

Shri. S. R.

12-11-2001

~~GA 1784/2000~~
GA 1781/2000

Present: Sh. Shyam Babu, Id. Counsel for
the applicant.

Sh. Dervesh Singh, Id. Counsel
for the respondents.

Head in fact

list on 12-11-2001 as part-head.

(Shri. S. R.)
MID

(M. P. Singh)
M(A)

13/11/01

Present: Sh. Shyam Babu Counsel for the applicant
Sh. Dervesh Singh Counsel for the respondents.

Orders passed separately in the open.

Consent by the D.O. of Honble M.P. Singh M(A) &
Honble Shri. S. R. M(S)

G.O.
S.E. 2 C.D.

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1781/2000

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

HON'BLE MR. M.P. SINGH, , MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Jasbir Singh (6011/DAP),
PIS 28893249,
S/o Shri Tirlok Chand,
R/o Village & PO Mandouli,
PS Loni, Distt. Ghaziabad,
U.P.

-Applicant

(By Advocate Shri Shyam Babu)

-Versus-

1. Lt. Governor,
Delhi, Raj Niwas,
Delhi.
2. Deputy Commissioner of Police
1st Battalion,
DAP Kingsway Camp,
Delhi.
3. Addl. Commissioner of Police,
Armed Police, Delhi,
P.S. Kingsway Camp,
New Delhi.
4. Commissioner of Police,
Delhi, Police Headquarters,
I.P. Estate,
New Delhi.

(By Advocate Shri Devesh Singh)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Heard the learned counsel for the parties. The applicant, a Constable in Delhi Police, has assailed the order passed by the disciplinary authority, imposing a punishment of dismissal on the applicant, which has been confirmed in appeal, revision as well as in review.

2. The applicant on a preliminary enquiry has been charged for allegedly taking an illegal gratification of Rs.54,000/- from the complainant on the pretext of the recruitment of his brother Manoj Kumar in Delhi Police as a Constable. The enquiry officer after examination of

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prosecution as well as defence evidence and submission of the defence statements by the applicant held him guilty of the charge which has been agreed to by the disciplinary authority resulting in the impugned order.

3. Shri Shyam Babu, learned counsel for the applicant, at the outset has taken two legal submissions before us for adjudication. His first plea is that though on a preliminary enquiry the permission has been taken by the respondents from the Additional Commissioner of Police under Rule 15 (2) of the Delhi Police (Punishment & Appeal) Rules, 1980 to initiate a regular departmental enquiry but the same shows non-application of mind and as no reasons have been recorded by the Commissioner of Police as to either holding of departmental enquiry or investigating a criminal case on the same set of facts the order is vitiated. The learned counsel for the applicant has placed reliance on the decision of the Apex Court in Delhi Administration v. Chanan Singh, AIR 1969 SC 1108 and contended that in the conspectus of the then Rule 16.32 of the Punjab Police Rules, it has been held that every administrative order is to contain reasons and more particularly when the authority has acted in a quasi-judicial capacity. It is stated that the principles of natural justice and recording of reasons have to be read as part of the rules even if it is not specifically contained therein. The other contention of the learned counsel is that during the course of the departmental enquiry when the applicant has produced defence witnesses they have been subjected to extensive cross-examination by the enquiry officer and by asking leading question the enquiry officer has assumed the role of a prosecutor which has vitiated the

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enquiry, as in violation of the Rule 16 (5) of the Rules
ibid and in view of the following decisions of the various
Benches of this court on the subject:

Jagbir Singh v. Union of India, 1991 (16) ATC
192, Mani B. Solanki v. Union of India, 1998 (3) SLJ 443
and D.B. Patan v. Union of India, 1991 (1) SLJ 356.

4. It is lastly stated that from the question asked from the defence witnesses wherein the enquiry officer has suggested to the extent that they have been deposing on the behest of the applicant and they have taught by the delinquent official to have deposed in the enquiry. In this backdrop it is stated that one of the defence witnesses Sat Prakash to whom the complainant in his testimony has referred to have been associated with him in some dealings of alleged demand and acceptance of money has not supported the prosecution but later on by asking leading question to the extent that suggesting the witnesses that they have been deposing falsely and also suggesting to them the testimony of the complainant the enquiry was tantamount to prove the charge against the applicant and as in absence of presenting officer and being a judge the enquiry officer is precluded from assuming the role of a prosecutor.

