Central Administrative Tribunal, Principal Bench

Original Application No.595/96 & 588/97

New Delhi, this the 19th day of January,2000

Hon'ble Mr.Justice Ashok Agarwal,Chairman
Hon'ble Mr.R.K.Ahooja, Member (Admnv)

(10)

(1) O.A.No.595 of 1996

Dhan Singh, 2028/SW, 544/D, 9th Btn., Armed Police Pitam Pura, Police Complex, New Delhi. - Applicant

(By Advocates S/Shri U.Srivastava & Jasbir Singh)

Versus

1. The Commissioner of Police, Delhi, Police Head Quarter, Inder Prasth Estate, New Delhi.

2. The Additional Commissioner of Police, Armed Police and Training, New Delhi. - Respondents

(By Advocate Shri Vijay Pandita)

(2) O.A.No.588 of 1997

Constable Hoshiar Singh, No.363/DAP, S/o late Shri Khajan Singh;Qr.No.B/7, Police Station, Keshav Puram, New Delhi-110035 - Applicant
(By Advocate Shri B.S.Oberoi)

Versus

1. Commissioner of Police, Police Headquarters, MSO Building, IP Estate, New Delhi-110002

2. Additional Commissioner of Police, (Armed Police and Training) Police Headquarters, MSO Building, IP Estate, New Delhi-110002 - Respondents

(By Advocate Shri Vijay Pandita)

Common Order (oral)

By R.K.Ahooja, Member(Admnv) -

As both the Original Applications are directed against the same order and both the applicants were subjected to the same common disciplinary proceedings, they are being disposed of by this common order.

2. The applicants in the two OAs namely, ASI Dhan Singh and Constable Hoshiar Singh were served with a summary of allegations. After the evidence of the

prosecution witnesses was recorded, the enquiry officer framed the charge as follows :

> "You, Inspr. Ram Narain, No.D-1/29, ASI Dhan Singh, No.2028/SW, HC Dilawar Singh, Ct. Kirpal Singh, Ct.Sukh Ram and Ct. Hoshiar Singh are hearby charged that while you were all posted in the Vigilance Staff of South-West Distt., you with your mutual connivance extorted Rs.22,000/- from Dr. Hosiar Singh r/o Vill. Fatehpur Beri, Mehrauli, Delhi by threatening him that a complaint against Dr. Hoshiar Singh had been received in your office to the effect that he possessed a false qualification certificate. On 13.11.90, you ASI Dhan Singh, HC Dilawar Singh, Ct. Sukh Ram and Kirpal Singh visited the clinic of Dr. Hoshiar Singh in Vill. Fatehpur Beri, Mehrauli, Delhi and threatened him that you would arrest the Doctor and his family members and would also seal his clinic as well as his house and thus would ruin his career. You, allegedly brought Dr.Hoshiar Singh to PS Vasant Vihar, Delhi and demanded Rs.40,000/- as illegal gratification from him for his release. You (ASI Dhan Singh, HC Dilawar Singh, Ct.Sukh Ram and Ct. Kirpal Singh) briefed Ct. Hoshiar Singh in Police Station Vasant Vihar who (Ct.Hoshiar Singh) in turn also demanded Rs. 40,000/- from Dr.Hoshiar Singh as illegal gratification and threatened the doctor that in case he would report about this matter then he would be sent to Jail. You, Ct. Hoshier Singh and Ct. Sukh Ram after threatening Dr. Hoshiar Singh settled the matter for Rs.30,000/-. You Ct. Sukh Ram took the doctor on a motor cycle whereas you ASI Dhan Singh and Ct.Hoshiar Singh followed the motor cycle in a TSR. You Ct. Sukh Ram accepted Rs.22,000/- as illegal gratification from Dr. Hoshiar Singh near Chhatarpur Mandir in the presence of you ASI Dhan Singh and Ct.Hoshiar Singh....."

The enquiry officer found the aforesaid charge proved. The disciplinary authority also accepted the finding in respect of all the charges except the factum of actually receiving the amount of Rs.20,000/- from Dr. Hoshiar Singh as in the opinion of the disciplinary authority it had not been conclusively proved beyond doubt. On that basis the disciplinary authority imposed the penalty of forfeiture of four years approved service permanently

for a period of four years entailing proportionate reduction in their pay. It was also ordered that they will not earn their increments during the period of reduction and after the expiry of this period the reduction will have the effect of postponing their future increments. The period of suspension was also decided to be treated as period as not spent on duty for all purposes. The aforesaid order of the disciplinary authority was upheld by the appellate authority.

