

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI**



OA No.1779/1994

Reserved on 02.04.2014
Pronounced on 22/07/2014.

Sh.

HON'BLE SHRI SUDHIR KUMAR, MEMBER (A)
HON'BLE SHRI A.K.BHARDWAJ, MEMBER (J)

Jeet Singh (404/DAP) Ex.Constable
S/o of Shri Niranjana Singh,
R/o Village & Post Office Gungakheri,
P.O.Babli, Distt.Meerut (UP).

...Applicant.

(By Advocate: Shri Arun Bhardwaj)

Versus

1. Deputy Commissioner of Police,
1st Bn., DAP, New Police Line,
Kingsway Camp, Delhi.
2. Addl. Commissioner of Police,
(AP & T), Police Headquarters,
I.P.Estate, NewDelhi.

...Respondents.

(By Advocate: Shri N.K.Singh for Ms.Avnish Ahlawat)

ORDER

Sh.Sudhir Kumar, Member (A):

This is the third round of consideration of this O.A. before this Tribunal. The applicant had filed this OA on 07.09.1994. The case before the D.B. got referred to a Full Bench on certain legal issues, which was decided along with 18 batch cases by the Full Bench on 28.07.1999. with the following findings:

"(6) O.A.No 1779/94 (S.No.16):

Applicant was charge-sheeted for the misconduct of mischief, refusal to perform Govt. duty, rumour mongering, spreading disaffection and indiscipline among the rank and file of the Battalion, because he was dissatisfied with his posting to general duties. The misconduct was found to be very serious in nature and the retention of the applicant in police service as held to be highly detrimental to the interest of overall discipline. The impugned order of punishment of dismissal from service indicates that the misconduct was grave in nature and the applicant was unfit for police service. The retirement of Rule 8(a) of the Delhi Police Rules

Sh.

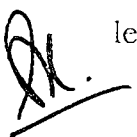
was, thus, fulfilled and, therefore, the punishment of dismissal from service calls for no interference."

2. When the 19 Batch cases were returned for adjudication separately, a prayer was made that this OA, along with another OA No.1823/1994, could be de-linked from the bunch of the other cases and heard separately, and accordingly it was ordered on 12.07.2000 that these two cases be heard separately. Thereafter, the judgment in this O.A. alone was pronounced on 10.08.2000 by a Coordinate Bench. We cannot reproduce portions of that judgment and order here because it has since been set aside by the Hon'ble High Court. An R.A. No.286/2000 was, thereafter, filed alleging that the Tribunal's order dated 10.08.2000 did not adjudicate on applicant's plea that an *ex parte* enquiry which was conducted against him was illegal, but the RA was rejected in circulation since that ground had already been dealt with in Para-12 of the order passed on the O.A. Therefore, the R.A. was rejected in circulation. The applicant, thereafter, approached the Hon'ble Delhi High Court in W.P.(C) No.2752/2001, which came to be disposed off by the Hon'ble High Court through its judgment dated 29.07.2013 in the case of **Jeet Singh vs. Additional Commissioner of Police and Others**. The Hon'ble Delhi High Court had examined the charge as framed against the applicant by the Inquiry Officer, and noticed that one of the issues concerned four objectionable bills, which were the subject matter of a summary of allegations, and that there has been two documents entitled "Summary of Allegation" which had been served upon the applicant, the contents of both of which were reproduced by the Hon'ble High Court in its judgment. The Hon'ble Delhi High Court, however, found that the impugned order passed by this Tribunal on 10.08.2000 had recorded that the charge against the Writ Petitioner was not in respect of the objectionable bills, and the Tribunal had thereafter refused

to discuss the issue pertaining to the objectionable bills. Having held that the Tribunal had misled itself, the Hon'ble Delhi High Court disposed of the Writ Petition, quashing the impugned order dated 10.08.2000, as well as the order dated 16.02.2001, through which Review Application had also been rejected. Thus, the Original case was ordered to be restored before this Tribunal, after a gap of 13 years, for being heard once again.

