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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.No.371/97

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

New Delhi, this the 28<sup>th</sup> day of July, 2000

Constable Udai Singh  
No.1388/NW (Now 4670/DAP)  
Delhi Police  
S/o Shri Bharat Singh  
r/o Vill. Parnala  
P.O.Bahadur Garh  
Distt. Rohtak  
Haryana.

... Applicant

(By Shri Mohit Madan, proxy of Mrs. Avnish Ahlawat,  
Advocate)

Vs.

Union of India through

1. Government of National Capital  
Territory of Delhi, through  
Commissioner of Police  
Delhi  
Police Headquarters  
M.S.O.Building, I.P.Estate.  
New Delhi - 110 002.
  2. Shri P.R.S.Brar  
Additional Commissioner of Police  
Northern Range  
Delhi Police  
Police Headquarters  
M.S.O.Building, I.P.Estate  
New Delhi - 110 002.
  3. Shri Kishan Kumar  
Additional Deputy Commissioner of Police  
North West District  
Delhi Police  
Ashok Vihar  
New Delhi.
- ... Respondents

(By Shri Arun Bhardwaj, proxy of Shri Ajesh Luthra,  
Advocate)

O R D E R (Oral)

By Justice Rajagopala Reddy:

Departmental Proceedings were initiated against the applicant, a Constable in Delhi Police on 15.6.1992, on the allegation that he tried to instigate other Constables when he was not allowed to enter examination hall, as he came late and that he

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sat along with the Driver in a three wheeler though Smt. Prathibha Rani, Judicial Magistrate, who was travelling in that three wheeler, asked the applicant not to sit in the driver's seat. He started shouting at her and used unparliamentary language. The enquiry officer in his report dated 22.12.1992 held <sup>m</sup>that the applicant guilty of the charges. The disciplinary authority, agreeing with the findings of the enquiry officer, imposed the penalty of withholding the next increment for a period of three years permanently with cumulative effect on his future increments, by the impugned order dated 7.9.1993. The appeal filed was however, dismissed. The revision petition was also rejected. The OA is therefore filed questioning the order of punishment awarded by the disciplinary authority as confirmed by the higher authorities.

2. It was first contended by the learned counsel for the applicant that as the accused was discharged by the criminal court where he was prosecuted under Section 93 and 97 of the Delhi Police Act, 1978, the applicant should have been exonerated. Secondly, it is contended that enquiry held/<sup>was</sup>not held in accordance with the rules nor the principles of natural justice were observed. The learned counsel for the respondents however submits that the order of the discharge of the applicant will not vitiate the impugned order. The contention that the enquiry was not in accordance with the rules is refuted.

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3. We have given careful consideration to the above contentions. Serious allegations were made against the applicant relating to breach of indiscipline.

The effect of discharge:

In the Kalandra that was filed against the applicant before the Criminal Court on the allegation that the accused along with other 200/250 Constables started making a hue and cry outside the examination hall demanding the authorities to allow them to appear in the examination which was a departmental examination, it was held that there was no intention on the part of the accused to make any hue and cry or to create any public nuisance at a public place. Therefore, the applicant was discharged in the said criminal case by order dated 10.7.1995. In our view the nature of the charges in the Kalandra and the departmental enquiry is distinct and different. What was sought to be enquired into was about the conduct of the applicant as a Government servant, in view of the alleged indiscipline defying lawful authority, in public places. Further, the allegation of using unparliamentary language against a lady magistrate was not a part of the charge in the Kalandra. In addition the enquiry was completed and the disciplinary authority passed the impugned order on 7.9.1993 which has been confirmed by the appellate authority by order dated 24.11.1994, whereas the order of discharge was passed in the Kalandra on 10.7.1995. In the circumstances, mere discharge of the applicant in the

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Kalandra, even before trial, cannot be a ground for exonerating the applicant. The contention is therefore, rejected.

Res. validity of the enquiry:

The first objection as to the supply of documents, in his application dated 31.8.1992, two documents were sought for by the applicant, they are the investigation report dated 1.6.1992 and the complaint of Smt. Prathibha Rani. It was clearly stated in the counter affidavit, in Paragraph 4.11 that the report of the then SHO as well as a copy of complaint of Smt. Pratibha Rani have already been received by the applicant on 2.9.1992. In the enquiry officer's report it was also stated by the enquiry officer that the summary of allegations, list of prosecution witnesses and other documents were also served on the Constable against proper receipt. It is true that the applicant again requested vide his letter dated 23.11.1992 and 9.12.1992, in response to the letter dated 7.9.1992 given by the enquiry officer to produce any document, to file his defence statement. It is also seen from the departmental file that the disciplinary authority in the proceedings dated 7.6.1993 permitted the applicant to take notes from the relevant statements by 16.6.1993 and then submit his reply by 20.6.1993. In spite of this, the applicant did not file his written statement on one ground or the other. Thus, the applicant having received the documents on 2.9.1992, he has been going on making attempts to show that he was not supplied the documents and in our view, it has been done with

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ulterior motive. In the cross-examination of PW-2, Smt. Pratibha Rani, he did not state that he could not cross examine her due to the non-supply of her statement. His case was that he was not the person who misbehaved with her. In the circumstances, we are of the view that the contention as to the non-supply of the documents cannot be acceded to.

