

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1753/2000

New Delhi this the 13th day of July, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Const. Ashok Kumar,
PIS No.28882978),
presently working at
Shift-A, IGI Airport, Tr.II,
New Delhi.

...Applicant

(By Advocate Shri A.K. Singhal)

-Versus-

1. Lt. Governor of Delhi,
Raj Niwas, Sham Nath Marg,
Delhi.
2. Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
3. Addl. Commissioner of Police (OPS),
through Commissioner of Police,
Police Headquarters, I.P. Estate,
New Delhi.
4. D.C.P. I.G.I. Airport,
New Delhi.

...Respondents

(By Advocate Shri Devesh Singh)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

The applicant, a Constable in Delhi Police, has been proceeded against in a preliminary enquiry (for short, PE) where a number of statements have been given and on submission of report has been dealt with departmentally on the allegations of leaving duty point and further using filthy language and misbehaviour with lady Home Guard Raj Kumari and further threatening her and disobeying the lawful orders of the seniors. The applicant after the departmental enquiry has been awarded a major punishment of forfeiture of one year's approved service permanently with consequent reduction in pay and withholding of increment

and the period of suspension was treated as not spent on duty. The punishment order was confirmed in appeal and also in revision petition as well as the orders passed by the reviewing authority. The aforesaid orders are assailed by the applicant in the present OA.

2. Though the applicant has taken several contentions to challenge the impugned order, but at the outset it is contended that on receipt of the summary of allegations he made a request to the enquiry officer for furnishing him the PE statements of SI Rajpal Singh and lady Home Guard Raj Kumar who were examined as witnesses in the departmental enquiry (for short, DE), vide his application dated 10.10.96. It is contended that despite a specific request the applicant has not been furnished the copy of the PE statements on the ground that the same has already been provided to him. It is contended that the applicant has not been provided the PE statements of the witnesses who were examined in the DE alongwith the summary of allegations and the list of documents does not contain the PE statements. In this background it is stated that due to non-furnishing of the PE statements the applicant has been greatly prejudiced in the matter of his defence, which vitiates the DE and in support of his contention the learned counsel of the applicant places reliance on the decision of the Apex Court in State of U.P. v. Shatrughan Lal & Anr., JT 1998 (6) SC 55, wherein it has been held that mere availability of documents of the PE, including statements for inspection would not be an effective opportunity and in absence of denial of the copies of the statements recorded in the PE where the delinquent official has no right to participate, there has been a violation of

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✓ the principles of natural justice. The applicant by drawing our attention to the evidence recorded during the DE has stated that these statements have been recorded during the course of the enquiry and as the same have not been provided to him he could not have effectively cross-examine the witnesses and later on produced his defence. According to him, mere opportunity of inspecting the documents would not be in consonance with a reasonable opportunity in the interest of principles of natural justice. The applicant has also placed reliance on Rule 15 (3) and 16 (1) of the Delhi Police (Punishment & Appeal) Rules, 1980, whereby it is provided that any document from the preliminary record if taken by the enquiry officer in the DE the same should be supplied to the delinquent official and along with the summary of allegation all the relied upon documents should be furnished to the delinquent official.

✓ 3. Rebutting the contentions of the applicant the learned counsel of the respondents has drawn our attention to the ordersheet of the enquiry officer dated 10.10.96 wherein it has been mentioned that the applicant has been allowed to see the file and the documents asked for by him have already been supplied to him and the enquiry has been conducted in accordance with the laid down and procedural rules and after following the principles of natural justice. Lastly, it is contended that the charge against the applicant has been validly and legally proved and as such the Tribunal has no jurisdiction to interfere in the matter of departmental enquiry if no illegality or irregularity of the procedure is found.

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4. We have carefully considered the rival contentions and perused the material on record, including the DE file provided to us by the learned counsel for the respondents. In our view, it is not disputed that before holding the DE, a PE has been held against the applicant where statements of witnesses, including the complainant who were late on examined in the DE were recorded. It is also not in dispute that in the PE the applicant was not allowed to participate and the statements have been recorded exparte in his absence. It is also not in dispute that these statements have been exhibited during the course of DE and relied upon by the EO. The stand of the respondents that the applicant has already been provided with the statement of witnesses during the course of DE has not at all been established. On our pointed query to the learned counsel of the respondents to show us any proof of the receipt of the statements by the applicant, the learned counsel of the applicant has failed to bring to our notice the same. From the perusal of the record we find that nowhere the applicant was provided with the PE statements and there is no such acknowledgement to this effect which could establish that the applicant has received these documents. Apart from it, the applicant has acknowledged the documents which were furnished to him along with the list of documents, which, inter alia, conspicuously do not include the PE statements. What has been provided to him is the copy of the two reports and the copy of the duty roster, which has no bearing and cannot be treated as PE statements of the witnesses. Having regard to this we are of the confirmed view that the respondents plea that the applicant had already been provided with the PE statements is not correct. As regards the stand of the respondents

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that the applicant was allowed inspection of the documents, as such there is no need to furnish the copies of the statements is concerned, we do not agree with the same. Mere availability of the documents for inspection would not amount to affording an effective opportunity. In this view of ours we are fortified by the ratio in Shatrughan Lal's case (supra) wherealso the same plea was taken by the petitioner and was rejected by holding that mere opportunity to inspect the PE record would not amount to an effective opportunity. Furthermore, according to the statutory rules contained in Rule 15(3) *ibid* it is incumbent upon the enquiry officer to furnish a copy of the document from the PE if the same is taken on record of the DE. As the enquiry officer in the instant case has taken on record the PE statements were exhibited it was mandated upon him to supply the copy of the same. Being a substantive procedural rule the same shall have to be complied with. As far as the prejudice caused to the applicant is concerned, we find that due to non-supply of the PE statements he could not effectively cross-examine the witnesses and to impeach their veracity by way of effective cross examination. The PE statements are recorded in absence of a delinquent police official and failure of the respondents to provide the same would constitute a breach of principles of natural justice and more particularly when the same have been specifically asked for by a delinquent official. In our considered view, due to non-furnishing of the PE statements to the applicant despite his specific request, the departmental enquiry is vitiated and an opportunity to the applicant to inspect the same would not be an effective opportunity to defend.

5. In this view of ours and for the reasons recorded and the discussion made, we set aside the impugned order of punishment, the appellate order as well as the order passed on review. The applicant shall also be entitled to all the consequential benefits, including restoration of his pay and withheld increment. However, the respondents are at liberty, if so advised, to resume departmental enquiry from the stage of furnishing the copy of the PE statements to the applicant and to conclude the same within a period of three months from the date of receipt of this order. The applicant is also directed to cooperate in the DE. The OA is allowed in the above terms. No costs.

6. The other legal issues raised by the learned counsel of the applicant need not be adjudicated in view of the application being allowed on the aforesaid legal infirmity.

S. Raju
(Shanker Raju)
Member (J)

'San.'

V.K. Majotra
(V.K. Majotra)
Member(A)