

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1411/94

New Delhi, this the 4th day of December, 1998.

Hon'ble Mr. K. Muthukumar, Member (A)
Hon'ble Mr. J.S. Dhaliwal, Member(J)

Ex-Constable Brahm Singh
No.2021/DAP

...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

1. The Lt. Governor of Delhi
through Addl. Commissioner of Police,
& Another ...Respondents

(By Advocate Shri Anil Singal, proxy for Sh. Anoop
Bagai, Advocate).

1. To be referred to the Reporter or not? YES/NO
2. To be circulated to other Benches of the Tribunal
or not? YES/NO

(J.S. DHALIWAL)
Member(J)

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Hon'ble Mr. K. Muthukumar, Member (A)
Hon'ble Mr. J.S. Dhaliwal, Member (J)

Ex-Constable Brahm Singh
No.2821/DAP
Son of Shri Mahabir Singh,
R/o Village & P.O. Badhari
Distt/ Muzaffarnagar (UP).
...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

1. The Lt. Governor of Delhi
through Addl. Commissioner of Police,
Armed Police & Training,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. The Dy. Commissioner of Police,
3rd Bn. DAP New Police Lines,
Kingsway Camp,
Delhi-110 007.Respondents

(By Advocate Shri Anil Singal, proxy for Sh. Anoop Bagai, Advocate).

O R D E R

Hon'ble Mr. J.S. Dhaliwal, Member (J):

Applicant, Shri Brahm Singh, while working as Constable under the respondents is alleged to have been caught on 7.5.92 while on duty red handed while taking bribe from a relatives of under trial. The money was recovered from his pocket and as per the summary of allegations served on him, (Annexure A-4) he admitted the fact in presence of Inspector D.K. Bhardwaj and Inspector R.P.S. Rana about the fact of accepting the money for providing food to the under trials, from their relatives. The summary of allegations also mentions that he was not wearing his own name plate but was wearing the name plate of Virender Singh instead. On these the allegations were served on him for gross misconduct, and

malpractice indulged in with malafide intentions. It also mentions that this is gross misconduct and remissness on his part and is unbecoming of police officer which renders him liable to be dealt with departmentally under Section 21 of the Delhi Police Act, 1978. A departmental enquiry under the Delhi Police (Punishment & Appeal) Rules, 1980 was conducted and after finding the charges proved vide Annexure A-1 dated 30.11.93 the following order was passed by the disciplinary authority:

"Keeping in view the above discussion, it is evident that reply submitted by the defaulter is not convincing and the E.O. rightly held him guilty of the charge. The defaulter Constable was also heard on O.R. on 29.9.93 where he did not putforth any fresh plea and pleaded for mercy. In view of the facts and circumstances I am of the opinion that the act of the Constable has not only tarnished the image of police department but had also caused bad effect on other police personnel. The Constable is an incorrigible type and deserve no sympathy. I, therefore, order to dismiss Constable Brahm Singh No.2621/DAP from service with immediate effect. His suspension period from 7.5.92 onward is also decided as period not spent on duty for all intents and purposes."

He filed an appeal which has been rejected by the appellate authority vide the orders dated 11.4.94 endorsed to various corners, including the applicant on 12.4.94 (Annexure A-2). 2. Through the present C.A. the applicant challenges the said order of dismissal from service (Annexure A-1) and the appellate order (Annexure A-2) with a prayer to quash the orders at Annexure A-1 and Annexure A-2 with a direction to respondents to reinstate him in service w.e.f. 30.11.93 alongwith all consequential

benefits, including back wages and to treat the period of suspension as spent on duty for pay and allowances.

3. Though he has raised some grounds in the OA which were basically based on facts, at the time of arguents the learned counsel has argued the case of the applicant only on two grounds, (a) that the respondents have violated the provisions of Rule 16 (i) of the Delhi Police (Punishment & Appeal) Rules, 1980 and that would render the proceedings void or in the alternative the enquiry proceedings be held to be vitiated; (b) that no finding has been recorded that the applicant is guilty of grave misconduct and, therefore, the severest kind of penalty of dismissal from service cannot be sustained.

