

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(12)

O.A.No.1115/1994

Tuesday this the 20th day of July, 1999

CORAM

HON'BLE MR. A.V HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

Sushil Kuamr (1301.W)
Ex-Contable (Driver)
Son of Shri Bishan Dayal,
resident of House No.962
Nazafgarh, New Delhi.

...Applicant

(By Advocate Mr. Shyam Babu)

Vs.

1. The Additional Commissioner of
Police (Southern Range)
Police Headquarters,
IP Estate, New Delhi.

2. Additional Deputy Commissioner of
Police (West District)
Rajauri Garden,
New Delhi.

...Respondents

(By Advocate Mr. Jog Singh (not present)

The application having been heard on 20.7.1999 the
Tribunal on the same day delivered the following:

O R D E R

HON*BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

This is the second round of litigation between the
applicant, an Ex-Constable Driver of Delhi Police and
the Delhi Administration regarding his dismissal from
service on the charge that he secured employment
producing a forged driving licence. The facts in brief
can be stated as follows;

2. An enquiry was initiated against the
applicant alleging that he produced a forged driving
licence at the time of recruitment in the Delhi

...2

Police. On the close of the enquiry the Deputy Commissioner of Police (West District) New Delhi by his order dated 3.7.87 dismissed the applicant from service with immediate effect. Though the applicant preferred an appeal against this order to the Lt .Governor of Delhi, the same was dismissed upholding the order of penalty by order dated 14.9.93.

The applicant challengd these orders in O.A.903/89 before this Tribunal. The Tribunal by its order dated 29.5.92 disposed of this application with the following directions:-

"We, therefore, by setting aside the orders of the disciplinary, appellate and revisional authorities, remand the case to the respondents, who may examine this aspect, either by the disciplinary authority himself, or by deputing a sufficiently senior officer who may enquire into the matter again by summoning the relevant records, from the office of the authority concerned, in the presence of the applicant, by also affording him an opportunity to defend himself. In the meanwhile the applicant shall stand reinstated forthwith, and the question of his backwages shall be decided by the respondents in accordance with the provisions contained in FR 54. The respondents' order regarding the period of suspension 'not spent on duty' in view of th citation referred to bythe applicant, is not legally sustainable, and set aside. Needless to say that case the matter is enquired into again, action at all levels, shall be accomplished as early as possible, but not later than six months from the receipt of a copy of this judgment by the rsspondents."

2. The Deputy Commissioner of Police (West District) New Delhi pursuant to the above direction of the Tribunal vide his order dated 28.8.92 reinstated the applicant in service but appointed Shri Gurbax Singh, S.H.O. Rajouri Garden to hold a fresh enquiry againt the applicant on the same set of allegations by order dated 28.8.92. The enquiry officer on 16.9.92 issued a fresh Memo of Enquiry/Summary of Allegations to the applicant. The Enquiry Officer examined the witnesses PWs 1 to 5. Shri Om Prakash and Shri Naresh Kumar who were examined in the earlier enquiry did not

✓

appear for giving evidence. Their statements in the first enquiry were brought on record as statements of PWS 6 and 7 with fresh enquiry. Thereafter the Enquiry Officer framed a charge against the applicant on 28.12.92. The Enquiry Officer submitted his report on 31.12.92 holding that the charge was fully established. The applicant was given an opportunity to make his representation against the acceptability of the report. The applicant submitted his reply to the respondent No.2. However, the second respondent accepted the finding of the Enquiry Officer that the charge against the applicant was proved and by his order dated 19.4.93 (Annexure.A) imposed on the applicant the penalty of removal from service. Aggrieved by the above impugned order Annexure.A the applicant preferred an appeal to respondent No.1 which was rejected by the appellate authority by order dated 14.9.93 (Annexure. B). Aggrieved by orders at Annexures A and B the applicant has filed this application impugning these orders praying that the respondents be directed to reinstate the applicant in service with backwages and all consequential benefits.

3. The applicant assailed these orders on various grounds. The applicant has contended that the enquiry has been held in total violation of the principles of natural justice as also the provisions of the Delhi Police (Punishment and Appeal) Rules inasmuch as the Enquiry Officer has taken on record the statements of PWS 6 and 7 without examining them at the enquiry, that the Enquiry Officer himself has

allegedly visited the office of the RTO without giving even a notice to the applicant and a reasonable opportunity to put forth his case and had disbelieved the veracity of the letter dated 812.92 of the RTO Meerut District, U.P. which was produced at the previous enquiry as a piece of prosecution evidence and belied by the Tribunal in O.A.903/89 and that for denial of reasonable opportunity to defend and for perversity of finding the orders are liable to be set aside.

5. The respondents in their reply statement refuted the allegations made in the Original Application.

6. We have gone through the pleadings and materials placed on record and have heard Shri Shyam Babu, learned counsel appearing for the applicant. Since the counsel for the respondents did not appear we did not have the privilege of hearing him. However, we have given our serious consideration to the facts and circumstances born out from the pleadings and the materials placed on record in this case.