3. The orders of the disciplinary & appellate authority are impugned by the applicants on various grounds. They allege that the proceedings of the preliminary enquiry were not furnished to them; that they were asked to enquire into the complaint against Dr.Hoshiar Singh; that they were only discharging their duties; they also point out that the factum of receipt of the amount by them had not been found to be proved by the disciplinary authority vide his order dated 2.12.1993. They also state that the enquiry officer was prejudiced since he had only considered the evidence of the prosecution witnesses. They also allege discrimination inasmuch as the applicants had been given the punishment of forfeiture of four years service permanently while in the case of other two co-accused the punishment of forfeiture of four years service was only temporary in nature and in one case Sub Inspector Ram Narain, the accused was totally exonerated.

4. We have heard the counsel and have also gone through the record of the disciplinary case.

5. In so far as the allegation that the proceedings of the preliminary enquiry had not been furnished Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980 specifically provides that preliminary enquiry is a fact finding enquiry and its purpose is to collect prosecution evidence to facilitate a regular departmental enquiry. It has also been held in the case of Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and others, (1997) 1 SCC 299 that the preliminary enquiry has nothing to do with the enquiry conducted after the issue of the charge-sheet, the former action is only to find whether a disciplinary enquiry should be initiated against the delinquent. After a full-fledged enquiry was held, the preliminary enquiry lost its importance.

6. We also find that even though the applicants, as part of the vigilance squad, were required to enquire into the complaint, they cannot on that basis claim they were also entitled to threaten or extort money from the person whom they were investigating. We also find that the plea taken by the applicants regarding the reliance placed by the enquiry officer on the evidence of prosecution witnesses is not tenable. The enquiry officer had examined the evidence both of the prosecution witnesses as well as defence witneesses and had on that basis come to a certain conclusion.

7. As regards the allegation that the applicants been treated discriminately inasmuch as some of the co-accused have been visited with a lesser punishment or have been exonerated altogether, we do not find that

there is any lacuna in the order of the disciplinary authority. In any proceedings the severity of the punishment has to be related to the judgment of the disciplinary authority as regards the culpability of each of the accused. On that basis the applicants have been given a severer punishment. This does not by itself mean that they have been treated in a discriminatory fashion.

8. Shri Jasbir Singh, learned counsel for applicant Dhan Singh has argued that once the disciplinary authority reached the conclusion that there was no evidence that the accused had received the money by way of illegal gratification, the whole charge against the applicants collapsed. This is because, according to the learned counsel, the allegation against the applicants rested on the complaint that he had asked for and received illegal gratification. We find, however, from the charge framed against the applicants, which has been extracted above, that the allegation against the applicants was confined not only to actual receipt of the money but also included meting out a threat to the person against whom they had gone to investigate a complaint and asking him to pay money to the applicants. The disciplinary authority had come to the conclusion that as no direct evidence was available regarding the receipt of the money, this part of the charge against the applicants could not be held proved. We do not consider that merely because no direct evidence was found as regards the actual receipt of the money, it would necessarily mean that there was no threat or no attempt to extort money by the applicants.

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9. Shri B.S.Oberoi, learned counsel for applicant Hoshiar Singh, however, has raised a point that the enquiry has been conducted in violation of rule 16(iii) of the Delhi Police (Punishment & Appeal) Rules, 1980. The said rule reads as follows :-

> "If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes....."

The learned counsel has pointed out to the evidence recorded in the enquiry report in respect of PW1 Dr.Hoshiar Singh in which it is stated as follows :-

> "This PW-1 has stated that he is running a clinic in the name and style of BERIWAL CLINIC in Vill. Fatehpuri Beri. This clinic is separate from the residential house of this PW1. This PW-1 has made a complaint dt.13.11.90 now marked as Ex-PW-1/A which was given by him in the police headquarters. After that an ACP/Vigilance Branch recorded the statement of this PW-1 in detail which is now marked as Ex-PW-1/B. He identifies his signatures over his statement and complaint marked as Ex-PW-1/A and Ex.PW-1/B. He is still stands by the contents of these statements and does not want to give a fresh statement....."

