

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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OA.No.495 of 1994

New Delhi, this 15th day of July, 1999.

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN(J)
HON'BLE SHRI S.P. BISWAS, MEMBER(A)

Subhas Kumar
S/o Shri Maha Singh
R/o Village & Post Office Manali
P.S. Rai
District Sonapat
Haryana.

... Applicant

By Advocate: Shri Shyam Babu

versus

1. Commissioner of Police
Police Headquarters
I.P. Estate
New Delhi-110002.
2. Deputy Commissioner of Police
Central District, Darya Ganj
New Delhi-110002.
3. Addl. Deputy Commissioner of Police
Central District
Darya Ganj,
New Delhi-110002.

... Respondents

By Advocate: Shri S.K. Gupta, proxy for
Shri B. S. Gupta.

ORDER (ORAL)Hon'ble Shri A.V. Haridasan, VC(J)

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The applicant who is an Ex-Constable of Delhi Police, has filed this application under Section 19 of the Administrative Tribunals Act challenging the legality, propriety and correctness of the order dated 22.8.90 (Annexure-A), Enquiry Report dated 15.7.91 (Annexure-H), order 19.8.91 (Annexure-B) by which he was removed from service and revisional order dated 2.6.93 (Annexure-C) by which the penalty was reduced into one of forfeiture to two years' approved service. The Annexure-B order of penalty was imposed on the applicant after an enquiry held on the basis of the summary of allegations that he misbehaved and abused the superior officer. The applicant has assailed the impugned orders on various grounds. He has taken a ground that the enquiry authority refused to give him copies of the preliminary enquiry report and statements of witnesses questioned during the preliminary enquiry, the applicant has been disabled to effectively cross examine PW-5, the officer who conducted the preliminary enquiry, and that therefore the enquiry is vitiated for violations of natural justice and deprivation of reasonable opportunity to defend himself.

2. We have heard learned counsel on either side on various aspects of the case. However, in view of the course that we are taking in this case, we are not going into the other rival contentions of the parties. It has been held by this Tribunal in a number of OAs, for instance OA.No.186/95 failure on the part of the enquiry officer to supply copy of the enquiry report and statements of witnesses recorded during the preliminary enquiry to enable the police officer defending the charge to cross examine the officer who held the preliminary enquiry when he was being examined in the departmental enquiry would vitiate the enquiry. This ruling has been followed by a Division Bench of the Tribunal in

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OA.874/96 titled Prem Pal Singh Vs UOI & Ors. The Tribunal came to the conclusion that non supply of copy of the preliminary enquiry report and statements of witnesses recorded during the enquiry would vitiate the proceedings basing on a circular issued by the Headquarters of Delhi Police on 1.5.80. We do not find any reason to disagree with the view taken by the Tribunal ^{1/2} and the judgments referred to above. On the other hand, we are in respectful agreement with this view. Since the PW-5, the officer who held the preliminary enquiry was examined and the report submitted by him was relied upon by the enquiry officer for disbelieving the testimony of one of the witnesses, we are of the considered view that non supply of a copy of the enquiry report and the statements of the witnesses recorded during the preliminary enquiry has resulted in grave prejudice to the applicant and, therefore, the proceedings have become vitiated.

3. Having found the proceedings vitiated because of non supply of copy of the enquiry report, we have to consider what relief the applicant is entitled to. Learned counsel for applicant with considerable vehemence argued that as the order of disciplinary authority based on the enquiry officer's report which is vitiated, it cannot stand in the eye of law.

The applicant has to get the benefit of the same and should be let free. We do not agree with this argument of the learned counsel. It has been held in a catena of judgments by the Apex Court that if an order of penalty is set aside on the ground of non compliance of principles of natural justice, the proper course would be to remand the matter back to the disciplinary authority for complying with the principles of natural justice.

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4. In the light of what has been stated above, we set aside the impugned orders, direct the disciplinary authority to have a further enquiry report and the statements of witnesses during the preliminary enquiry and allowing him to cross examined PW-5 once again. This exercise shall be completed and final order passed within a period of four months from the date of receipt of a copy of this order.

No order as to costs.



(S.P. Biswas)
Member(A)

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(A.V. Haridasan)
Vice Chairman (J)