

Central Administrative Tribunal  
Principal Bench  
New Delhi

O.A. No. 173/94

Decided on 28.6.99.

Shri Vijay Singh ..... Applicant

(By Advocate: Shri G. D. Gupta. )

Versus

Govt. of NCT, Delhi & Ors. Respondents


(By Advocate: Shri Anresh Mathur. )

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J).

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not? No.

  
(S.R. ADIGE)  
VICE CHAIRMAN (A)

Central Administrative Tribunal  
Principal Bench

O.A. No. 173 of 1994

New Delhi, dated this the 28<sup>th</sup> JUNE 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)  
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri Vijay Singh,  
S/o Shri Hukam Singh,  
R/o Vill. & P.O. Jharsa,  
Dist. Gurgaon,  
Haryana.

... Applicant

(By Advocate: Shri G.D. Gupta)

Versus

1. Govt. of NCT, Delhi through  
Lt. Governor,  
Raj Niwas, Delhi-110054.
  2. The Commissioner of Police,  
Police Headquarters,  
M.S.O. Building, I.P. Estate,  
New Delhi-110002.
  3. The Dy. Commissioner of Police,  
South West District,  
New Delhi.
- ... Respondents

(By Advocate: Shri Amresh Mathur)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns Respondents' letter dated 27.11.90 (Ann. A-6), the I.O's Report dated 5.5.91 (Ann. A-7), the Disciplinary Authority's order dated 7.4.92 (Ann. A-11) and the Appellate Authority's order dated 13.11.92 (Ann. A-13) and prays for reinstatement with consequential benefits.

2. Upon a complaint dated 17.2.90 received from one Shri B.S. Chauhan, resident of 1/351 Sadar Bazaar, Delhi Cantt., New Delhi-110010 that applicant received Rs.700/- from him to show favour to him by not taking any legal action in respect of

a dispute between a truck driver and him, applicant was suspended by order dated 22.2.90 (Ann. A-1) and a Preliminary Enquiry under Rule 15(1) Delhi Police (P&A) Rules was ordered on 2.3.90 (Ann. A-2).

(5)

3. As the P.E. reportedly substantiated the charges against the applicant of not taking legal action by misusing his official position and accepting illegal gratification and as the evidence and materials available on the file were not sufficient to prosecute the defaulter in a Court of Law, the Addl. Commissioner of Police decided to deal with the case departmentally in accordance with Rule 15(2) Delhi Police (P&A) Rules vide order dated 1.8.90 (Ann. A-4).

4. Accordingly by letter dated 27.11.90 (Ann. A-6) the summary of allegations was communicated to applicant that while posted at P.S. Delhi Cantt., D.D. entry No. 10-A dated 16.2.90 had been entrusted to him for enquiry and necessary action regarding a quarrel between a truck driver one Shri Durga Prasad and Shri Balbir Singh Chauhan, Netar Pal and Ved Pal etc., in which applicant did not take legal action and accepted Rs.700/- from Shri B.S. Chauhan and the matter got compromised by using pressure tactics, and he failed to register case and thus misused his official position in the discharge of Govt. duty.

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5. The I.O. in his finding dated 5.7.91 (Ann.A-7) held the charge against applicant stood proved beyond any shadow of doubt.

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6. A copy of the findings was furnished to applicant vide notice dated 30.7.91 (Ann. A-9) for representation, if any.

7. Applicant submitted his representation dated 6.8.91 (Ann. A-10). After considering the same the Disciplinary Authority by his order dated 7.4.92 (Ann. A-11) rejected the contents of the representation and accepted the findings of the I.O and held that as the charge stood proved against applicant was very grave which rendered him unsuitable for further retention in service, dismissed him from the Police force. Against that order applicant filed an appeal dated 1.5.92 (Ann. A-12) which was also rejected by the Appellate Authority's order dated 13.11.92 (Ann. A-13) against which this O.A. has been filed.

8. We have heard applicant's counsel Shri G.D. Gupta and respondents' counsel Shri Amresh Mathur.

9. The main ground taken by Shri Gupta is that there has been a violation of the principles of natural justice in the conduct of the proceedings because, copy of the Preliminary Enquiry report was not supplied to the applicant despite his written request dated 12.12.90 (Ann. A-14) for supply of the same, as a result of which he could not defend himself effectively.

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✓ 10. We have considered this ground taken by Shri Gupta very carefully.

11. We note that by order dated 2.3.90 (Ann. A-2) ACP, Vasant Vihar had<sup>^</sup> been entrusted with the job of conducting a preliminary enquiry into the complaint made by Shri B.S. Chauhan and he submitted his report. It is on the basis of this Preliminary Enquiry report that proceedings were initiated against applicant by order dated 1.8.90 (Ann. A-4). However, the Preliminary Enquiry report was not on the list of documents annexed with Respondents' letter dated 27.10.90 although the ACP, Vasant Vihar was one of the witnesses who was to depose before the enquiry against applicant. We have also noted that a copy of the Preliminary Enquiry report was not furnished to applicant despite his written request for the same vide letter dated 12.12.90 (Ann. A-14).

12. In this connection we also find that the ACP, Vasant Vihar was PW-9, who stated in evidence that by order dated 2.3.90 the Preliminary Enquiry was entrusted to him in regard to the complaint against applicant, and after completing the PE he had submitted his report to DCP (SW). During the course of the PE he recorded the statement of some PWs who were on the PE file. He had seen the statement of PWs so recorded during the course of enquiry which were exhibits PW-2/A, PW-3/C etc. He

was also cross-examined by the S.I. and his examination/cross-examination has been referred to in the I.O's finding.

