CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-2125/96
OA-2131/96
OA-2162/96

New Delhi this the 21st day of July, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLE MR. S.P. BISWAS, MEMBER (A)

OA-2125/96

Shri Ved Singh
S/o Shri Bharat Singh,
R/o I-1329, Jahangirpuri,
Delhi. ...Applicant

(By Advocate Shri Shyam Babu)

-Versus-

1. Addl. Commissioner of Police,
(Southern Range),
Police Headquarters,
I.P. Estate,
New Delhi.

2. Deputy Commissioner of Police,
West District,
P.S. Rajouri Garden,
New Delhi. ...Respondents

(By Advocate Shri S.K. Gupta)

OA-2131/96

Suresh Kumar (1804/W),
Ex-Constable,
S/o Shri Jeet Singh,
R/o Vill. Dutana,
Distt. Sonipat,
Harayana. ...Applicant

(By Advocate Shri Shyam Babu)

-Versus-

1. Addl. Commissioner of Police,
(Southern Range),
Police Headquarters,
I.P. Estate,
New Delhi.

2. Deputy Commissioner of Police,
West District,
P.S. Rajouri Garden,
New Delhi. ...Respondents

(By Advocate Shri S.K. Gupta)

OA-2162/96

Dharambir Singh (1384/W),
Ex-Constable,
S/o Shri Baldev Singh,
R/o Vill. Nnord, P.S. Sanpala,
Distt. Rohtak,
Haryana.
...Applicant

(By Advocate Shri Shyam Babu)

-Versus-

1. Addl. Commissioner of Police,
(Southern Range),
Police Headquarters,
I.P. Estate,
New Delhi.

2. Deputy Commissioner of Police,
West District,
P.S. Rajouri Garden,
New Delhi.
...Respondents

(By Advocate Shri S.K. Gupta)

O R D E R

By Reddy. J.-

These three OAs are disposed of as under by a common judgement, as they are directed against the single composite order, imposing the penalty and arguments were heard in all the three matters.

2. The applicant in OA-2123/95 was working as Assistant Sub Inspector (ASI) and the applicants in the other two cases were working as Constables in the Delhi Police. Charges were framed against them and complying with the rules of disciplinary enquiry under Rule 15 (ii) of Delhi Police (Punishment & Appeal) Rules, 1980, a departmental enquiry was initiated. One Suchender Singh, Inspector was appointed as Enquiry Officer. The departmental enquiry was initiated in 1989. The applicants were placed under suspension. Two witnesses, viz. the prosecutrix and her husband were examined during the enquiry. After holding enquiry, the Enquiry Officer found the applicants guilty of the charges. He

submitted the report. The disciplinary authority, however, ordered a De novo enquiry. Later on, one Mr. M.S. Sapra was appointed as Enquiry Officer who conducted the enquiry. As he did not choose to record fresh statements of the witnesses but placed the earlier statements recorded during the course of the previous enquiry proceedings. He completed the enquiry finding that the charges against the applicants are proved. He submitted the enquiry report to the disciplinary authority who after carefully going through the findings submitted by the Enquiry Officer and having agreed with the findings of the Enquiry Officer issued a show cause notice as to why the applicants should not be dismissed from service on 9.7.90. The appeal filed was also rejected by the order dated 20.12.90. Further, revision also ended in dismissal. Aggrieved by the above orders the applicants filed OA Nos.2761/91 and OA-2751/91 before this Tribunal and the Tribunal by order dated 17.2.93 allowed the OAs, holding that the Enquiry Officer has not again examined the prosecution witnesses afresh but taken the statements given by them during the preliminary enquiry on record. The Tribunal, therefore, quashed the impugned orders of punishment and the appellate and revisonal orders and reinstated the applicants with all consequential benefits. The Tribunal also expressed that a fresh enquiry may be held in accordance with law. Accordingly, another enquiry officer Suchendra Singh was appointed to conduct the enquiry against the applicants who examined the witnesses, namely, the prosecutrix and her husband and submitted his report dated 12.6.95 by order dated 15.9.95 holding that all the charges against the applicants are proved. The disciplinary authority,

respondent No.2, herein agreeing with the conclusions reached by the Enquiry Officer and after complying with the necessary formalities dismissed the applicants from service by order dated 28.10.95. An appeal was filed to respondent No.1 on 13.11.95 but before the appeal was disposed of the applicants filed the present OA afresh.

3. As seen above, this case involves a chequered history. The incidents occurred in 1990. Three enquiries have been conducted so far. Serious allegations have been made against the applicants, one of the applicants who was working in Delhi Police is alleged to have allured Smt. Asha Rani, W/o Shri Kashmiri Lal by holding a promise that she and her husband could get job in Home Guards provided they spend Rs.10,000/- to obtain a certificate of eligibility. The allegation was that though she has paid Rs.7,000/- the applicants sexually assaulted her repeatedly and raped her under the threat of dire consequences. Initially the enquiries held earlier were set aside on one ground or the other and the present enquiry was again held into the above allegations.

