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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1217 of 1996

with

OA 1113 of 1996

New Delhi, this the 22nd day of December, 1999

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

OA 1217/1996

Subey Singh
S/o Late Sri Shiv Lal Kaushik
R/o Village & P.O. Lahara
P.S. Sadar Sonepat
District Sonepat, Haryana.Applicant.

By Advocate Shri Shanker Raju.

Vs.

1. Union of India through
Lt. Governor,
Government of NCT of Delhi,
Raj Niwas, Rajpur Road,
Delhi.
2. Commissioner of Police, PHQ,
M.S.O. Building, I.P. Estate,
New Delhi.
3. Addl. Commissioner of Police (Ops)
PHQ, M.S.O. Building, I.P. Estate,
New Delhi.Respondents

By Advocate Shri Amresh Mathur.

OA 1113/1996

S.I. Attar Singh
S/o Shri Chandgi Ram
R/o T-3/6, Police Colony,
Andrews Ganj,
New Delhi-49.Applicant

By Advocate Shri Shanker Raju.

Vs.

1. Union of India through
Lt. Governor,
Government of NCT of Delhi,
Raj Niwas, Rajpur Road,
Delhi.
2. Addl. Commissioner of Police (Ops)
PHQ, M.S.O. Building, I.P. Estate,
New Delhi.

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03. Commissioner of Police, PHQ,
M.S.O. Building, I.P. Estate,
New Delhi. ... Respondents

By Advocate Shri Amresh Mathur.

ORDER

By Hon'ble Shri Kuldeep Singh, Member (J)

By this common order we will be disposing of OA Nos. 1217/96 and 1113 of 1996 since the law point involved in both the cases are common one and both the cases have arisen out of the same departmental proceedings.

2. In OA 1113 of 1996, SI Attar Singh was proceeded departmentally on the allegations that he along with certain other police officials have lifted Mariyappa, Shanker and their brother-in-law Kumresh from the house of one Mohan and took them to P.P. Daula Kaun where Mariyappa was falsely arrested in two concocted criminal cases registered vide FIR No.509/91 u/s 21/61/85 of NDPS Act and FIR No.510/91 u/s 25/54/59 of Arms Act and sec.5 of T.A.D.A. respectively. The same allegations are against S.I. Sube Singh (applicant in OA No. 1217 of 1996), who was also proceeded departmentally under the Delhi Police (Punishment & Appeal) Rules, 1980. A joint enquiry was conducted against both of them.

3. After this enquiry, punishment of dismissal was awarded to both of them vide order dated 7.2.1995. Against these orders, applicants filed an appeal before the Commissioner of Police and their appeals were rejected. The applicants have challenged the orders of punishment and order passed on their appeals.

[Signature]



4. We have heard the learned counsel for the parties and have gone through the records.

5. The main ground taken by Shri Shanker Raju, the learned counsel appearing for the applicant to challenge the impugned order is that at the time when the enquiry was conducted, the applicants were entitled to gist of evidence along with list of witnesses as per Rule 16(1) of the Delhi Police (Punishment & Appeal) Rules, 1980 and in this case since only the list of witnesses were supplied and the gist of evidence has not been supplied, so the departmental proceedings had been conducted in violation of Rule 16(1) of the Delhi Police (Punishment & Appeal) Rules, 1980. The Police Rule also requires that along with summary of allegations, the list of PWs together with brief details of the evidence to be led by the witnesses is required to be supplied. Since in both these cases the gist of statement of witnesses has not been supplied, so enquiry proceedings are vitiated and are liable to be quashed and the orders passed on the basis of this vitiated enquiry and subsequently orders passed in appeals, both are liable to be quashed.

6. In this case admittedly along with the summary of allegations, a list of 11 witnesses has been supplied, but no gist of evidence or the statements which were to be made by those witnesses were supplied.

7. Shri Amresh Mathur, the learned counsel for the respondents has no explanation to the same. Rather from the record it is quite apparent that no gist of statement of evidence of the witnesses had been supplied. 

(8)

Q. Rule 16(1) of the Delhi Police (Punishment & Appeal) Rules, 1980 is reproduced hereinbelow:-

"16(i) A police officer accused of misconduct shall be required to appear before the disciplinary authority, or such Enquiry Officer as may be appointed by the disciplinary authority. The Enquiry Officer shall prepare a statement summarising the misconduct alleged against the accused officer in such a manner as to give full notice to him of the circumstances in regard to which evidence is to be regarded. Lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon or prosecution shall be attached to the summary of misconduct. A copy of the summary of misconduct and the lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution will be given to the defaulter free of charge. The contents of the summary and other documents shall be explained to him. He shall be required to submit to the enquiry officer a written report within 7 days indicating whether he admits the allegations and if not, whether he wants to produce defence evidence to refute the allegations against him." (emphasis supplied)

g. A perusal of Rule 16(1) of the Delhi Police (Punishment & Appeal) Rules, 1980 as quoted above, shows that the use of the word shall be attached in with this rule is mandatory in nature and non-supply of gist of evidence in the case is fatal to the proceedings and for this conclusion, we are supported by the view taken by the Tribunal in O.A. No. 80/94 (Ex. Head Constable Dheeraj Singh Vs. L.G. Delhi and Others and connected case) which was subsequently followed in case No. OA 2127 of 1994 - HC Kailash Chand Vs. Government of NCT of Delhi and Others. In another case O.A. No. 2229/95 - Ex. Constable Ram Sewak Vs. U.O.I. & Another the same view was taken and it had been held that in case of non-supply of gist of statement, the proceedings are vitiated.

(10)

10. In view of the above, the O.As. succeed and are allowed to the extent that the orders of the disciplinary authority dated 7.2.95 and that of the appellate authority dated 15.4.96 are quashed and hereby set aside. Applicants pay should be restored to them with arrears and such increments^{were} were admissible to them in accordance with the rules. However, it will be open to the respondents, if they are so advised, to continue the D.E. from the stage of supplying to applicants the gist of evidence to be led by each of the PWs, and in case they choose to act accordingly, they should conclude the DE as expeditiously as possible, and preferably within 3 months from the date of receipt of a copy of this order. On conclusion of the D.E., they should take a final decision regarding the treatment of the suspension period.

11. No order as to costs.

12. Let a copy of this order be placed in O.A. No. 1217/96 and O.A. No. 1113/96.

(MRS. SHANTA SHAstry)
MEMBER (A)

(KULDIP SINGH)
MEMBER (J)

Rakesh