

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 848/94

199

T.A.No.

7

DATE OF DECISION 28.7.99

SI Sushil Chander

....Petitioner

Sh, Shankar Raju

....Advocate for the
Petitioner(s)

VERSUS

Lt. Governor, NCTD through
Addl. Commissioner of Police &Respondent
Ors.

Sh. Girish Kathpalia

....Advocate for the
Respondents.

CORAM

The Hon'ble ~~Shri V. Ramakrishnan~~, Vice-Chairman(A)

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

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

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

Central Administrative Tribunal
Principal Bench

.....

O.A. 848/94

New Delhi this the 28 th day of July, 1999

Hon'ble Shri V. Ramakrishnan, Vice Chairman(A).

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

Sub Inspector Sushil Chander No. D/544,
S/o late Shri S.R. Sharma,
R/o Qtr. No.C-9, Police Station paharganj,
New Delhi. ... Applicant.

By Advocate Shri Shanker Raju.

Versus

1. Lt. Governor,
National Capital Territory of Delhi,
(through Addl. Commissioner of Police,
North-Range, Police Headquarters,
I.P. Estate, New Delhi.
2. Deputy Commissioner of Police,
North-District Civil Lines,
Near Old Secretariat,
Delhi-110054. ... Respondents.

By Advocate Shri Girish Kathpalia.

O R D E R

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

The applicant who is working as Sub-Inspector in Delhi Police, is aggrieved by the orders passed by the respondents awarding him a major punishment of permanent forfeiture of two years approved service entailing reduction of pay by two stages along with postponement of increments against which appeal filed by him was rejected by order dated 15.9.1993.

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2. The applicant states that while he was posted as Incharge, Police Post, ISBT, the respondents conducted a preliminary inquiry into the complaint of one Smt. Ram Bati for alleged robbery of her possessions and inaction on the part of the concerned officials to register the case. On the basis of the preliminary inquiry report, which the applicant states has not been furnished to him, a departmental inquiry was ordered to be held against the applicant on 5.10.1990. One of the main grounds taken by Shri Shanker Raju, learned counsel for the applicant, is that the preliminary inquiry report was not supplied to the applicant which vitiates the whole inquiry. During the course of the inquiry, the Inquiry Officer had examined seven prosecution witnesses and the complainant. Another ground taken is that the Inquiry Officer had himself cross-examined these witnesses after the applicant had cross-examined them and, therefore, he acted as prosecutor which is against Rule 16(v) and (viii) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the 1980 Rules').

3. Learned counsel for the applicant has also relied on the judgement of the Supreme Court in Re Reference under Article 317(1) of the Constitution of India (1990(4) SCC 262). His contention is that the evidence of each of the witnesses has to be considered in their totality and a part of ^a sentence in their deposition cannot be allowed to be picked up in isolation and analysed and scanned as a statutory provision. Learned counsel has contended that there is no evidence and

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the findings of the Inquiry Officer are perverse. He has submitted that PW Ram Bati had contradicted her own statement given in the first instance ^{is} ~~and~~ when she was cross-examined, which should, therefore, ^{be} ~~be~~ read as a whole. He has also referred to the evidence of a number of witnesses for example, PWs 1, 5 and 7 to show that they have given somewhat different statements and, therefore, according to him, the findings of the Inquiry Officer are perverse. Shri Shanker Raju, learned counsel, has, therefore, vehemently submitted that in the light of these infirmities in the departmental proceedings, the impugned orders should be quashed and set aside with consequential benefits.

4. The above contentions of the applicant have been refuted by the respondents. According to them, the applicant had committed gross misconduct in the discharge of the official duties for which a departmental inquiry has been held in accordance with the Rules.