7. In the earlier enquiry held against the applicant all the witnesses who were examined in this case excepting PW4 Easwar Singh and PW5 S.A.Khan were examined. In addition Naresh Kumar and Om Prakash whose statements have been brought in as that of PWS 6 and 7 in this case without examining them were also examined in the earlier case. The Tribunal finding that Naresh Kuamr on whose complaint the proceedings were initiated against the applicant did not implicate the applicant but gave evidence in applicant's favour

and that there was no evidence at all to bring home the guilt on the applicant that he produced a forged driving licence, set aside the impugned order of penalty but gave liberty to the respondents to examine the matter either by the disciplinary authority or by deputing a sufficiently senior officer, who might enquire into the matter again by summoning the relevant records from the office of the authority concerned in the presence of the applicant after affording an opportunity to him to defend himself.

8. In the light of the above specific direction in the order of the Tribunal it was incumbent on the authority concerned to summon and examine the competent authority of the Transport Department with reference to the relevant documents after citing it and to come to a definite conclusion as to whether the applicant was really guilty of producing the forged driving licence, after giving the applicant a reasonable opportunity to defend himself. The Tribunal had also made reference to the letter written by the R.T.O. Meerut to the Dy. Commissioner of Police on 8.12.82 wherein in reply to the querry made by the Dy. Commissioner whether the driving licence No.S.13150 was genuine wherein it was stated that the said licence issued to Sushil Kumar S/o Bishan Dayal (the applicant) was absolutely genuine.

9. A careful scrutiny of the enquiry report and the statements of witnesses examined in this case reveals that the directions of the Tribunal in its Order in O.A.903/89 has been ignored by the Enquiry Officer as also the disciplinary and appellate authorites. A very curious method is seen to have

been adopted by the Enquiry Officer by bringing on record the statement of Om Prakash and Naresh Kumar who were examined in the earlier enquiry without they being examined in this case on the ground that they did not participate in the enquiry as statements of PWs 6 and 7. This procedure is opposed to the rules. No statement of a witness in a previous enquiry could be brought into record as statement in the enquiry without their examination. A previous statement of a person could be brought on record only under special circumstances and on satisfying the conditions detailed in Rule 16 (3) of the Delhi Police (Punishment & Appeal) Rules. That has not been done. Further, it was with the testimonies of Om Prakash and Nareshkumar on record that the Tribunal in O.A.903/89 found that the guilt of the applicant was not established. Therefore, even if their statements which have been illegally brought on record are also taken into account no reasonable conclusion could be arrived at that the applicant has concocted or forged the driving licence. The statement of PW4 Easwer Singh does not in any way implicate the applicant with the misconduct of forging a driving licence. The statement of S.A.Khan who is a Senior Clerk in the RTO, Meerut has been made use of to observe that the letter dated 8.12.82 was not genuine merely on the basis of a verbal enquiry. It is seen stated by that witness that record pertaining to the said letter having been destroyed evidence could not be collected. The direction in the order of the Tribunal in O.A. 903/89 was to examine a responsible officer of the

R.T.O. Meerut with reference to the relevant documents. This has not been done by the respondents. It is seen stated by the Enquiry Officer in his report as follows:

"I have personally visited the office of RTO/Meerut and checked the record. No driving licence was issued to Shri Sushil Kumar S/o Shri Bishan Dayal r/o H.No.962, Najafgarh, Delhi on 17.5.1982 from RTO/Meerut according to record. I have signed the record of 10.5.81 and 19.5.81. No driving licence was either issued or renewed to anyone between 10.5.81 and 19.5.81."

This observation of the Enquiry Officer is based on his subjective satisfaction and against the directions of this Tribunal in its orders in O.A.903/89. The Enquiry Officer was not empowered to make independent investigation. The role of the Enquiry Officer is to bring on record the evidence available at the enquiry.

He cannot take up the role of an investigating officer. If he takes up the role of investigating officer then he cannot decide the issue. Even if the right to inspect a document in another office is conceded to the Enquiry Officer, he could have done so only after giving the applicant an opportunity to be present and to put forth his case. The essence of the directions of the Tribunal in its Order in O.A.903/89 was that. Therefore, we do not find any material which was not available when the Tribunal decided O.A.903/89 which would have enabled the Enquiry Officer and the disciplinary authority to find that the applicant is guilty on the fresh enquiry.

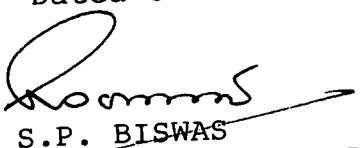
10. In the light of what is stated above, we find that the enquiry report is vitiated for the Enquiry Officer having exceeded his jurisdiction and

19

acted in deprival of principles of natural justice to the applicant. The Enquiry Officer has also reached the conclusion which is not warranted by the evidence recorded at the enquiry. The finding that the applicant is guilty is not based on any legal evidence at all. The disciplinary authority's order as also the appellate order are therefore, devoid of application of mind to these relevant points.

11. In the light of what is stated above, the impugned orders (Annexure A and B) are set aside and the respondents are directed to reinstate the applicant in service with all consequential benefits and to pay him full backwages for the period he was kept out of service. The above direction shall be complied with by the respondents in full within a period of three months from the date of receipt of a copy of this order. We direct that the parties will bear their costs.

Dated the 20th day of July, 1999


S.P. BISWAS
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

| ks |