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CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

OA - 874/96

New Delhi, dated this the 5<sup>th</sup> March, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Prem Pal Singh  
Ex. Head Constable,  
No.156/DAP,  
S/o Shri Devi Charan,  
R/o Vill. & P.O. Satwara,  
P.S. Ahmad Garh,  
Dist. Bullandshahr,  
U.P.  
R/o Qr. No.B-43,  
Police Colony,  
Model Town,  
Delhi.

... APPLICANT

(By Advocate: Shri Shankar Raju)

VERSUS

1. Union of India/Lt. Governor  
of N.C.T. of Delhi,  
through Commissioner of Police,  
Police Headquarters,  
M.S.O. Building,  
I.P. Estate,  
New Delhi.

2. Sr. Addl. Commissioner of  
Police, (Armed Police & Trg.),  
Police Headquarters,  
M.S.O. Building,  
I.P. Estate,  
New Delhi.

... RESPONDENTS

(By Advocate: Shri Vijay Pandita)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant Shri Prem Pal Singh, Head Constable, Delhi Police has impugned the Disciplinary Authority's orders dated 9.11.95 (Ann. A-1) dismissing him from service and appellate authority's order dated 3.3.96 (Ann. A-2) as well as the findings in the departmental proceedings (Ann. A-3).

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2. Applicant and constable Prem Veer Singh were jointly proceeded against departmentally on the allegation that they demanded and accepted Rs.25,000/- as illegal gratification from one Shri Daniyal on the false assurance of getting his brother-in-law Shamsher Ali recruited in police. On persistent demand by complainant the defaulters are alleged to have returned Rs.8000/- to him, and thus duped him to the tune of Rs.17,000/-.

3. The E.O. held the charges framed against both defaulters proved beyond doubt. Tentatively agreeing with those findings the disciplinary authority served a copy of the enquiry report on the applicant as well as on Shri P.V.Singh and gave them opportunity to file representations, which they did. After going through the materials on record, including the joint representation filed by the two defaulters and gave them a personal hearing the disciplinary authority issued the impugned dismissal order dated 9.11.95 which was upheld vide impugned appellate order dated 3.3.96 against which this O.A. has been filed.

4. We have heard applicant's counsel Shri Shankar Raju and respondents' counsel Shri Vijay Pandita

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5. The first ground taken is that the officer who conducted the preliminary inquiry was examined in the D.E. and proved his preliminary inquiry report, but the copy of that report was not supplied to the applicant, despite respondents own circular dated 1.5.80 a copy of which is taken on record, as a result of which he was unable to cross-examine that officer effectively, which greatly prejudiced him, thus vitiating the entire D.E.

6. Respondents have not denied (para 5(ix) of their reply) that copy of P.E. report was not supplied to applicant although the officer who conducted the P.E. (Inspector K.L.Dogra) was cited and examined as P.W. In this connection we note from the E.O.'s report that the applicant had also raised the question of non-supply of P.E. report before the E.O. in his defence, but the E.O. rejected the same on the ground that the applicant had not asked for a copy of the P.E. report, and hence there was no violation of Police Hqrs. instructions.

7. In this connection applicant's counsel has invited our attention to respondents' own instructions dated 1.5.80 a copy of which is taken on record. This circular which refers to various irregularities which have come to notice in disposal of appeals against punishments awarded on the basis of departmental

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enquiries states in para 2(ii) as follows:

"The officer who had conducted the preliminary enquiry was cited and examined as P.W., but copy of his preliminary enquiry report was not furnished by the E.O. to the defaulter giving him an opportunity to cross-examine the witness. This has affected proper cross-examination of such witness and goes against the principles of natural justice vitiating the departmental enquiry abinitio. Copy of P.E. Report in such cases should have been supplied suo-moto at the initial stage along with the summary of allegations even if no specific request is made by the defaulter."

8. Manifestly therefore, a copy of the PE report should have been supplied to applicant even if no specific request was made by him, and as it was not supplied, there has been a violation of respondents own instructions.

9. Respondents' counsel has sought to argue that these instructions are not in accordance with rules and hence not binding. Reliance has been sought to be placed on the rulings in 1992 Suppl. (1) SCC 150, State of M.P. & anr. Vs. M/S G.S.Dall & Flour Mills ~~and~~ in which it has been held that executive instructions can supplement a statute to cover areas to which the statute does not extend, but they cannot run counter to those statutory provisions or whittle down their effect. If respondents instructions are indeed not in <sup>as</sup> consonance with the rules, they should have withdrawn their instructions, but they have not done so and those instructions are operative. Under the circumstances

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respondents cannot be allowed to argue that while their own instructions continue to remain in operation, those instructions are not in accordance with rules. Hence this ruling does not help respondents.

10. Other rulings cited by respondents' counsel include State of U.P. Vs. O.P. Gupta 1969 (3) SCC 775; Ex. Capt. K. Balasubramaniam & Ors. Vs. State of Tamil Nadu & Ors. (1991) 2 SCC 708; Bengal Iron Corpn. & Anr. Vs. Commercial Tax Officer & Ors. 1994 Suppl. (1) SCC 310/ (1997) 1 SCC 9; JT 1991 (3) 608; and B.C. Chaturvedi's case (1995) 6 SCC 749, but none of those rulings cover a situation like the present one, where there has been a non-adherence to respondents' own instructions.

11. Union of India Vs. Parmanand AIR 1989 SC 1185 has also been invoked by respondents' counsel which clearly defines the parameters within which the Tribunal can exercise its jurisdiction, but manifestly in a case such as the present one where respondents have not adhered to their own instructions, this ruling does not apply either.

12. We are fortified in our view that the present application requires our judicial intervention in the background of the CAT, Principal Bench judgment dated 8.2.96 in O.A. No.2641/91 Vijaykumar Vs. Commissioner of Police & Others. In that case also a copy of

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the P.E. report was not supplied to the charged officer, although its author was examined in the D.E. as PW-2. Relying upon an earlier judgment by a Division Bench of CAT, Principal Bench in O.A. No.186/95 wherein it had been held that non-supply of P.E. report to applicant when respondents' own circular dated 1.5.80 provided for it, vitiated the D.E. and rendered it void abinitio the CAT, Principal Bench in its judgment dated 8.2.96 in O.A. No.2641/91 had allowed the O.A.

13. Since this plea succeeds, we do not think it necessary to refer to the other submissions of applicant's counsel raised before us questioning the impugned order.

14. In the result the O.A. is allowed to the extent that the impugned punishment order dated 9.11.95 and appellate order dated 3.3.96 in so far as the same are applicable to applicant Ex. Head Constable Prem Pal Singh <sup>alone,</sup> are quashed and set aside and the case is remanded to respondents to conduct fresh departmental proceedings <sup>against him</sup> in accordance with law from the stage of supplying a copy of the Preliminary Enquiry report to the applicant.

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In accordance with the Hon'ble Supreme Court's judgment in State of Punjab Vs. Dr. H.S. Greasy JT 1996 (5) SC 403, pending enquiry, applicant will be deemed to be under suspension, and the manner in which the period of suspension is to be treated will be determined by respondents in accordance with rules upon conclusion of the enquiry. No costs.

*A. Veda Valli*

(DR. A. VEDAVALLI)  
Member (J)

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*S.R. Adige*  
(S.R. ADIGE)  
Member (A)