3. In the course of hearing on 17.09.2013, the learned proxy counsel for the arguing counsel for the respondents submitted that in Para-10 of its judgment, the Hon'ble Delhi High Court had given full liberty to this Tribunal to look into the entirety of the facts of the O.A., stating that **"needless to state that all the contentions urged in the Original Application would be decided by the Tribunal"** and, therefore, the consideration of the case cannot remain confined to only the four objectionable bills, as had been noted by the Hon'ble Delhi High Court's judgment in another paragraph.

4. Since the entire order dated 10.08.2000 passed earlier in this OA has been set aside, we have to once again record the facts of this case. The applicant was initially working in the MT Section of Delhi Police. Four objectionable bills were detected by the supervisory staff, as a result of which, the applicant was transferred internally by the respondents, removed from the MT Section, and posted to General Duty. The applicant was upset, and the respondents have alleged that he resorted to a display of his annoyance with his transfer, and refused to perform government duty, indulged in rumour mongering, spreading disaffection and indiscipline among the rank and file of the battalion, and at his instance news items also appeared in the newspaper "Rashtriya Sahara" levelling some serious allegations against a Gazetted Officer of the



Batallion. A charge was sought to be framed against him, which required a Summary of Allegations in support of the charge, to be served upon him first, as per the Delhi Police (Punishment & Appeal) Rules, 1980 [DP (PA) Rules, in short]. But, as was argued on behalf of the applicant before the Hon'ble Delhi High Court, and before us also, two documents entitled "Summary of Allegations", having different charges were issued to him. In respect of the enquiry ordered on 27.05.1993, the Inquiry Officer gave his findings on 02.08.1993, holding that the charge was proved. The applicant submitted a representation against that charge on 20.08.1993, and the Disciplinary Authority passed the impugned order dated 22.10.1993 dismissing him from the Delhi Police, and further directing that the period of his suspension from 03.09.1992 to till date i.e. the date of issuance of impugned order, will not be treated as spent on duty.

5. The applicant is aggrieved that the Enquiry officer did not give sufficient reasons for arriving at his findings that the charge against the petitioner was proved. He is further aggrieved that the Disciplinary Authority also in its order dated 22.10.1993 did not give any sufficient reasons as to why it agreed with the findings of the Enquiry Officer to dismiss him from the Police force by a non-speaking order. The applicant, thereafter, raised various grounds in paras 5(A) to 5(S) in his OA, bringing in ~~the~~ lots of other grounds based on unrelated facts, and also names of persons not named by him as opposite party respondents, and in the result, the applicant had prayed for the following reliefs:

"a) Call for the records of the case and quash/set aside the enquiry report dated 02.08.93 (Annexure-P), the impugned order of dismissal dated 22.10.1993 (Annexure-A) and the impugned appellate order dated 02.05.94 (Annexure-B).

b) reinstate the applicant into service with all consequential benefits as if the above mentioned impugned



orders were not passed given him the benefit of seniority, monetary and promotions,

c) pass such order and further orders as deemed fit and proper in the circumstances of the case to meet the ends of justice."

6. Annexure A of the OA was the order of the Disciplinary Authority, which the applicant has assailed, as, according to him, it has taken into consideration extraneous matters. The applicant had, in an application addressed to Shri Karnail Singh, the then DCP/1st Bn. Delhi Armed Police, with a copy to Shri G.R.Gupta, the then Sr.Addl. CP/A.P.&T., Delhi, alleged that one of the senior officers was responsible for the assassination of late Smt.Indira Gandhi, which had nothing to do with the charge, as levelled against the applicant, but it had been taken note of by the Disciplinary Authority in its speaking order. But, it is seen that this was not the only matter which had been taken into consideration by the DCP while passing the impugned order. The Appellate Order placed at Annexure B of the OA also shows that the applicant's Appellate Authority had gone through the records even more carefully, and recorded his findings after giving a personal opportunity to the applicant for being heard in the Orderly Room, and then the appeal was rejected. The relevant portion of the Appellate Order may be reproduced here as below:

