

Central Administrative Tribunal
Principal Bench

....

O.A. 2318/94

New Delhi this the 29th day of July, 1999

Hon'ble Shri V. Ramakrishnan, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

ASI Khiali Ram, No. 2767/D
through Mrs. Avnish Ahlawat,
Advocate,
243, Lawyers Chambers,
High Court of Delhi,
New Delhi. ... Applicant.

By Advocate Mrs. Avnish Ahlawat.

Versus

1. Governor of National Capital Territory of Delhi
through Commissioner of Police,
MSO Building, IP Estate,
Delhi Police,
New Delhi.
2. Shri S. Ramakrishnan,
Addl. C.P.,
Police Headquarters, MSO Building,
I.P. Estate,
New Delhi.
3. Shri J.K. Sharma,
D.C.P.,
North East District, Ashok Vihar,
Delhi.
4. Shri D.D. Nigam,
Asstt. Commissioner of Police,
Ashok Vihar,
North-East District,
Delhi. ... Respondents.

By Advocate Shri Girish Kathpalia.

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

we have heard Mrs. Avnish Ahlawat, learned counsel for the applicant and Shri Girish Kathpalia, learned counsel for the respondents.

2. The applicant is aggrieved by the punishment order passed by the disciplinary authority dated 14.3.1994 and the appellate authority's order dated 1.6.1994. By these orders,

the applicant was punished with forfeiture of two years approved service for a period of two years entailing reduction in his pay. These orders have been passed after holding a departmental inquiry against him on the charge that it had been found that the applicant had written certain fictitious diaries on the following dates:

- (1) C.D. No.3, dated 15.6.93.
- (2) C.D. No. 4, dated 28.6.93.
- (3) C.D. No. 5, dated 20.7.93.
- (4) C.D. No.6, dated 2.8.93.
- (5) C.D. No. 7, dated 17.8.93.

3. Mrs. Avnish Ahlawat, learned counsel for the applicant, has taken a number of grounds challenging the aforesaid punishment orders. She has submitted that there was no evidence at all which was produced before the Inquiry Officer to prove the fact that the case diaries were false or fictitious on the basis of which the charges ought to have been held proved. She has submitted that the charge as mentioned above can be considered in two parts, namely (1) that the applicant had written fictitious case diaries ^(CDs) on the five dates; and (2) that on perusal of DD Entry register it had been revealed that he had not even made the departure of the investigation of the said case and thus submitted untraced report in the case u/s 173 Cr.P.C. dated 22.8.1993. She has taken us through the relevant records, including the findings of the Inquiry Officer's report dated 30.1.1994. In particular, she has drawn our attention to the conclusion of the Inquiry Officer in his report i.e. at Annexure 'A' wherein it has been stated:

(A)

"After carefully going through the statement of the PWS and the DWS and other documentary evidence adduced during the DE proceedings it has been established that the ASI had undoubtedly made enquiries from the public person in connection with case FIR No. 133/93 u/s 380 IPC PS Welcome and thereafter had written the case diaries in above-mentioned case but the ASI did not make his departure and arrival entries in Daily Diary. The ASI was supposed to make entries regarding his departure and arrival in the daily diary and then should have submitted the case diaries to his superiors as per the procedure but he did not and as such it can be said that the ASI had committed this mistake and partly charged therefore stands proved. However, no malafide intention has been found on the part of the ASI and as such some lenient view may be taken".

Learned counsel's contention is that the Inquiry Officer had only held part of the charges as proved, namely, that the applicant had not made entries regarding his departure and arrival in the daily diary. In other words, she has submitted that there was no finding of guilt with regard to the making of false entries in the case diaries. In the impugned disciplinary authority's order, however, he has stated that after perusal of the Inquiry Officer's report and the other relevant records available on the DE file, he has come to the conclusion that the ASI wrote false C.Ds which is ^a very serious lapse on his part, for which he was imposed punishment of forfeiture of two years approved service for a period of two years entailing proportionate reduction in his pay. The appellate

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✓ authority in his order dated 1.6.1994 has commented that they have a certain procedure for the I.O. in making their departure and arrival entries which have been definitely flouted in this case. Learned counsel has, therefore, submitted that these very statements in the I.O's report, the disciplinary authority's order and the appellate authority's order show that there has been total lack of application of mind in so far as the reasons given for the conclusions and the decision of the competent authorities. She has further submitted that since there has been ~~with~~ the conclusions of the Inquiry Officer, disagreement by the disciplinary authority, the applicant should have been given a show cause notice which has also not been given in this case. She has further submitted that as far as the entries in the daily diaries are concerned, there are no rules or instructions on the point and none has been pointed out in the departmental inquiry held against the applicant making it obligatory for him to have his ^{entered} departure and arrival entries/each time with reference to the investigation of a case.