5. The learned counsel for the respondents Shri Devesh Singh, strongly rebutting the contentions of the applicant, has produced the official record. According to him Rule 15 (2) does not provide for recording of reasons while according permission to hold a departmental enquiry. According to the rules where the reasons are to be recorded

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there has been a specific reference to it and by quoting rule 29 (3) of the rules it is stated that in the event the enquiry establishes negligence or connivance in an escape, if the prosecution is not launched the Additional Commissioner of Police is mandated to record reasons for holding a departmental enquiry. As in Rule 15 (2) there is no provision for recording reasons the permission taken by the disciplinary authority from the Additional Commissioner of Police would not vitiate the enquiry. As regards the cross-examination by the enquiry officer is concerned, by referring to Rule 16 (v) it is contended that the enquiry officer can frame question to be put to the defence witnesses to clear the ambiguities and to test their veracity. It is in this background it is stated that whatever has been asked by the enquiry officer is to test the veracity as to the deposition on the basis of the answers to the questions and has come to the conclusion that the testimony of the defence witness does not inspire confidence and appears to be an after thought. As such the same has not been placed reliance by the enquiry officer. According to him the enquiry officer has not asked any leading question in the form of cross-examination to bring in evidence against the applicant but the questions were purely to impeach the testimony of the applicant as to his truthfulness. The ratio relied upon by the applicant has no applicability in the facts and circumstances. As regards the particular question by the enquiry officer suggesting the defence witnesses as to his being won over and deposing on the behest of the delinquent official it is contended that the defence witnesses have deposed differently from what has been deposed by the prosecution witnesses naming them to be present in the transactions it

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necessitated a clarification from them and from the testimony it appears that the witnesses have totally resiled from their earlier stand and have been supporting the delinquent official to which the questions have been asked to ascertain whether they are deposing falsely or otherwise. It is lastly contended by the learned counsel for the respondents that the enquiry officer is within his jurisdiction to ask question to the defence witnesses and the quantity of the question will not be a decisive factor. What is decisive is whether the enquiry officer has acceded the jurisdiction by asking certain question to bring in more evidence against the delinquent official. It is within his judicial domain as provided under the rules to consider the testimony of the defence witnesses and in the event it is found not reliable and after thought he can reject the same and to resort to this conclusion it is imperative for him to have resorted to certain question. As such, as the enquiry has been conducted in accordance with the provisions laid down under Rule 16 of the Rules the punishment given to the applicant is legally tenable. It is further stated that as there is some evidence against the applicant in the form of deposition by the complainant and supported by other witnesses as well as substantial evidence the same is sufficient to bring home his guilt and the Tribunal in judicial review cannot assume the role of appellate authority and come to the conclusion different from what have been arrived at by the respondents, there cannot be a re-appraisal of the evidence in a judicial review.

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6. We have carefully considered the rival contentions of the parties and perused the material on record. As regards first submission of the applicant regarding recording of reasons by the Additional Commissioner of Police under Rule 15 (2) *ibid*, the same is not legally sustainable and is rejected. Rule 15 (2) envisages that on a preliminary enquiry and in case of disclosure of a cognizable offence the Additional Commissioner of Police shall accord prior approval as to whether a criminal case should be registered or DE should be held. There is nothing in this rule to suggest that while doing so it is incumbent upon the Additional Commissioner of Police to record reasons. His application of mind would be construed from the decision as to whether the enquiry is to be held or a criminal case is registered. No separate reasons are to be recorded. Furthermore, from the perusal of Rule 29 (3) *ibid* wherein in such a situation the legislature has provided recording of reasons, ordering departmental enquiry the intention of the legislature under Rule 15 was not so. As such the reliance of the learned counsel for the applicant to the decision of the Apex Court would have no application in the present case as the same pertains to Punjab Police Rules where there exists a specific provision for recording reasons.

7. Apart from it, the contention that every order of a quasi judicial authority shall contain reasons would not be applicable, as there is no prejudice caused to the applicant on account of non-recording of reasons as after the approval the entire enquiry is to be conducted in

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accordance with the laid down procedure where the applicant has a right to show his innocence. In the result this ground is not legally tenable.

