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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O. A. NO. 642/1997

New Delhi this the 25th day of September, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI M. P. SINGH, MEMBER (A)

Cont. M. Sambaiah  
No. 1546/SW Delhi Police  
R/O PS. Building, Janakpuri  
New Delhi. ... Applicant

( By Shri S.K. Shukla, Advocate )

-versus-

1. The Commissioner of Police  
Delhi Police Headquarters  
I.P Estate  
New Delhi.
3. Addl. Commissioner of Police  
Operations, New Police HQ  
IP Estate  
New Delhi. ... Respondents

(By Shri Ram Kawar, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Non-supply of relevant documents to the delinquent in disciplinary proceedings conducted against him, in our view, vitiates the entire order passed by the disciplinary authority on 2.9.1994 imposing a penalty of reduction in pay scale of the applicant from Rs.1070/- to Rs.950/- p.m. for a period of five years. Similarly the order passed by the appellate authority on 14.10.1996 would also stand vitiates.

2. Applicant was proceeded departmentally with the following charge:-

"You, Constable Malya Shambhai,  
No. 1546/SW are hereby charged that while

posted in PS R. K. Puram, you were on sentry duty from 2 A.M. to 6 A.M. in the night of 20/21-4-92 at the lock-up of PS R.K.Puram. You had shown carelessness in taking the charge of the lock-up from the outgoing sentry without following the proper drill. When questioned by the duty constable about the accused in the lock-up, you displayed callous negligence and replied that everything was alright despite the fact that the criminals had dug the hole by removing bricks in the backside wall of the lock-up. Finally, these two desperate criminals escaped through these holes.

The above act on the part of you, Ct.Malya Shambhai, No.1546/SW amounts to gross negligence and dereliction in the discharge of your duties which renders you liable for punishment as envisaged U/S 21 of Delhi Police Act, 1978."

Applicant was served with a summary of allegations which contained a list of documents seven in number. Since applicant was not furnished with copies of the same, he made several representations to supply the same. Two such representations have been filed at Annexure-D collectively. As far as non-supply of the documents is concerned, respondents in para 4(iii) of the counter have stated as under:-

"4 (iii). That contents of this para as stated in the O.A. are wrong and hence, denied. It is submitted that all the available additional documents were supplied to the appellant by the E.O."

When called upon to substantiate the aforesaid statement, Shri Ram Kawar, the learned counsel appearing for the respondents, has been unable to produce any <sup>material</sup> documents to substantiate the same. On the contrary, we find that the Deputy Commissioner of Police passed an order on 28.11.1994 in connection with the aforesaid demand and has observed as under:-

"In this connection the observations of Addl. CP/Ops. Delhi are reproduced below:-

"All the relevant documents have been made available to them (the delinquent officials) during the course of DE. They have been party to the DE proceeding & have cross examined the witnesses & other due opportunity has been given to them. Necessary documents for filing appeal in so far as the DE is concerned ought to be available with them. The application is misconceived & therefore, rejected. (Emphasis provided)

3. Aforesaid order makes it clear that the applicant had sought for copies of the documents even at the stage of preferring an appeal but the same had been declined on the ground that the documents ought to be available with him. As far as the application for documents submitted by the applicant is concerned, the same is dated 3.3.1994. The same makes it abundantly clear that the documents have not been furnished as on that date. <sup>Hence no reliance can be placed on the bald assertion that the same</sup> The report of the enquiry ~~were furnished~~ officer is dated 31.3.1994. Nothing has been brought on record to show that the documents had in the meanwhile been furnished to the applicant. In the case of U.P. State Road Transport Corporation and another v. Sarfaraz Hussain and others, 1995 LAB. I.C. 1971, the Allahabad High Court has placed reliance on ~~a~~ decisions of the Supreme Court in the cases of M/s Fire Stones and Tyre and Rubber Company reported in AIR 1973 SC 1227 : 1973 Lab IC 851 and Cooper Engineering Limited reported in AIR 1975 SC 1900: 1975 Lab IC 1441 and has observed:-

..In the domestic enquiry it was the duty of the employer to prove the charge against the delinquent. It was also the duty of the said employer to establish before the Tribunal or Labour Court that the enquiry was properly ~~properly~~ held, particularly when there is allegation that the said enquiry was defective. In the instant case no evidence was adduced by the employer after several adjournments was granted. The burden of

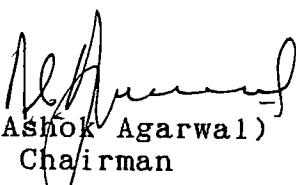
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proof that there was no enquiry or a defective enquiry was never on a person who denies it. Section 101 of the Evidence Act comes into play when the burden of proof was on the employer that the delinquent was guilty in the domestic enquiry, the said employer is also liable to prove before the Labour Court that the domestic enquiry was properly held. There can be burden on a person to prove the negative to establish that there was no domestic enquiry. It does not rest on a person who denied the fact..."

4. In the instant case, as already observed, no material has been placed on record and no material has been shown to us to substantiate the contention that the applicant had been furnished the documents which were relied upon by the disciplinary authority against him. The disciplinary proceedings, in the circumstances, stand vitiated on the ground of violation of the principles of natural justice. The impugned order of the disciplinary authority of 2.9.1994 imposing the penalty of reduction of pay from Rs.1070/- to Rs.950/- P.M. for a period of five years is accordingly quashed and set aside. Similarly, the order of the appellate authority of 14.10.1996 maintaining the order of penalty is also quashed and set aside. Applicant will now be entitled to receive the arrears of salary based on present order. Applicant will also be entitled to all the consequential benefits arising out of the aforesaid directions.

5. Present OA in the circumstances is allowed in the aforesaid terms. No order as to costs.

  
(M.P. Singh)  
Member (A)

  
(Ashok Agarwal)  
Chairman