

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2161/96

New Delhi this the 10 Day of February 1999.

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)  
Hon'ble Shri R.K. Ahooja, Member (A)

Shri Rajesh Kumar,  
(8156/PCR),  
Ex-Constable,  
S/o Shri Samunder Singh  
R/o X-313 Mangolpuri,  
New Delhi.

Applicant

(By Advocate: Shri Shyam Babu)

-Versus-

1. The Commissioner of Police,  
Police Hq,  
I.P. Estate,  
New Delhi.
2. The Senior Addl. Commissioner  
of Police (AP&T),  
I.P. Estate,  
New Delhi.
3. The Principal,  
Police Training School,  
Jharoda Kalan,  
New Delhi.

Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R

Hon'ble Shri R.K. Ahooja, Member (A)

On a complaint being received that the applicant had fraudulently fabricated Order Book Slips for himself and four other Constables in order to avail leave, a formal inquiry was conducted by an Inspector of the Recruit Training Centre where the applicant was working. This was followed by a departmental inquiry in which the charge against the applicant was held to be proved. Based on the findings of the Inquiry Officer, the disciplinary authority issued the

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impugned order, Annexure A, of dismissal from service. The appeal of the applicant was also dismissed by the Senior Addl. Commissioner of Police, Annexure B. The revision petition also met the same fate as per order, Annexure C. It is aggrieved by these orders that the applicant has now come before the Tribunal.

2. The applicant challenges the order of the disciplinary authority on the ground that he was denied a fair hearing during the departmental inquiry. He, firstly alleges that the statements of witnesses recorded in the preliminary inquiry report were not supplied to him even though the Inspector who conducted the preliminary inquiry was examined as PW 3 in the Departmental inquiry. It is also alleged by the applicant that the preliminary inquiry report was taken into consideration by the disciplinary authority as well as the appellate authority while forming their opinion even though the applicant had no opportunity to see this report and to make his submissions thereon.

3. It is also contended that none of the witnesses cited by the prosecution have stated anywhere that the false order books slips were prepared or submitted by the applicant and therefore there was no evidence linking the

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applicant with the alleged misconduct. In other words his plea is that it is a case of "No evidence".

4. Another ground taken is that the sanction of the competent authority has not been taken under Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, for conducting a departmental inquiry instead of launching criminal prosecution. The applicant also submits that while action was taken against him with ulterior motives, the other constables alleged to be involved were let off and were instead cited as prosecution witnesses 4,5,6 and 7. Since these constables were themselves involved, their statements in the departmental inquiry had no evidential value.

5. The applicant also alleges that the appellate authority and the revisional authority had not applied their minds while passing the impugned orders.

6. Having considered the matter carefully, we find that there are only two issues raised by the applicant which need consideration. These relate firstly to the non supply of the preliminary enquiry report and the contention of the applicant that there was no evidence available to link the applicant with the alleged offence. In so far as the first point is concerned, the stand taken by the respondents is that it was only a formal inquiry to ascertain the facts of the

case and further that no formal orders were issued for the conduct of such an inquiry and for these reasons it was not necessary to supply to the applicant the copies of the statement recorded at the time of the facts pending inquiry, or the finding of the inspector who conducted this inquiry. This stand of the respondents is not supported by rule position. Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 reads as follows:

15. Preliminary enquiries--(1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulters, (ii) to collect prosecution evidence, (iii) to judge quantum of default, and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above mentioned points exists a preliminary enquiry need not be held and departmental enquiry may be ordered by the disciplinary authority straight away. In all other cases a preliminary enquiry shall normally precede a departmental enquiry.

(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.

(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witnesses. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from

the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by Enquiry Officer.

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7. It is clear that the enquiry conducted by Sub-inspector, Prem Chand was a preliminary inquiry under Rule 15 since the purpose of inquiry was to establish the nature of default and identity of the defaulter to collect prosecution evidence, to and to bring relevant documents on record to facilitate a regular departmental inquiry. The question then is whether the respondents were required to make available the report of the preliminary inquiry to the applicant and if so whether its non supply has resulted in prejudice to the applicant in making his defence.