Similar statements have been recorded by PW2 and other witnesses who have identified and accepted the statements made by them earlier and have also stated that they stand by those statements. The learned counsel submitted that in terms of Rule 16(iii) ibid once the witnesses were available then necessarily under law their evidence had to be recorded direct during the course of regular enquiry and not indirectly on the basis of the statements recorded earlier by them in the course of the preliminary enquiry. He also relies in this context on the ratio of this Tribunal's decision in the case of Shri Azad Singh Vs. Commissioner of Police and others, 1998 (3) SLJ (CAT) 386. In that the Tribunal held as follows:

> "9. In the present case, we note from the findings of the Enquiry Officer... that the earlier statement ....of PW2 Shri Pratap Chand who was one of the PWs in the DE was brought on to the record, despite his being available and being examined and cross-examined in the D.E. Similarly, the earlier statement...made by PW3 Madan Lal was also brought on record in the DE. In the case of PW4....."
> 10. Under the circumstances, it must be held that there has been violation of the statutory provisions contained in Rule 15(3) (sic) Delhi Police (P&A) Rules."

On that basis the Tribunal quashed the order of the disciplinary authority and remitted back the case to the disciplinary authority to proceed in accordance with law in the background of the infirmities pointed out in the order of the Tribunal.

10. We have carefully considered the aforesaid submissions made by Shri Oberoi. We find however that the facts and circumstances of the present case are distinguishable from the aforesaid case of Azad Singh

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(supra). In the case of evidence recorded of PW1 we find that after the portion extracted above the enquiry officer proceeded to note the statement of the applicant as appearing in Ex.PW1A in full detail; he has stated that the witness was running a clinic in village Fatehpuri Beri; the manner in which he had been approached by the Crime Branch officials and how the witness was brought to the police station and the manner in which the threat was given and money extorted. After recording this part of the statement made in Ex.PW1A the enquiry officer then proceeded also to detail the contents of the statement made by the witness in the preliminary enquiry which was marked as Ex.PW1/B. It was after this that the witness was offered for cross-examination. There was detailed cross-examination of the witness by the various accused persons in this common disciplinary proceedings. We find that same is the position in respect of other witnesses where contents of the earlier evidence had been reproduced and only thereafter the witneses had been offered for cross-examination and the opportunity to do so was also availed of by each of the applicants before us.

11. In view of the above position we do not consider that the mere fact that the witnesses had stated that they stand by their earlier statement made in the complaint or in the preliminary enquiry vitiated the conduct of the enquiry. We also find support for our conclusion from the decision of the Supreme Court in the case of State Bank of Patiala and others Vs. S.K.Sharma, JT 1996 (3) SC 722. In that case the Supreme Court has held that even where there is any

procedural infirmity on account of failure of any procedure, the litmus test is whether the applicant thereby had been prejudiced in his defence. The Supreme Count has held that some of the regulations are of substantive nature which have to be complied with and in such case the theory of substantive compliance would not be available but in respect of mere procedure the theory of fundamental substantive compliance would be available. In the present case the procedural irregularity, if any, was in our opinion not of a substantive nature. The applicants had been supplied with the copies of the statements recorded by the various witnesses in the preliminary enquiry. As these were the documents listed by the prosecution as relied upon documents, the enquiry officer proceeded to record the substance of the statements made by the witnesses in the preliminary enquiry before offering the witnesses for cross-examination by the applicants. The applicants also availed of this opportunity and conducted fairly detailed cross-examination.

12. Rule 16(iii) which has been reproduced above also states that <u>as far as possible</u> the witnesses shall be examined (emphasis supplied). The wording of this rule would indicate that the requirement of rule to examine the witnesses is directory and not mandatory. This will thus come within the ambit of the rule laid down by the Supreme Court in S.K.Sharma's case (supra) that this is not a procedural provision which is of a fundamental nature. Therefore, if there is substantial compliance of the rule inasmuch as the witnesses have been produced, substance of their evidence has been

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recorded and the applicants have been given opportunity to cross-examine, there would be no prejudice caused to the applicants. This, in our opinion, is the situation in the present case.

13. In the result, we find that there is no ground for interference. Accordingly, both the OAs are dismissed. No order as to costs.

(Ashok Agarwal)
(Chairman)

Member (Admnv)

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Attested

Advocate
C.O.T