8. As regards the contention of the applicant as to assuming the role of a prosecutor by the enquiry officer is concerned, and his resort to the cross examination to the defence witnesses and the questions which have been asked do indicate the bias of the enquiry officer, is legally tenable and justified. As in a departmental enquiry and particularly in the absence of a presenting officer the enquiry officer should act fairly and be impartial. Having regard to the fact that the defence witnesses have deposed in favour of the applicant contradicting the testimony of the complainant the enquiry officer by suggesting to them that they have been deposing on the behest of the applicant and have been taught to depose clearly indicates that the questions asked are not with a view to clarify or to clear ambiguity or to test the veracity but the enquiry officer has acceded his jurisdiction and he has shown his personal interest in the question asked to collect evidence against the applicant on which he has come to the conclusion that the testimony of the defence witnesses is an after thought and cannot be placed reliance. In a way defence evidence and material has been thrown out on the basis of this ^hcross-examination. No doubt the contention of the learned counsel for the respondents is ^hcontrary to the extent that it is within the judicial ^hdomain of the enquiry officer and under the rules to ask question to clear ambiguity and to ^htest the veracity. But, one thing should be kept in mind while ^hdoing so that the question asked and the issue regarding

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assumption of the role of a prosecutor cannot be laid down in a straight jacket formula. The determination of this issue would be on the basis of facts and circumstances of each case. In the instant case as the complainant has supported the prosecution by stating that the money was given in the presence of DW Satya Prakash and his statement clearly denying the same and further stating that there had not been any dealing of money by the applicant with the complainant clearly indicates that the testimony of complainant has been contradicted to some extent. The resort of the enquiry officer not to have taken into consideration this testimony and straightaway rejecting it as an after thought shows his bent of mind and bias towards the applicant to hold him guilty of the charge. No doubt, it is not within the jurisdiction of this Tribunal, in a judicial review, to re-appraise the evidence or to interfere in a case where exists some evidence, but yet keeping in view the ratio laid down by this court (supra) where the cross-examination by the enquiry officer to the defence witnesses was found sufficient to vitiate the enquiry on the ground of bias and violative of principles of natural justice we do agree with the decision. In order to arrive at a finding it must be established by the prosecution that the conduct of the enquiry officer has remained impartial, free from bias and as the presenting officer is not provided by the prosecution they cannot go beyond their jurisdiction and under the garb of seeking ambiguity and testing veracity should not ask such questions which would result in a conclusion to be arrived at by the enquiry officer and later on to reject the testimony of the defence witnesses. The enquiry officer under Rule 16 (ix) is to evaluate the evidence of both prosecution and defence and

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then come to the conclusion of guilt. If he himself assumes the role of a prosecutor then there is no need for a presenting officer or the enquiry can be held even without participation of the delinquent official. In this view of the matter, we do not agree with the contention that the enquiry officer's cross examination to the defence witnesses was either with a view to clear ambiguities or to test the veracity but was purely a cross examination and the questions asked were leading to fill up the gaps in the enquiry and more particularly suggesting as to their false deposition is certainly beyond the scope of Rule 16 (v) ibid rendering the enquiry not legally sustainable.

9. In the result and having regard to the reasons recorded we find this legal infirmity sufficient to vitiate the enquiry as due to the bias of the enquiry officer the enquiry conducted against the applicant cannot be observed to be impartial or fair. As this legal infirmity has prejudiced the applicant as he has been denied a fair and free departmental proceedings and chance of an opportunity to rebut the prosecution version the same is not legally sustainable. The OA is allowed to the extent that the order passed by the disciplinary authority, appellate authority, revisional authority and the memorial are quashed and set aside. The applicant is directed to be re-instated in service. However, as the legal infirmity has cropped up at the stage of defence evidence and the conduct of the enquiry officer was not impartial, the matter is remanded back to the respondents to take up proceedings from the stage of defence through another enquiry officer and to complete the same within a period of six months from the date of receipt of a copy of this

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order. The pay and allowances and other consequential benefits shall be subject to the outcome of the enquiry to be conducted by the respondents and to this effect a reasoned order should be passed by the disciplinary authority at the appropriate stage, in accordance with law. No costs.

S. Raju

(Shanker Raju)
Member (J)

M.P. Singh

(M.P. Singh)
Member (A)

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