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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.385/94

Thursday this the 15th day of July, 1999

CORAM

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

Ex.S.I. Vinod Kumar No.D.1823
Son of Shri Brahm Dev Sharma,
aged about 36 years
previously posted at SIT Section of
Crime & Railways, Delhi Police,
R/o 75, Gajju Katra
Shahdara, Delhi.32. ..Applicant

(By Advocate Mr,Shanker Raju)

vs.

1, Govt. of National Capital Territory
of Delhi (through Additional Commissioner
of Police), Police Headquarters,
M.S.O. Building, New Delhi.

2. Dy.Commissioner of Police,
Crime (Women) Cell,
Nanakpura, New Delhi. ...Respondents

(By Advocate Mr. M.K. Giri (not present))

The application having been heard on 15.7.99, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant, an Ex-Sub Inspector of Delhi
Police has filed this application challenging the order
dated 22.10.92 (A9) issued by the second respondent
dismissing him from service on acceptance of a report of
enquiry in a disciplinary proceedings held against him as
also the Appellate Order (A.11) dated 29.9.93 of the
first respondent, rejecting the appeal. The applicant
was proceeded against for alleged receipt of illegal
gratification and also for some other charges. The
applicant has raised various grounds including that the
finding is perverse as there is no evidence to support

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the finding. He has inter alia raised a contention that as a copy of the preliminary enquiry report and the statement of witnesses were not supplied to him though he requested the enquiry officer to do so he has been deprived of a reasonable opportunity to defend himself as for want of these documents he could not effectively cross examine the officer who held the Preliminary Enquiry ie. the PW3. The applicant contends that the enquiry was therefore, vitiated.

2. The respondents have in their reply refuted the allegation that the enquiry was held not in conformity with the rules and seek to justify the impugned orders on the ground that the misconduct of the applicant was proved by cogent and convincing evidence.

3. When the matter was taken up for hearing Shri Shanker Raju, learned counsel appeared for the applicant but none appeared on behalf of the respondents. However, we have carefully gone through the pleadings in this case and have heard Shri Shanker Raju. The learned counsel for the applicant brought to our notice a Circular No.6368-6493/CR.III dated Delhi the 1st day of May, 1980 issued by the DCP/HQ(I)/Delhi which reads as follows:

"Reference this Headquarters Circular Order No.6113-64/CR.III dated 8.5.78, on the subject cited above.

While disposing of an appeal against punishment awarded on the basis of departmental enquiry, the following irregularities have come to notice:-

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(i) That the Enquiry Officer had issued the summary of allegations and the charge u/s 149 of Delhi Police Act instead of Section 21 of the Act. Although this was not considered to be a material irregularity in view of the provisions of Section 215 of the Cr.P.C. as no prejudice had been caused to the appellant because of a wrong section of law being mentioned, the remained that an irregular procedure was adopted.

(ii) The officer who had conducted the preliminary enquiry was cited and examined as PW but copy of his preliminary enquiry report was not furnished by the E.O. to the default of giving him an opportunity to cross examine the witness. This has affected proper cross examination of such witnesses and goes against the principles of natural justice vitiating the departmental enquiry an initio. Copy of the P.E. report in such cases should have been supplied suo motu at the initial stage along with the summary of allegations even if no specific report is made by the defaulter.

(iii) Since these irregularities vitiate the proceedings necessitating to come to be set aside on the technical grounds, it is essential that all enquiry officers apprise themselves fully regarding the procedural and legal position in this regard. Every enquiry officer before he is entrusted with his first enquiry should be directed to carefully or through the detailed instructions issued vide this Hdqrs. Circular order referred above. All Districts/Units DCP and Addl.DCP will please ensure that irregularities may not occur in future."

That the preliminary enquiry report and the statements recorded at the preliminary enquiry were not supplied to the applicant despite his request in that behalf has not been controverted in the reply statement. A Division Bench of this Tribunal in O.A.874/96 has held that the non supply of a copy of the preliminary report and the statement recorded would vitiate the proceedings for non-observance of the principles of natural justice. In a recent decision of the Apex Court reported in 1998(6) JT 55 (State of UP Vs.Shatrugnan Lal) the necessity of

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supplying the copy of the preliminary enquiry report as also the statement recorded to enable the person defending the charge to put up an effective defence has been highlighted and it was held that it was necessary in the ends of justice to supply the Preliminary Enquiry records and the statement. Under these circumstances as the applicant was not served with a copy of the preliminary enquiry report and the statement of witnesses recorded at the enquiry, we are of the considered view that the impugned order of dismissal (A9) and the Appellate Order have to be set aside and the matter should be remitted to the disciplinary authority with a direction to have a further enquiry held after giving the applicant copies of the preliminary enquiry report and the statement recorded in the preliminary enquiry and affording him an opportunity to cross examine the PW3 again. If the material witness who could not be examined earlier for his being out of India may also be examined if now available.

4. In the light of what is stated above, the application is disposed of setting aside the impugned orders A9 and A.11 directing the disciplinary authority to have a further enquiry held after furnishing the copies of the preliminary report and the statement recorded in the preliminary enquiry and allowing the applicant to further cross examine the PW3. The material witness who was omitted to be ~~xxxxxxx~~ examined as he was out of India may also be examined now if he is available. The said exercise shall be


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completed and final order in the disciplinary proceedings issued by the disciplinary authority as expeditiously as possible but at any rate within a period of four months from the date of receipt of a copy of this order. The question as to how the period with effect from the date of dismissal of the applicant would be treated shall abide by the final decision in the disciplinary proceedings. No order as to costs.

Dated the 15th day of July, 1999


S.P. BISWAS
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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