1323/W) posing as SHO and constable Ashok Kumar No.826/W posing as SI Saini, the Division Officer, threatened Dharampal that he would be arrested under Arms Act for loitering about in the area. Both of you (constable Jitender Pal No.1323/W and Const. Ashok Kumar 826/W) beat Dharam Pal mercilessly and extorted Rs.2960/- from him for leaving him scot free who reported the matter to the P.S.Hari Nagar on 27.10.92 and was got medically examined from DDU Hospital. Similarly on 24.10.92 itself at about 2 AM you (constable Jitender Pal Singh 1323/W and constable Ashok Kumar 826/W) while being off duty entered the premises of Diplomat furnitures, C-8 Manak Vihar Extn. New Delhi and mercilessly beat Sri Kanhya Lal who was having drinks with his friends and playing cards in the premises of factory. After threatening them you searched their pockets and snatched Rs.1800/- from their pockets. On the same night i.e. 24.10.92 at about 2.30 A.M. both of you (constable Jitender Pal and constable Ashok Kumar) entered the house of one Sh.Uma Shanker R/o 338-B village Tihar under the influence of liquor, while Uma Shanker and his brothers were having their means. After threatening them you(Const. Jitender Pal No.1323/W and const. Ashok Kumar 826/W) snatched his watch and purse containing Rs.500/-. The complaint of Uma Shanker R/o 338-B village Tihar and Kanhya Lal R/o C-8 manak Vihar were received at P.S.Hari

Nagar on 26.10.92 in this regard.

the above act on your part (constable Jitender Pal No.1323/W New No.1821/W and constable Ashok Kumar No.826/W New No.1822/W) amounts to gross misconduct which render you liable for departmental action lunder section 21 of the Delhi Police Act,1978."

After examining nine prosecution witnesses the enquiry officer framed a charge against the applicant which reads as follows:

" I Yashwant Singh, Inspector, SHO Police Station Kirti Nagar, New Delhi, charge you constable Jitender Pal Singh No. 1323/W (now 1821/W) and constable Ashok Kumar No.826/W (now 1822/W) while posted at P.S. Hari Nagar committed the following acts of misconduct on the night dated 24.10.92:

1. That you stopped one Dharampal s/o Sh. Uttam Chand r/o J. 17, Beri Wala Bagh near village Tihar and deprived him of Rs.2960/- on the threat to implicate him in the recovery of a knife case.
2. That you entered the premises of Diplomat furniture Manak Vihar, gave beatings to Kanahiya Lal, Padam Singh and Durga with the dandas while they were playing cards and deprived them of Rs.1800/-.
3. That you entered the house of Uma Shankar in village Tihar Delhi in drunken condition, threatened him and his family members with dire consequences and took away his watch and purse containing Rs.500/-.

The above acts amount to gross misconduct, negligence and dereliction in the discharge of official duties rendering you both liable for punishment under Section 21, Delhi Police Act."

The applicant denied the charge and filed a defence statement on 26.3.95. The enquiry officer, however,

submitted a report finding the applicant guilty. The Deputy Commissioner of Police, West District gave a copy of the enquiry report soliciting his explanation. The applicant submitted his explanation. However, the respondent No.1 accepting the report of the enquiry officer issued the impugned order dated 3.11.95(Annexure-A) holding the applicant guilty of the charge and dismissing him from service. The appeal submitted by the applicant was dismissed by the respondent No.2 the appellate authority by the impugned order dated 9.5.96(Annexure-B). The applicant being aggrieved by these orders has filed this application challenging these orders on various grounds. The applicant has alleged that the show-cause notice dated 23rd June, 1995 was issued by the Deputy Commissioner of Police and a reply to that was also submitted by him. The impugned order has been passed by the Additional Deputy Commissioner of Police, West District and this is irregular in procedure. It has been further alleged that there is no sufficient evidence to hold the applicant guilty and that the finding of the enquiry officer which have been accepted by the disciplinary authority and affirmed by the appellate authority that he is guilty is perverse. The applicant has further contended that he has been prejudiced in his defence because the enquiry officer has placed reliance on a preliminary enquiry report and has examined the officer who conducted the preliminary enquiry Sri Ved Pal Rana as PW 8 without supplying to him a copy of the preliminary enquiry report thereby disabling him from cross-examining the witnesses and this has resulted in gross injustice to him and is also opposed to the provisions of sub-rule (3) of Rule 15 of the Delhi Police Punishment and Appeal Rules. The applicant further alleges

that as no opinion has been formed in accordance with Rule 8(a) of the Delhi Police Punishment and Appeal Rules that the applicant had committed a grave misconduct, the penalty of dismissal from service is unsustainable.