"The charges against the appellant was so serious that benefit of this minor mistake of the disciplinary authority could not be granted to the appellant. The third contention of the appellant is admitted to the extent that the document was served with two summaries of allegations and list of documents. **The enquiry officer did not put his signatures on first summary of allegations and list of documents served upon the appellant and it was mandatory under Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 to supply the summary of allegations and list of documents under the signatures of Enquiry Officer. Therefore, the second summary of allegations and list of documents were served upon the appellant duly signed by enquiry officer. Moreover, the summary of allegations was never changed at any stage and the E.O. had conducted and completed**



Re. Rule 16 of the DP (DA) Rules, 1980, and has to be discarded as non-est in law. As per Rule 16 of the DP (DA) Rules, 1980, it is the Enquiry Officer appointed to enquire into the conduct of a Police Official who has to frame such a "Summary of Allegations", serve it upon the delinquent Police Official, obtain a reply, and then, if not satisfied with the reply received from the delinquent Police Official, he alone has to frame the charge, serve it upon the delinquent, and then proceed ahead with the departmental enquiry into that charge. Only for the purpose of undertaking such a departmental enquiry on *ex-parte* basis, in the event of the delinquent ~~not~~ cooperating with the conduct of the D.E., the Enquiry Officer has to obtain the permission of the Disciplinary Authority for proceeding ahead with the D.E. on an *ex-parte* basis.

9. Even the applicant has alleged that he had never been served the properly attested copy of the first "Summary of Allegations" as has been noted by him at the bottom of page 41 stating **"received on 23.01.1993 without attested"**. But, even though the documents accompanying the first "Summary of Allegations" had not been properly attested, still the applicant had replied to that first "Summary of Allegations" through Annexure 'E', which was addressed to the Enquiry Officer through Annexure pages 42 to 48. Therefore, it cannot be the applicant's case that he was ever denied any opportunity to defend himself, and to be able to present his case in respect of any document, though it may have been a legally defective document, which had been served upon him by the Respondents at any stage of the proceedings against him.

Re. 10. It is, therefore, quite clear that the applicant had had an opportunity to reply even to the legally defective "Summary of Allegations", which was attested on 13.12.1992 and received by him on 23.01.1993. The second "Summary of Allegations" had been served upon



the D.E. under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980. As regards his fourth contentions, no preliminary enquiry was conducted against the appellant. Therefore, there was no question of supplying of copies of P.E. to the defaulter Constable."

(Emphasis supplied)

7. During the course of hearing, our attention was drawn to the two sets of documents titled as "Summary of Allegations", one at page 39 signed by the ACP concerned on 13.12.1992, which the applicant had submitted that he had received on 23.01.1993 along with list of documents and list of witnesses etc. annexed to that. The second "Summary of Allegations" ~~was~~ which is at Annexure 'E' at pages 49-50 was signed by the appointed Enquiry Officer Inspector Balbir Singh, and which was received by the applicant on 12.02.1993. It stated as follows:

"1) In November, 1991, four objectionable bills in M.T.Section were detected by the supervisory staff and Const.Jeet Singh, No.7330/DAP, 404/DAP was removed from M.T.Section and was sent to General Duty by the competent authority.

2) **Enraged at his posting to General Duty, he resorted to mischief refusal to perform Government duties, rumour mongering spreading disaffection & indiscipline among the ranks and file of the Batallion.**

3) **On the instance of Const.Jeet Singh, No.7330/DAP, 404/DAP News Items leveling false, frivolous, baseless and serious allegations against a Gazetted Officer of the Bn. regarding his own harassment and intimidation by a Gazetted Officer, were published in the Hindi Daily "Rashtriya Shara" dated 24/24/25/5/92.**

4) **Thus Const.Jeet Singh, No.7330/DAP, 404/DAP tried for character assassination of a Gazetted Officer knowingly and with ulterior motive."**

8. We have perused carefully both the documents titled "Summary of Allegations." Out of the two sets of documents entitled "Summary of Allegations" as served upon the applicant, the first one appears to have been signed by an officer who had not been designated as the Enquiry Officer to enquire into the alleged misconduct of the applicant.