4. The respondents have filed a reply contesting the case of the applicant, to which no rejoinder has been filed by the applicant.

5. We have heard the learned counsel Shri Shankar Raju for the applicant and Shri Anil Singhal, proxy for Shri Anoop Bagai, for the respondents and with their able assistance have examined the material on file.

6. Since violation of Rule 16 (i) of the Rules aforesaid is alleged the relevant portion is being reproduced:

"16(i)The Enquiry Officer shall prepare a statement summarising the misconduct alleged against the accused officer in such a manner as to give full notice to him of the circumstances in regard to which evidence is to be regarded(?) Lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon or prosecution shall be attached to the summary of misconduct. A copy of the summary of misconduct and the lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution will be given to the defaulter free of charge."

7. It has been very strongly argued by the learned counsel that this rule provides that enquiry officer shall prepare a statement summarising the misconduct alleged, which in this case, is not disputed to have been shown in the form of summary of allegation (Annexure A-IV) and that with it he is also required to give brief details of evidence to be led by the department alongwith the lists of prosecution witnesses apart from the documents to be relied upon. It is stressed that if a copy of such brief details of the evidence to be led is not given alongwith the summary of allegation and the lists of prosecution and the documents, the enquiry be held to be void. The learned counsel for the applicant has placed reliance on the judgement by this Bench in OA 80/94 and OA 338/94 dated 26.8.97 - Ex. Constable Dheeraj Singh Vs. Lt. Governor etc. etc. This judgement has been followed by another Bench in OA No. 2596/97 dated 27.11.98 - Ex. Constable Ashok Kumar Vs. Secretary, Ministry of Home Affairs & Ors.

8. We have carefully examined the said judgements. In the present case we find that the facts are distinguishable from those cases. In this case alongwith the summary of allegations, list of PWs has been given and while giving list of documents, detailed statements of the said PWs have been annexed therewith and supplied to the applicant. It is argued that the detailed statements of the said PWs will not satisfy the provisions of this rule. We find that in the judgements relied upon by the learned counst, there is nothing to indicate that the detailed statements of the witnesses relied upon by the department had been supplied. The relevant portion of the order is reproduced:

"The learned counsel for the respondents fairly conceded that as in the case of Soma Kumar Vs. Union of India, O.A. No.812/1991, decided on 29.9.1995 by this Tribunal; so in the present two cases also the lists of PWs together with the documents to be relied on by the prosecutuion and summary of allegations were supplied to the applicants but the brief details of the evidence to be led by the PWs were not supplied to them."

9. This aspect was held to be violative of the provisions of Rule 16 (i) supra. We put to the learned counsel for the applicant specifically that if the applicant knows what are the statements to be made in detail by the PWs, would small gist of the same given in brief would improve the fairness of the departmental enquiry or conversely whether not giving such a brief summary alongwith the detailed statements of the PWs as to what they would be deposing to has caused any prejudice to the applicant. Answer to this query obviously was evasive. Reading of the provisions of this Rule itself clarifies, as

reproduced above, that the intention behind giving statements summarising misconduct alleged with brief details of the evidence to be led alongwith documents to be relied upon is "to give full facts to him of the circumstances in regard to which evidence is to be recorded. We not only find the facts of the case distinguishable but are of the opinion that no prejudice has been caused to the applicant by non-summarising the details in precise form when detailed deposition of those PWS recorded in preliminary enquiry had been supplied to the applicant. If the macro description is available with the applicant that would include the micro description supposed to be made available to put him on notice.

10. The very intention of holding departmental enquiries, as is known from the law settled, that a Government servant in cases of grave misconduct should be given a very fair opportunity to defend himself and that the departmental enquiry should be very fair. With this specific idea enshrined in Article 311, the rules provide for procedure to conduct such departmental enquiries and there are different sets of rules for different departments. But the intention behind all these is that the government servant must be given fair opportunity and an impression should not be created that somebody has been visited with a penalty without providing a fair chance of defending himself. In the present case we find that nothing is there on record which may indicate that some prejudice has been

caused to the applicant by not summarising or giving him in short as to what was to be stated by the Pws when the detailed statements thereof were supplied to him. We are of the opinion that bringing on record of previous statements recorded from framing of charge against the delinquent official does not vitiate the enquiry proceedings. We are fortified in this view by Judgments of the Hon'ble Supreme Court in the case of K.L. Shinde vs. State of Mysore (1976) to SLR 102 (SC), Govt. of U.P. vs Om Prakash AIR 1970 SC 679. In State of UP vs. O.P. Gupta, supra the Apex Court observed thus:

12. " This Court has repeatedly laid down that the fact that the statements of the witnesses taken at the preliminary stage of the enquiry were used at the time of the formal enquiry does not vitiate the enquiry if those statements were made available to the delinquent officer and he was given opportunity to cross-examine the witnesses in respect of those statements- seeks State of Mysore v. Shivbaappa, 1963-2 SCR 943 =(AIR 1963 SC 375) it is clear from the records of the case that the respondent had been permitted to go through the statements recorded from the witnesses by the Deputy Commissioner and prepare his own notes; he was supplied with the English translation of those statements and he was permitted to cross-examine those witnesses in respect of those statements. It may be that there were some mistakes in the translations. In our opinion those mistakes could not have vitiated the enquiry. They were quite trivial mistakes. We agree with the trial Court that the enquiry officer had given reasonable time to the respondent to prepare his case."

11. During the course of arguments a plea was developed, which is not in the grounds of challenge in the OA that the supply of statements of these Pws is not required under Rules, either Rule 15 or Rule 16, and that such statements can be brought

on record only if the said PWs are no longer available. It is argued that giving these copies to the applicant is itself illegal. We find that the contention is opposed to the service jurisprudence accepted in this country. The requirement of justice in fact is that if statements of some PWs have been recorded earlier in a preliminary enquiry and those very PWs are to be examined during the departmental enquiry, the charged government official should be given copy of the same so as to put him on notice as to what they had stated earlier and for enabling him to cross-examine them. Supply of that statement of these witnesses in fact is to ensure a fair enquiry and we find that supply of the statements cannot be held to be violative of either of the provisions of Rule 15 or Rule 16. From examination of the record it is clear that the competent authority has not placed reliance on the statements recorded in the preliminary enquiry for arriving at his conclusion and recording findings.

12. The other contention raised by the applicant that the disciplinary authority and the appellate authority have not recorded that he was guilty of grave misconduct is found to be factually incorrect. Requirement of Rule 8 of the said Rules provides that dismissal or removal of service shall be awarded for the act of grave misconduct rendering the police official unfit for police service. Grave misconduct in one case of Sukhbir Singh vs. Dy. Commissioner of Police, New Delhi (1984 (2) SLR 149) was interpreted to mean indicating incorrigibility

and unfitness for police service readwith Rule 10 which provides for consideration of the record of service. Firstly, acceptance of bribe by a police official, without the competent authority required to say that it is a grave misconduct, can be accepted by the court of law that it is an act of grave misconduct. Court can take judicial notice of such a misconduct, if proved, and if an order of dismissal or removal is passed on the basis of such misconduct proved, it cannot be interfered with for the reasons that the word 'misconduct' has actually not been used by the competent authority while passing the punishment order. Such a situation can be visualised where a service record of the person is excellent and he is found guilty of an act of misconduct, which per se can be interpreted to be not grave. Secondly, we find that the disciplinary authority while choosing to punish the applicant has, in due consideration of the requirements of Rules 8 and 10 has recorded that in view of the facts and circumstances the act of the Constable has not only tarnished the image of police department but has also caused bad effect on other police personnel. He has recorded that the applicant is an incorrigible type and deserves no sympathy. In our opinion, this fairly takes into consideration the requirements of Rules 8 and 10 which include consideration of discipline in the Police Force.

13. No other ground has been urged. Even otherwise we find from the OA that the grounds mentioned are factual and based on appreciation of evidence and the Tribunal is not entitled to re-appreciate the evidence.

14. For the reasons mentioned above we find no merit in the OA, which is accordingly dismissed. No costs.

(J.S. Dhaliwal)
Member (J)

(K. Muthukumar)
Member (A)

'Sanju'