8. As is clear from Rule 15(3) reproduced above, the file of preliminary inquiry will not form part of the departmental record in statements therefrom may be brought on record on the departmental proceedings when the witnesses are no longer available. There is no contention on the part of the applicant that any of these statements were brought on the record of the departmental inquiry but copies of such statements were not made available to him. There is no provision under rules that a report of the preliminary inquiry is to be supplied to the charged officer; in fact is is specifically provided as already mentioned that preliminary enquiry will not form

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part of the formal departmental record. Unless, therefore, the prosecution uses the preliminary inquiry report in the course of the formal departmental proceedings, there is no requirement in the rules to provide copies thereof to the charged officer and its non supply cannot therefore be said to have resulted in prejudice to the cause of the latter.

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9: It was contended by the learned counsel for the applicant that since the prosecution examined Sub-Inspector Prem Chand who had conducted the preliminary inquiry, it was incumbent on the prosecution to supply the copy of the preliminary inquiry report as it would have enabled the applicant to conduct the cross examination of Sub-inspector, Prem Chand properly. We do not agree with this contention for three reasons. Firstly, the departmental inquiry is a domestic inquiry not bound by the Evidence Act. Secondly, it is not the case of the applicant that Sub-inspector Prem Chand deposed regarding the statements recorded or his findings in the case of the preliminary inquiry. Finally there is also no contention on the part of the applicant that at the relevant time a request was made by him for the supply of the inquiry report. We, therefore, find that the mere fact that Sub-inspector, Prem Chand was examined as a prosecution witness did not require the respondents to supply the copy of the preliminary enquiry report to the applicant. Hon'ble Supreme Court have also held in the case

of Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and Others (1997) 1 Supreme Court Cases 299 as follows:

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"It is then contended that the preliminary enquiry was not properly conducted and, therefore, the enquiry is vitiated by principles of natural justice., We find no force in the contention. The preliminary enquiry has nothing to do with the enquiry conducted after the issue of the charge-sheet. The former action would be to find whether disciplinary enquiry should be initiated against the delinquent. After full-fledged enquiry was held, the preliminary enquiry had lost its importance."

10. The second main ground taken by the applicant is that there is no evidence against him because none of the witnesses was deposed that the forgery was committed by him and further because the evidence of four constables who were also found guilty of availing leave on the basis of false O.B. slips have no evidentiary value since they were interested parties. We find that there were nine prosecution witnesses. The evidence given by these witnesses clearly established that the O.B. slips were bearing forged signatures. There is no denial that the applicant was one of the beneficiaries of these forged O.B. slips. It cannot therefore be said that there was no evidence against the applicant. In judicial review, the Tribunal is not required to re-appreciate the evidence and to displace the judgement of the disciplinary authority by its

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own. There is, therefore, no further need to examine the contentions of the applicant on this point.

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11. As regards, the allegation of the applicant that the sanction of the competent authority had not been obtained before ordering the departmental enquiry instead of criminal prosecution, Rule 15(2) quoted above, clearly states that only when the preliminary inquiry discloses the commission of a cognizance offence that the prior approval of the Additional Commissioner of Police is required before ordering a departmental inquiry instead of criminal prosecution. The alleged misconduct of the applicant related to an act within the confines of the police force itself and did not concern members of the public. The applicant himself states that the misconduct alleged against him disclosed a non cognizance offence. Therefore, this ground taken by the applicant is also untenable.

12. The applicant has also alleged that the appellate and revisional authorities have not applied their minds to the points raised by the applicants. We have perused the impugned orders and find that they are speaking orders in which the points raised by the applicants have been duly dealt with.

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13. It was also contended before us by the learned counsel for the applicant that even if it was assumed that the applicant was guilty of the misconduct, there was no evidence that it was a "grave" misconduct and hence the extreme penalty of dismissal from service was not warranted. It is true that there is no specific mention in the order of the disciplinary authority that the applicant was found guilty of a grave misconduct. The disciplinary authority observed as follows:

14. From the above discussion it is clear that the defaulter has criminal tendency in his character. Such a person will always misuse his official authority for his personal gains and bring unwarranted bad name to the force. The defaulter does not deserve to be retained in force any more. Under these circumstances I have no option but to impose the extreme penalty of dismissal. Therefore, the defaulter Constable Rajesh Kumar, 8156/PCR is dismissed from the service forthwith.

14. The above quoted observation of the disciplinary authority clearly shows that the misconduct was considered to award the extreme penalty. A mere citation of the word "grave" in the order of the disciplinary authority is not an essential requirement when the conclusion of the disciplinary authority can be clearly discerned from the language of the order itself.