Therefore, it just cannot be treated to be a document valid in law as per



the applicant by the Enquiry Officer, as per the prescribed procedure, as per Rule 16 of DP (P&A) Rules, which has been reproduced in para 7 above, and was replied by the applicant through Annexure-H dated 20.03.1993, reiterating his earlier submissions, and again pointing out that some of the photocopy documents supplied to him were still not attested. He had further protested that neither the photocopy documents supplied to him were attested nor Hindi translation copies of the same were provided to him.

11. The Enquiry Officer replied to him stating that the additional documents, as requested for by him, through his representation dated 25.01.1993, did not have any concern with the disciplinary enquiry, and the charges framed, and that there was no rule that every single document supplied should be attested. The applicant thereafter failed to attend the enquiry, and the Enquiry Officer sought permission through his request dated 02.04.1993 to complete D.E. on *ex parte* basis. However, on behalf of the D.C.P. the ACP (Administration) advised him on 15.04.1993 to supply to the applicant a copy of the documents sought by the delinquent, attested under his own signatures, and if even thereafter the defaulter Constable still failed to attend the D.E. proceedings, *ex parte* proceedings may be continued against him. The applicant was also separately advised in respect of his representation dated 26.03.1993, directly addressed by the D.C.P., that whatever he has to depose, he may depose in the D.E. only and if he does not face the D.E. before the Enquiry Officer, one sided action of dismissal will be taken against him. The applicant has alleged pre-determination on the part of the ACP/Adj., who had signed this endorsement dated 08.04.1993 through Annexure-L. We may only note here that the Endorsement not being signed by the Disciplinary Authority or the



Appellate Authority, but a junior supervisor officer, may have been technically wrong, but it does not definitely establish a pre-determined mind on the part of the Disciplinary Authority, who has to act in a quasi-judicial manner. The applicant thereafter submitted a detailed submission dated 19.04.1993, before the Enquiry Officer through Annexure-M. He had protested regarding having been served with a second Summary of Allegations, & list of documents and witnesses, without the first "Summary of Allegations" having been cancelled and withdrawn before the departmental enquiry was instituted. He insisted that the copy of the concerned four bills, which had found a mention in a part of the Summary of Allegations, should be supplied to him in an attested form, as on the back of those bills, even his superior officers had certified as corrected, checked etc and he may not be charged in respect of those bills. Several News Papers Articles appear to have followed, in "Sahara Samachar" Part-4 of which series of Articles has been produced by the applicant at page 64 of the Paper Book which includes the dateline dated 27.04.1993.

12. Thereafter, when it was found that the applicant was not cooperating with the conduct of the disciplinary enquiry, and had refused to join the DE on one pretext or the other, and was deliberately avoiding finalizing of the same, the DCP, as his Disciplinary Authority, passed the order dated 27.05.1993 through Annexure-O, ordering that the D.E. against the applicant shall be conducted *ex parte* in order to avoid any further delay. The Enquiry Officer, thereafter, conducted the D.E. *ex-parte*, and submitted his findings as per Annexure-P (Pages 66 to 71 of the Paper Book). The Enquiry Officer had come to the conclusion that the charges of misconduct, indiscipline, insubordination, rumour mongering, attempt to assassinate the character of a senior officer, and going to the Press, stand proved against the defaulter. The impugned



order of his dismissal from service was, thereafter, passed by the Disciplinary Authority, after giving the applicant an opportunity of personal hearing in the Orderly Room.