4. Several grounds have been urged by the learned counsel for the applicants. It was firstly and seriously contended that the Enquiry Officer has not considered the evidence at all nor assigned any reason for his conclusion. Hence, it is contended that the action of the Enquiry Officer is contrary to Rule 16 (ix) of the Delhi Police (Punishment and Appeal), Rules, 1980. It is also contended that the order of the disciplinary authority merely agreeing with the findings of the

Enquiry Officer and dismissing the applicants did not improve the situation, as he has also not made any attempt to consider the evidence or give reason for his conclusion. Learned counsel for the respondents, however, submits that the Enquiry Officer has considered the evidence and gave reasons for his conclusion and hence there is no violation of the Rules. He also contends that this Tribunal will not normally interfere with the findings of the Enquiry Officer or disciplinary authority since there is no violation of the procedure contemplated under the rules. The law is well settled that the enquiry officer should assess the evidence on record, the prosecution as well as the defence and should give reasons for his conclusions. The disciplinary enquiry is a quasi-judicial enquiry. Hence the Enquiry Officer has a duty to act judicially. Let us now consider the E.O's report. It is useful to extract the relevant portion of the enquiry officer's report dated 12.6.95:

> "The above act of three of you amounts to gross misconduct,dereliction in the discharge of your official duties and un-becoming of a police officer which renders you three liable for punishment u/s 21 of Delhi Police Act, 1978.
>
> After getting the above charge approved from DCP/W the same was served to Ved Singh on 7-3-95 and on 9-3-95 to Ct. Suresh & Ct. Dharambir. The contents of charge were explained to them in Hindi.
>
> On being examined about the charge, the defaulters denied the same and preferred to produce defence. Later on the defaulters submitted that their defence statements submitted on 15-5-90 earlier may be taken on record in this DE also.
>
> The defence statements dt. 15-5-90 submitted by the defaulters have been discussed at length by Sh. M.S. Sapra, the then SHO, Anand Parbat in the findings submitted by him

on 29-5-90 and there is no need to repeat the defence statement and the version of the defaulters.

I have gone through the defence statement dt. 15-5-90 of defaulters and did not find any weight in it to rebut the charge made against them.

From the above discussion I conclude that the charge against the defaulters stands proved."

We do not find, from a reading of the above that the Enquiry Officer has made any attempt to apply his mind to the evidence on record. He has extracted the evidence of PWs 1 and 2 and theeafter he has mentioned charges 1, 2 and 3. The above portion follows immediately thereafter. There is no assessment of the evidence at all. Surprisingly he has stated that in view of the fact that the previous Enquiry Officer has already discussed the earlier defence statements placed before him it was not necessary to narrate the defence statements or discuss the evidence except stating that there was no weight in them. The present Enquiry Officer was appointed to conduct fresh enquiry. It may well be that he could have placed the defence statements already produced by the earlier enquiry officer in the present enquiry but it was his duty to assess the defence statement and their weight. The prosecution evidence was not at all discussed. Practically, there is no other discussion by the enquiry officer with regard to the evidence on record, nor a single reason given by him to come to the conclusion that the charges against the defaulter should prove. The Supreme Court in Anil Kumar v. Presiding Officer (AIR 1985 SC 1121) has clearly

explained the nature of the disciplinary proceedings and the duty of the enquiry officer. The Court speaking through Justice Desai, J. observed:

> "We have etracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In Madhya Pradesh Industries Ltd. v. Union of India (1966) 1 SCR 466:(AIR 1970 SC 671), this court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly in Mahabir Prasad v. State of Uttar Pradesh (1971) 1 SCR 201 : (AIR 1970 SC 1302), this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character."

5. Since the enquiry officer did not either assess the evidence or give reasons it should be concluded that the order was passed without application of mind. The order, therefore, is vitiated. On another ground also the impugned orders are liable to be set aside. Under the Delhi Police (Punishment & Appeal) Rules, 1980, Rule 16 contemplates the procedure for departmental

enquiries. It says that the procedure mentioned in Rule 16 shall be observed in all the departmental enquiries against the Police Officers. Prima facie, the misconduct was likely to result in a major punishment being awarded, if proved. Rule 16 (ix), therefore, comes into play. The rule says that after recording the evidence, the Enquiry Officer shall ~~then~~ proceed to record the findings. He shall pass orders, either acquittal or punishment, on the basis of evaluation of evidence. The action of the Enquiry Officer is also contrary to Rule 16 (ix) as he has neither evaluated the evidence nor gave a single reason.

6. Again, though, there are three articles of charge against the applicants, the Enquiry Officer seems to have proceeded as if there was only one charge which was held proved. It, therefore, reveals that the Enquiry Officer has miserably failed to apply his mind to the enquiry proceedings. The order is also vitiated, as we do not find any independent assessment of evidence by him nor did he assign any reason to his conclusion. We, therefore, hold that the enquiry is vitiated on account of non-application of mind by the enquiry officer in arriving at his findings.

7. In view of the foregoing discussion, the OAs are allowed and the impugned orders are quashed. The punishment imposed upon the applicants is set aside.

8. The applicants have been kept under suspension w.e.f. 1990 and they faced three enquiries for one reason or the other for no fault of theirs. We

are, therefore, of the view that the applicants must have suffered mental agony which itself may be a punishment for them and nine years had elapsed since the date of the incident. It may be said, therefore, that it is harsh to again order fresh enquiry. Unfortunately, the offence they were alleged to have committed, being acts of rape on more than one occasion, the offence being an offence against the humanity, we do not want them to let go without being cleared of their allegations.

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9. In AIR 1997 SC 1898, Board of Management of S.V.T. Educational Institute & Another vs. A. Raghupathy Bhat & Ors. it has been held that, in cases where the enquiry was vitiated on one ground or the other, further enquiry can be ordered by the Court after setting aside the order of punishment, from the stage at which the enquiry was vitiated. In the present case, as the enquiry was vitiated on account of not assessing the evidence and for not passing a speaking order, we order a further enquiry, by the same enquiry officer or by any other, from the stage from which the enquiry was held vitiated. We also direct to complete the enquiry within three months from the date of receipt of a copy of this order.

10. We do not propose to consider other contentions raised in the view we have taken as above.

11. The O.As are allowed, subject to the above directions. No costs.

(S.P. BISWAS)
MEMBER (A)

(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN (J)

'San.'

Original judgement in OA 2125/96

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