

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2593/96

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 28th day of April, 2000

Ex. Constable Surender Singh
No.2819/P.C.R.
s/o Late Shri Mittan Singh
aged 36 years
previously employed in P.C.R.
Delhi Police
r/o Village - Burari
P.S. Timar Pur
Delhi. ... Applicant

(By Shri Shankar Raju, Advocate)

Vs.

1. Union of India
Ministry of Home Affair
North Block
New Delhi.
2. Addl. Commissioner of Police
Operations, Police Head Quarter
M.S.O.Building
New Delhi.
3. Dy. Commissioner of Police
Police Control Room, P.H.Q.
M.S.O.Building
New Delhi.
(By Shri Devash Singh, through Shri Amit Pathi, Advocate)
(By ASI Jarnail Singh, Departmental Representative
on behalf of the respondents)

O R D E R (Oral)

By Reddy. J.

The applicant, a Constable in Delhi Police, was alleged to have committed certain irregularities. It was alleged that on 1.6.1995 when he was on duty on PCR Van as Gunman in the morning, he came to duty having consumed alcohol and was not in a position to handle the weapon properly. The Head Constable, Jai Singh took the weapon in his custody and the Incharge Van and Const. Ravinder Naresh asked the applicant that he should not have come on duty after consuming alcohol. On that the applicant scuffled with Const.




(Dvr.) Ravinder Naresh. The allegations were ⁸denied by the applicant. A departmental enquiry was conducted and the disciplinary authority agreeing with the findings of the enquiry officer, passed the impugned order, dismissing him from service vide order dated 16.11.1995. The order was upheld by the appellate authority in his proceedings dated 31.5.1996. These orders are under challenge in this OA.

2. It is the contention of the learned counsel for the applicant, Mr. Shankar Raju, that the enquiry is vitiated as Rule 16(i) of the Delhi Police Punishment & Appeal) Rules, 1980 is violated as the enquiry officer having brought on record the preliminary enquiry report, the same was ^{not} furnished to the applicant. As it was also relied upon by the enquiry officer in establishing the truth of the charge without supplying copy of the same to the applicant, it also violates Rule 15(3) of the Delhi Police (Appeal & Punishment) Rules, 1980.

3. The learned counsel for the respondents, however, refutes the contentions and submits that there is no violation of Article 16(i) or 15(3) of the said Rules.

4. We have given careful consideration to the arguments advanced by the learned counsel on either side.~



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5. As per Rule 15(3), "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." (the relevant portion of the rule is quoted).

6. Rule 16(i), inter-alia, speaks of supplying the documents to be relied upon for prosecution, to the defaulter free of charge.

7. Thus, the plain reading of the above two provisions makes it clear that if any document was brought on record by the enquiry officer, whether it is the preliminary enquiry report or any other document from the file of preliminary enquiry, to be relied upon by him in the departmental enquiry, those documents shall have to be furnished to the delinquent and he has to be given an opportunity to cross-examine upon the contents of the same. Failing which they cannot form basis for his conclusions.

8. In the present case, PW-5 who was the officer, who conducted the preliminary enquiry, during his chief examination stated that he made an enquiry of the incident and prepared the report and he said



that he would submit it to his seniors (Ex. PW-5/A). The applicant complains that the copy of the same had not been furnished to him to enable him to cross-examine PW-5 in respect of the preliminary enquiry report.

9. We have perused the evidence of PW-5 (as extracted in enquiry officer's report) and it is strange to notice that the applicant had not chosen to cross examine him. The cross-examination was nil. It is not a case where the applicant asked for the report but it was not furnished it to him. The evidence of PW-5 was not much helpful to the prosecution. He was only a formal witness. The report of PW5 was not a piece of evidence which was against the interest of the applicant. In fact, it was not brought on record by the enquiry officer, to attract Rule 15(3). It was exhibited by PW-5 as a matter of course. Placing reliance upon the evidence of PW-1, PW-3, PW-4 and PW-6 who are the material witnesses in the case, the enquiry officer arrived at his conclusions. We are also satisfied from a reading of the enquiry officer's report that the enquiry officer has not placed any reliance either on the evidence of PW5 or on his report. Hence, Rule 16(i) or Rule 15(3) are not attracted, much less violated.

10. It is next contended that the enquiry officer has not considered the defence statement of the applicant. Though the enquiry officer has given time for submitting the defence statement beyond the period fixed for submitting the same, it is seen from the enquiry officer's report, the applicant did not

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submit his defence statement even on the date when the report was again sent to HAP Branch for perusal. Hence he proceeded to consider the witnesses including defence witnesses and came to his conclusion.

Q 11. Learned counsel for the applicant submits that the enquiry officer has given time for submitting the defence statement, hence, it should have been perused by the enquiry officer. The applicant could not submit the defence statement during the stipulated period as he was sick. It was the duty of the applicant to have submitted his defence statement within the period prescribed or at least by the date the enquiry officer's report was drawn up. It cannot, therefore, be said that the enquiry officer has committed any irregularity in the enquiry. No other argument was raised.

b 12. In the circumstances, we do not find any merit in the OA. The OA fails and is accordingly dismissed. No costs.

Shanta Shastri
(SMT. SHANTA SHASTRY)
MEMBER(A)

V. Rajagopala Reddy
(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/RAO/