13. The applicant thereafter gave a very detailed 24 pages' representation by way of statutory appeal against the order of his dismissal dated 22.10.1993, through Annexure A-5, which had been passed by the Disciplinary Authority, as mentioned above. After considering his appeal, the order of the Appellate Authority was passed on 02.05.1994 through Annexure-B, as already mentioned above, and some portions from which have been reproduced in para-6 above.

14. Meanwhile, the applicant had approached this Tribunal in OA No.1364/1993, challenging the order of his suspension dated 03.09.1992, and the subsequent order dated 13.01.1993 of holding of regular departmental enquiry against him. In that OA, he had named Shri A.A.Siddiqui, an Assistant Commissioner of Police, as a private respondent no.3, praying in the relief clause that the orders dated 03.09.1992 and 13.01.1993 be quashed, and the A.C.P. should be proceeded against, on the basis of the complaint filed by him. It was noticed by the Bench that in the meanwhile the enquiry proceedings had been concluded, and the applicant awarded the punishment vide order dated 22.10.1993, dismissing the applicant from service. The learned counsel for the applicant had then sought liberty to withdraw the OA 1393/1993, with liberty to assail the final order of punishment, if so advised, and any other grievance harboured by him in accordance with law. Therefore, that OA was dismissed as withdrawn with liberty as aforesaid.



15. During the course of hearing before us, learned counsel for the applicant submitted on 10.09.2013 that he has filed a bundle of documents at pages 134 to 273 of the OA, purporting to be the statutory appeal filed by the applicant against his dismissal along with its annexures. The respondents did not file any reply to that, as the order of the Appellate Authority had already been passed on that, as discussed above, and had been assailed in the present OA. Further, on 30.01.2014, learned counsel for the respondents had filed a detailed synopsis of the dates of events, and relevant documents, running into 44 pages. In these documents, Annexure P-15 & P-16 were the copies of the orders passed earlier in the OA and RA, which now stand set aside by the Hon'ble Delhi High Court. The respondents had also filed a copy of the Writ Petition No.2752/2001 and its annexures as filed by the applicant before the Hon'ble Delhi High Court, and the counter reply filed on behalf of the respondents there.

16. Heard. The case was argued vehemently on 02.04.2014 and reserved for orders. Earlier, during the course of day-to-day hearings, a query had been raised by the Bench as to whether the respondents could grant any compassionate allowance to the applicant under Rule 41 of the CCS (Pension) Rules. Learned proxy counsel for the respondents informed that the matter had since been considered by the respondents in the light of Rule 41 of the CCS (Pension) Rules and other factors, and the case of the applicant had not been found suitable for the grant of any compassionate allowance being not in the interest of public service, and in view of the serious charges against ~~the~~ him. After conclusion of the hearing, the case was reserved for orders, and liberty was granted to both sides to file written submissions for perusal. On 15.05.2014, learned counsel for the applicant filed 7 pages by way of brief written submissions on behalf of the applicant/petitioner, which also we have



considered, which included a copy of the judgment dated 29.07.2013 passed by the Hon'ble Delhi High Court.

17. We have given our anxious consideration to the facts of the case. As per the DP (PA) Rules, 1980, the charge and the Summary of Allegations have been framed by the Enquiry Officer. We have already held above that the first Summary of Allegations, which was served upon the applicant on 23.01.1993, attested by ACP on 23.12.1992, had not been framed by the Enquiry Officer, and therefore the Summary of Allegations and the list of documents attached at Annexure-D at Page 40 and the list of witnesses at page 41 are *non est* in the eyes of law. The only legally valid document served upon the applicant was the Summary of Allegations served upon him through Annexure-E, which, was prepared and signed by the appointed Enquiry Officer Inspector Balbir Singh on 11.02.1993 and served upon the applicant on 12.02.1993.