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13. Non-supply of a copy of the PE report was one of the specific grounds taken by applicant in his appeal dated 1.5.92 (Ann. A-12) as is clear from Para (D) thereof under the heading "Violation of Principles of Natural Justice", but the Appellate Authority in his order dated 13.11.92 (Ann. A-13) has not even cared to devote one sentence to this ground raised by applicant. In fact he has dismissed all the grounds taken in the appeal with the following Paragraph.

"I have gone through the appeal, parawise comments and other relevant record and also heard the appellant in O.R. The pleas put forward by the appellant are not convincing; the charges against him are fully established during the D.E. proceedings and I do not see any fresh plea or point requiring review of the punishment awarded. The appeal is without any force and substance and the appeal is, therefore, rejected."

14. Non-supply of the copy of the enquiry report has also been taken as one of the specific grounds in the present O.A. as is clear from Para 5(E), wherein it has been stated that it is non-supply of copy of enquiry report that prejudiced applicant as he could not cross-examine the PWs effectively and therefore could not give effective evidence.

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15. This has not been effectively denied by Respondents in the corresponding paragraph in their reply which is quoted verbatim as follows:

"Para 5.e of the application is not admitted. The Preliminary Enquiry is a fact nature of defaulter and identity of the defaulters, to collect prosecution evidence, to judge the quantum of default and to bring relevant documents on record to facilitate a regular departmental enquiry."

16. The question whether the non-supply of a copy of the PE report to the delinquent, where the author of that report was examined as a PW in the P.E., was sufficient to vitiate the departmental proceedings, was examined by a Division Bench of this Tribunal in O.A. 874/96 Prem Pal Singh Vs. Union of India & Others in which one us (Shri S.R. Adige, Member (A) as he then was) was a member. In its order dated 5.3.97 while allowing that O.A., the Bench noticed that Respondents' own instructions dated 1.5.80, Para (ii) of which ran as follows:

"The officer who had conducted the preliminary enquiry was cited and examined as P.W., but copy of his preliminary enquiry report was not furnished by the E.O. to the defaulter denying him an opportunity to cross-examine the witness. This has affected a proper cross-examination of such witness and goes against the principles of natural justice vitiating the departmental enquiry ab initio. Copy of P.E. Report in such cases should have been supplied suo-moto at the initial stage along with the summary of allegations even if no specific request is made by the defaulter."

In the present case we have noticed that in spite of a specific request made by applicant for a copy of the P.E. the same was not supplied to him.

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17. Relying upon several other rulings the Bench in Prem Pal Singh's case (Supra) held that non-supply of the PE Report to the delinquent when Respondents' own circular dated 1.5.80 required it to be supplied, was an infirmity grave enough to vitiate the entire D.E. Nothing has been shown to us to establish that the aforesaid order in Prem Pal Singh's case (Supra) has been stayed, modified or set aside.

18. In this connection one or two other points also need to be mentioned.

19. On going through the I.O.'s finding, we find that the I.O. in his summary contained in six points just before the conclusion, has dismissed the entire testimony of the Defence Witnesses in the following words:

"As the defaulter (sic) are always interested witnesses and support the defaulter, in the same way the DWs have supported the defaulter. Their evidence cannot be relied upon. After careful(ly) analysis and comparison of the prosecution evidence with evidence I am of the opinion that the defence evidence has not any weight."

20. Departmental Proceedings are quasi judicial in character and the I.O. who acts on behalf of the Disciplinary Authority <sup>is required</sup> ~~is required~~ to enquire into the matter impartially, and objectively, and weigh

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the evidence of each witnesses carefully, whether from the prosecution or from the defence, before accepting or rejecting the same. While doing so he is required to give reasons for coming to any conclusion, and these reasons should stand judicial scrutiny. No generalised statements of the type extracted above should have been allowed to pass muster by the Disciplinary Authority, which dismisses the entire defence evidence by such cryptic phrases and tends to brand all the defence witnesses in a single stereotype.

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21. We have also noticed earlier, that the Appellate Authority has not discussed the various points taken in the appeal, although the appellate order is required to be a detailed, speaking and reasoned one, and instead he has dismissed all the grounds taken in the appeal in a single cryptic paragraph.

22. In the light of the above, this O.A. succeeds. The impugned report of the I.O. dated 5.5.91 to the extent that it dismisses the entire defence evidence in a single generalised paragraph, without giving reasons which can stand judicial scrutiny; the Disciplinary Authority's impugned order dated 7.4.92 as well as the Appellate Authority's impugned order dated 13.10.92 are quashed and set aside. Applicant should be reinstated within two months from the date of receipt of a copy of this order. The intervening period between the date of dismissal and the date of reinstatement

See modified para 22 and para 23 on the back of this sheet

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should be treated in accordance with rules and instructions. It will be open to Respondents to proceed against applicant in accordance with law, if so advised. No costs.

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23  
See modified  
Para 22 &  
amendment added  
Para 23  
on the basis of  
previous page 6

*Lakshmi Swaminathan*  
(Mrs. Lakshmi Swaminathan)  
Member (J)

*S.R. Adige*  
(S.R. Adige)  
Vice Chairman (A)

/GK/