4. Learned counsel contended that Rule 16(i) of the Delhi Police (Punishment and Appeal) Rules, 1980 has not been complied with inasmuch as the details of the evidence to be <sup>led</sup> by the prosecution witnesses. <sup>was not given</sup> We do not find any substance in this contention. Rule 16 provides for the procedure to be adopted in departmental enquiries. Sub-rule (i) of Rule 16 speaks that enquiry officer should 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. For that purpose list <sup>of</sup> the prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution shall be attached to the summary of misconduct. The grievance is that the brief details of the evidence was not given in this case along with the summary of misconduct. We have perused the summary of misconduct dated 4.8.1992 wherein it has been mentioned as under:

"ENCLOSURES:  
(Summary of allegations) attached:

I. List of witnesses:

Sl.No.	Name and Address	Brief of nature of the evidence
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|---|--|
| 1. SHO/Mukharji Ngr., Delhi   | He will prove his report of dated 1.6.92                             |
| 2. Smt. Pratibha Rani, MM Flat No.80, L.N.Appartment Sector-9, Rohini | She will prove the allegations made against the defaulter Constable. |
| 3. SIP/NW   | He will prove the test for promotion list 'A'.                       |

II. List of documents:

1. Report of SHO/M Ngr. dt.1-6-92
  2. Complaint of Smt. Pratibha Rani
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5. What was intended/needed under the above sub-rule is the "brief details of evidence" of the witnesses and the same was clearly given in this case. This contention is therefore rejected.

6. The last contention pertains to adequate opportunity to defend the case: The following facts are to be noticed to appreciate this contention. After the enquiry officer's report has been submitted to the disciplinary authority, at the request of the disciplinary authority, three more witnesses were examined by the enquiry officer. On the basis of their depositions a supplementary report was submitted holding the applicant guilty. Thus, the earlier enquiry having been reopened, it is argued, that it was incumbent before submitting the supplementary report, <sup>that</sup> the enquiry officer should have given an opportunity to applicant to lead further evidence in the matter. The counsel for the applicant relies on Rule 16(x). We do not find any substance in this contention either. Sub Rule (x) of Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 reads as under:

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"On receipt of the Enquiry Officer's report the disciplinary authority shall consider the record of the inquiry and pass his orders on the inquiry on each charge. If in the opinion of the disciplinary authority, some important evidence having a bearing on the charge has not been recorded or brought on the file he may record the evidence himself or sent back the enquiry to the same or some other enquiry officer, according to the circumstance of the case for such evidence to be duly recorded. In such an event, at the end of such supplementary enquiry, the accused officer shall again be given an opportunity to lead further defence, if he so desires, and to submit a supplementary statements, which he may wish to make."

7. A reading of the rule makes it clear that if the disciplinary authority considers that some important evidence was not recorded, he may himself examine or he may send back the file to the enquiry officer, to record the evidence. On conducting the supplementary enquiry the accused officer shall be given an opportunity to lead further defence, if he so desires, or wish to lead further evidence or submit statements then the enquiry officer should be given an opportunity to do so. Considering Rule 16(8) of the Delhi Police (P&A) Rules, 1980 wherein a similar provision is made permitting the accused officer to make supplementary final defence statement after the court witnesses were examined after the charged officer submitted his final statement, the Tribunal in OA-1211/2000 (Constable Mahipal Singh Vs. Union of India & Others) decided on 5.7.2000 held that unless the charged officer seeks such a right it is not necessary for the enquiry officer to provide him on his own such an opportunity. In the instant case as it is not the case that the applicant had asked for such an opportunity, no grievance can be made by the applicant. No other arguments were advanced before us.

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8. The O.A., therefore, fails and is accordingly dismissed. No costs.

*Shanta Shastri*

(Smt. Shanta Shastri)  
Member (Admnv)

*V. Rajagopala Reddy*

(V. Rajagopala Reddy)  
Vice-Chairman (J)

/RAO/