18. Of course, after the order passed by the Hon'ble Delhi High Court in WP(C) No.2725/2001, it cannot be viewed by us that the forging of bill was not one of the charges against the applicant. However, as can be seen from the report of the Enquiry Officer, the charge of forging of bills has not been held proved against the applicant, and the charges proved against the applicant relate only to his misconduct, and the charges of indiscipline, insubordination, rumour mongering, attempt to assassinate the character of senior officer. For easy reference the conclusion arrived at by the Enquiry Officer is reproduced below:


"After going through the statement of the prosecution witnesses and other relevant documents, I find the charge of misconduct, indiscipline, insubordination, rumour mongering, attempt to assassinate the character of senior officer and going to the press stands proved against the defaulter."



19. As per the P.Ramanatha Aiyar's the Law Lexicon, 3rd Edition, 2012, the word "charge" signifies an accusation made in a legal manner of legal conduct, either of omission or commission by the personal charged. As had been defined by the Hon'ble Apex Court' in **Birichh Bhuian vs. State of Bihar, AIR 1963 SC 1120**, a charge is not an accusation made or information given in abstract, but an accusation made against a person in respect of an act committed or omitted, in violation of a penal law forbidding or commanding it. In other words, it is an accusation made against a person in respect of an offence alleged to have been committed by him. Again in **Re Lachman Nanda, AIR 1966 MP 261** the Hon'ble Madhya Pradesh High Court had laid down the law that the expression 'charge' includes the element of offence, and also reference to the person who is alleged to have committed it.

20. The word "charge" had been further extensively examined by the Hon'ble Apex Court in the case of **Govinda Menon vs. Union of India AIR 1967 SC 1274** though in the context of All India services (Discipline & Appeal) Rules, 1955. However, it was held by the Hon'ble Apex Court that the word "charges" denotes the accusations or imputations against a member of the service, and should be given wider meaning.

21. Thus neither any charge has been proved, nor any penalty has been imposed against the applicant for forging of the bills. In these circumstances, even if the charge of forging of the bills was there against the applicant, but it was not sought to be proved, and on that basis, no penalty has been imposed upon the applicant for that misconduct. In the circumstances, the plea that the misdemeanor of the applicant for forging of the bills was not taken into account by the departmental authorities in the disciplinary proceedings is of no consequence. The Disciplinary and the Appellate Authorities have also fully applied their





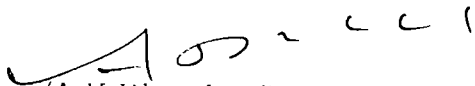
mind to the case of the applicant. We do not find that the case of the applicant has been given only a cursory look and not a proper consideration. The applicant has unnecessarily brought his averments concerning Indira Gandhi's assassination into a DE against him, which related to only his conduct after his transfer from the M.T. Section to General Duty, which transfer, or his conduct, both had nothing to do with Indira Gandhi's assassination. The criminal case of Indira Gandhi Assassination has already been attained finality. Still if there was any material relating to that available with the applicant, he should have approached the Criminal Trial Court trying that case at the appropriate time, and not drag the unsupported allegations of his in the present proceedings.

22. It has been repeatedly held by the Hon'ble Apex Court that the Disciplinary Authorities are the best judges to appreciate the facts, and the Courts and Tribunals should not interfere with that, or themselves try to re-appreciate the evidence laid during the course of DE hearings. We are bound by the law, as laid down by the Hon'ble Apex Court in a catena of cases, which we need not reproduce here once again. Our job in judicial review has to see as to whether the applicant had been provided sufficient opportunity by the respondents to defend himself, and as to whether the proper procedure for conduct of disciplinary enquiry had been followed. We find that the proper procedure for conduct of disciplinary enquiry has been followed by the respondents i.e. the Enquiry Officer, the Disciplinary Authority, and the Appellate Authority, and they had also given personal hearing to the applicant in the Orderly Room before passing their orders. Therefore, finding no fault in the procedure adopted by the Disciplinary Authorities of the applicant, we find no reason to interfere with the orders passed, and also finding no


SR.

(25)

merit in the OA, which is dismissed, but there shall be no orders as to costs.


(A.K. Bhardwaj)
Member (J)

/kdr/


(Sudhir Kumar)
Member (A)