5. Shri Girish Kathpalia, learned counsel for the respondents, has submitted the original departmental inquiry records which have also been shown to the learned counsel for the applicant during hearing. He has submitted that there was no separate P.E. report other than the report of the SHO, Kashmiri Gate dated 1.9.1990 which statement has also

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been supplied to the applicant. He has submitted that the applicant was well aware of the facts which have been given in the statement of SHO dated 1.9.1990. We have also seen the departmental records and are satisfied that the preliminary enquiry report which the applicant has alleged was not given to him, is only the statements/report of SHO dated 1.9.1990 indeed which have been given to the applicant. In view of these facts, the contention of the learned counsel for the applicant that the departmental inquiry is vitiated on account of the preliminary enquiry report not having been given to him is without any basis and is accordingly rejected.

6. We have also seen the documents on record with regard to the contentions of the learned counsel for the applicant that there has been violation of Rule 16 (v) and (viii) of the 1980 Rules. We are unable to agree with the contentions of the learned counsel for the applicant that the Inquiry Officer can only ask questions of the witnesses provided they are ^{the} defence witnesses as provided in Rule 16 (v) of the 1980 Rules. Rule 16 (viii) of the 1980 Rules provides that after the defence evidence has been recorded and after the accused officer has submitted his final statement the Inquiry Officer may examine any other witness to be called "court witnesses" whose testimony he considers, necessary for clarifying certain facts not already covered by the evidence brought on record in the presence of the accused officer who shall be permitted to cross-examine

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all such witnesses and then to make supplementary final defence statement, if any, in case he so desires. Rule 16(v) provides that the Inquiry Officer shall also frame questions which he may wish to put to the witnesses to clear ambiguities or to test their veracity. We are unable to agree with the contentions of the learned counsel for the applicant that the questions that may be put to witnesses by the Inquiry Officer under this sub-clause is only confined to defence witnesses and not generally to all witnesses i.e. prosecution and defence witnesses who appeared before him. There does not appear to be any such restriction on the Inquiry Officer framing questions to clarify ambiguities or test the veracity of the evidence from the witnesses. Accordingly, the contention of the learned counsel for the applicant that the Inquiry Officer cannot put questions to the prosecution witnesses under Rule 16(v) is without any basis and is accordingly rejected. On perusal of the relevant documents and records, we also do not find any substance in the allegations that merely because the Inquiry Officer himself has stated that he had cross-examined the witnesses he had assumed the role of the prosecutor so as to vitiate the departmental proceedings. The observations of the Supreme Court in Re Reference under Article 317(1) of the Constitution (supra) relied upon by the applicant that the evidence of each of the witnesses has to be considered in their totality and a part of ^a sentence in their deposition cannot be allowed to be picked up in isolation and analysed

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and scanned as a statutory provision, are relevant.

Accordingly, we do not find any force in the contentions of the learned counsel for the applicant that on these grounds the disciplinary proceedings are vitiated so as to warrant any interference in the matter.

7. Shri Shanker Raju, learned counsel for the applicant, has very vehemently contended that the statement of the SHO Kashmiri Gate dated 1.9.1990 in which he had referred to the statements of some of the witnesses is only a statement but not the preliminary inquiry report. We have perused the original records which have also been shown to the learned counsel for the applicant. We are satisfied that the preliminary inquiry report/statement of the SHO/Kashmiri Gate dated 1.9.1990 has been furnished to the applicant. In this regard, we agree with the submissions of Shri Girish Kathpalia, learned counsel, that the applicant has referred to these statements in detail in his representations and cannot, therefore, contend that this report/statement of 1.9.1990 has not been furnished to him. The contention to the contrary raised by the learned counsel for the applicant is without any merit and it is accordingly rejected.

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8. We have also considered the other contentions of the learned counsel for the applicant but we do not find any merit in the same. We are ^{also} unable to agree with the contentions that the findings of the Inquiry Officer ^{and the competent authorities} are perverse or arbitrary or not based on any evidence which in any way justifies any interference in the matter. C.A. is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

V. Ramakrishnan
27/11/21

(V. Ramakrishnan)
Vice Chairman(A)

'SRD'