2. The respondents in their reply statement contend that both the Deputy Commissioner of Police as also the Additional Deputy Commissioner of Police being competent authority to impose the penalty of dismissal from service on the applicant, the contention raised regarding the competence, has no force. They contend that the case of the applicant that this is a case of no evidence is not correct for Kanhya Lal and some of the other witnesses examined in support of the charge have identified the applicant and given evidence implicating him though some of the witnesses had failed to identify the applicant. Regarding the violation of Rule 15(3) of the Delhi Police Punishment and Appeal Rules pleaded by the applicant in this application, the respondents contend that what was conducted by PW 8 is not a preliminary enquiry but a fact finding enquiry and that the enquiry authority is empowered to bring in any relevant material from the preliminary enquiry if that was found to be relevant. The enquiry having been held in conformity with the rules and the penalty imposed on the applicant being deserving the application is only to be dismissed, contend the respondents.

3. We have given our anxious consideration to the facts and circumstances brought out in the pleadings and evidence and have heard the learned counsel appearing for the parties at considerable length.



The contention of the applicant that there is a total dearth of evidence on the basis that two of the complainants have failed to identify him, cannot be accepted as Kanhya Lal one of the complainants has identified the applicant and given evidence of his involvement in the offences. However, we find that PW 8 Ved Prakash who conducted the enquiry was examined in the proceedings and the report submitted by him was marked as an exhibit. It is not disputed that a copy of the report of the preliminary enquiry was not supplied to the applicant and that the applicant therefore did not cross-examine PW 8. The introduction of the preliminary enquiry report and the examination of PW 8 without giving the applicant a copy of the enquiry report has caused substantial prejudice to the applicant in his defence and the procedure adopted is opposed to the provisions of sub-rule (3) of Rule 15 of the Delhi Police Punishment and Appeal Rules, argued the learned counsel. Learned counsel invited our attention to a decision of this Bench of the Tribunal in Jai Singh vs. Delhi Administration and others (O.A.No.1788/1991 decided on 31 August, 1995) in which it was held that the preliminary enquiry report having been admitted in evidence by the enquiry officer without giving a copy thereof to the charged official, vitiated the proceedings. Learned counsel of the respondents argued that sub rule(3) of Rule 15 of the Delhi Police Punishment and Appeal Rules enables the enquiry- authority to bring on record of the enquiry any material from the file of the preliminary enquiry and that as the applicant had an opportunity to cross-examine the official who held the preliminary enquiry no prejudice has been caused to him and that therefore the argument based

(15)

on provisions of Rule 15(3) has no force at all. We are unable to accept this argument. That a preliminary enquiry has been held and a report thereof has been admitted in evidence at the enquiry by examination of the official who held the enquiry are not in dispute. Sub-rule 3 of Rule 15 of the Delhi Police Punishment and Appeal Rules ofcourse enable the enquiry authority to bring on record any material from the preliminary enquiry but it provides that before bringing such material on record of the enquiry, a copy thereof should be supplied to the charged official. This requirement has not been met in this case. The argument of the learned counsel of the applicant that on account of non-supply of a copy of the preliminary report the applicant was disabled from cross-examining the official who conducted the preliminary enquiry and that this has prejudiced the defence of the applicant has considerable force. We therefore hold that the proceedings of the enquiry is vitiated for non-compliance with the provisions of sub-rule 3 of Rule 15 of the Delhi Police Punishment and Appeal Rules. Since the enquiry officer has committed a grave error in relying on the preliminary enquiry report without giving a copy of the preliminary enquiry report to the applicant to enable him to cross-examine the PW 8 properly, the proceedings stand vitiated. Therefore, the impugned order (Annexure-A) based on that enquiry report and the finding as also the appellate order are liable to be set aside.

4. In view of the course that we are taking, we are not going into the other rival contentions in this application.

(b)

5. In the result, in view of what is stated above, the application is allowed in part. The impugned orders are set aside. However the respondents shall recommence the enquiry, supplying a copy of the preliminary enquiry report to the applicant and thereafter recalling PW 8 and allowing the applicant to cross-examine him and then pass a fresh order in accordance with law in the departmental proceedings. To enable the respondents to do so, we direct that the applicant shall be deemed to be under suspension from the date of his removal from service. We also direct that the directions as aforesaid shall be complied with within a period of four months from the date of receipt of a copy of this judgment. There is no order as to costs.

R.K. AHOJA
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MEMBER(A)

A.V. HARIDASAN
A.V. HARIDASAN
VICE CHAIRMAN

/jose/