4. The respondents in their reply have controverted the above submissions. According to them, the departmental inquiry has been held in accordance with the law and rules. Learned counsel has submitted that the punishment of forfeiture of two years approved service permanently entailing proportionate reduction in applicant's salary has been done by the competent authority after considering the facts and evidence on record in the departmental file and the representations made by the applicant. They have also ~~dis-~~ submitted that there was no agreement between the disciplinary authority and the Inquiry Officer since the charge stood partly proved and further that a lenient view had been taken by the disciplinary authority in awarding the punishment to the applicant.

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5. Shri Girish Kathpalia, learned counsel, has submitted that it is clear from the charge-sheet that there are, in fact, two charges, one of which has been held proved by the Inquiry Officer on the basis of which the punishment has been given by the disciplinary authority after considering the evidence on record. In the circumstances, the respondents have submitted that the O.A. has no merit and the same should be dismissed.

6. We have carefully considered the pleadings and the submissions of the learned counsel for the parties.

7. The conclusions of the Inquiry Officer have been reproduced in Paragraph 2 above. From this, it can be seen what was partly proved against the applicant was that he was supposed to make entries regarding his departure and arrival in the daily diary and then he should have submitted the same to his superiors as per the procedure, which he did not do. He has concluded that although there was no malafide intention on the part of the applicant, the charge stands partly proved, i.e. to the extent that he had failed to make proper entries regarding his departure and arrival in the daily diaries. We find that in the impugned order dated 14.3.1994, the disciplinary authority has stated as follows:

"I have carefully gone through the findings submitted by the E.O., and other relevant record available on the D.E. file. I have also carefully gone through the reply which was submitted by the defaulter on 8.3.94 during his personal hearing. After going through this all, I have come to the conclusion that the ASI wrote false C.Ds which is very serious lapse on his part. Even though the charges levelled against the ASI are very serious in nature yet I am inclined to take a lenient view this time, agreeing with the findings of the E.O".

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(12)

It is clear from the disciplinary authority's order that contrary to the conclusion arrived at on the facts by the Inquiry Officer, the disciplinary authority had based his conclusion that the ASI had written false case diaries (C.Ds), which he has termed as serious lapse on his part for which he had awarded the punishment. It is also relevant to note that the Inquiry Officer has stated that the ASI had undoubtedly made inquiries from the public person in connection with case FIR No. 133/93 u/s 380 IPC PS Welcome and thereafter had written the case diaries in the above mentioned case but the ASI did not make his departure and arrival entries in the daily diary. The conclusion of the Inquiry Officer and the disciplinary authority would, therefore, appear to be contrary to each other.

8. The Supreme Court in a number of judgements (Ram Kishan Vs. Union of India & Ors (1995(7) SC 43), Managing Director ECIL, Hyderabad and Ors. Vs. B. Karunakar & Ors. (JT 1993(6) SC 1) and Punjab National Bank & Ors. Vs. Kunj Behari Misra (JT 1998(5) SC 548), has held that when the disciplinary authority differs from the Inquiry Officer on findings, the authority must afford an opportunity to the delinquent official to be heard before passing ^{the B:} final order and giving contrary findings. Admittedly, no show cause notice has been issued by the disciplinary authority in the present case to the applicant that he is taking a contrary view disagreeing with the Inquiry Officer's report. On this ground alone, this application is entitled to succeed.

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9. On perusal of the appellate authority's order we find that he has stated that while the applicant had made departure entries on certain dates, details of cases for the investigation for which he had gone were missing. He has further stated that the applicant had failed to follow the procedure to be adopted by the Inquiry officer making their departure and arrival entries. He has further stated that the production of witnesses to support the story of the applicant seems to be an after thought and to cover up the mistake. It appears from this order that the appellate authority has impliedly agreed with the findings of the disciplinary authority that the entries in the case diaries are fictitious, without actually saying so, but he has also not given any show cause notice or an opportunity to the applicant to be heard even at that stage.

10. In Kunj Behari Misra's case (supra), the Supreme Court has held as under:

"...It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority".

18.

(A)

11. In the present case, the disciplinary authority has neither given reasons for his disagreement with the findings of the Inquiry Officer nor given an opportunity to the applicant to be heard on those reasons. This has also not been done by the appellate authority even though this ground has been taken in appeal where it has been stated that the disciplinary authority has mechanically passed the order and the minimum requirement of the principles of natural justice had been violated. In the facts and circumstances of the case, we find force in the contentions of the learned counsel for the applicant that there has been violation of the principles of natural justice, which have been clearly laid down in the aforesaid judgement of the Supreme Court, which are fully applicable in the facts and circumstances of the case.

12. In the result, O.A. succeeds and is allowed. The impugned punishment orders dated 14.3.1994 and 1.6.1994 are quashed and set aside. The respondents are directed to grant the consequential benefits of this order within two months from the date of receipt of a copy of this order. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

V. Ramakrishnan
(V. Ramakrishnan)
Vice Chairman (A)

'SRD'