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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1783/2000

New Delhi this the 31st day of January, 2003.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

SI Mahinder Singh,
RZ-A-86, Sitapuri,
New Delhi-110045.

-Applicant

(By Advocate Shri Arun Bhardwaj)

-Versus-

1. Union of India through

Lt. Governor,
Govt. of NCT of Delhi,
Raj Niwas Marg,
Delhi.

2. Commissioner of Police,
Delhi Police Headquarter,
I.P. Estate,
New Delhi.

3. Joint Commissioner of Police,
New Delhi Range,
Delhi Police Hqrs,
M.S.O. Building,
I.P. Estate,
New Delhi-110002.

-Respondents

(By Advocate Shri J.A. Chaudhary, proxy for Sh. George Paracken)

ORDER (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant, a Sub Inspector in Delhi Police impugns respondents' order dated 2.7.99 and 28.4.2000 whereby on a departmental enquiry a major punishment of forfeiture of approved service permanently for a period of one year with reduction of pay has been inflicted upon applicant and maintained retrospectively.

2. While posted at PS Mandir Marg applicant was placed under suspension on 20.5.96 after a PE held by Inspector R.S. Dogra of Vigilance substantiated misconduct against applicant. Applicant was served upon with the summary of allegation alleging the following imputation:

"It is alleged that a quarrel between Shri Kultar Kumar Dogra, s/o Shri B.C. Dogra, r/o 4-D/91, IIInd Floor and Shri Swaran Singh, s/o late Shri Sube Singh, r/o 2430, Gali Tilak, Chuna Mandi, Pahar Ganj, took place at Karol Bagh Union Club, Bhai Veer Singh Marg, New Delhi on the evening of 14.01.96. Shri Kultar Kumar Dogra visited Police Station Mandir Marg, for the reporting the incident where he met with Inspector Ramesh Chand, No.D/1695 the then Addl. SHO/Mandir Marg and narrated the incident. Inspector Ramesh Chand directed SI Mohinder Singh, NO.D/3246 to go alongwith Shri Kultar Kumar Dogra to enquire about the incident. When the SI alongwith complainant Shri Kultar Kumar Dogra reached Karol Bagh Union Club, the complainant was attacked with swords by Swaran Singh and his brother Rajinder Singh in the presence of SI Mohinder Singh, NO.D/3246 causing injury on face of the complainant. Despite, the complainant being attacked and injured in his presence, SI Mohinder Singh, No.D/3246 failed to react. The accused persons fled away from the spot after causing injuries to complainant which shows sheer cowardice and negligence in performing duty on the part of SI Mohinder Singh, D/3246. Further, the sequence of events was distorted and minimised and not only was the role of the SI omitted from the FIR but also only a case u/s 324/34 IPC was registered instead of 307/34 IPC. SI Ranvir Singh, No.1618/D recorded this FIR. Inspector Ramesh Chand, Addl. SHO/Mandir Marg was on duty at the relevant time and he failed to ensure that the sequence of events were correctly recorded in the FIR and that the correct sections of law were applied.

The above act on the part of you, Insp. Ramesh Chand, NO.D/1695, SI Mohinder Singh, NO.D/3246 and SI Ranvir Singh, No.D/1695 amounts to gross misconduct of carelessness, negligence and dereliction in the discharge of your official duties in violation of rules, 3 (ii) & 3 (iii) of the CCS (Conduct) Rules, which renders you liable for departmental action under the Delhi Police (Punishment & Appeal) Rules, 1980."

3. During the course of enquiry after examination of prosecution witnesses a charge was framed against applicant as well as other police officials proceeded in a common enquiry. Applicant produced defence

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witnesses and also tendered his defence statement. Enquiry Officer (EO) through his findings held applicant guilty of charge, to which a representation was filed by him.

4. Disciplinary Authority by an order dated 2.7.99 imposed upon applicant a major punishment whereas other officers including Inspectors have been awarded a minor punishment of censure, which, on appeal was upheld by the appellate authority, giving rise to the present OA.

5. Learned counsel for applicant Shri Arun Bhardwaj though taken several legal contentions to impugn the orders, including case of 'no evidence', but at the outset stated that whereas a PE has been held by Inspector Ranvir Singh Dogra, who was examined as PWs-5 and 6 in his testimony referred to his report submitted to ACP PG Cell, New Delhi District, but the copy of the same has not been served upon applicant, including PE statements, which is not sustainable as per Rule 15 (iii) of the Delhi Police (Punishment and Appeal) Rules, 1980 as well as held to have vitiating the enquiry in Vijay Singh v. Govt. of N.C.T. of Delhi by this Tribunal reported in 1999 (3) ATJ 563. It is in this conspectus stated that applicant has been greatly prejudiced as he has been deprived of an effective cross examination, though the report and the testimony of PO officer has been relied upon to hold applicant guilty of charge. This according to applicant is in violation of principles of natural justice and constitute a procedural illegality, vitiating the enquiry and consequent orders.

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6. On the other hand, respondents' counsel vehemently opposed the contentions and further stated in para 5.13 that there is no provision under rule 15 (iii) of the Delhi Police (Punishment & Appeal) Rules, 1980 to supply the report of PE, although PE was conducted by Inspector R.S. Dogra who was examined as PW-5 and copy of statements recorded during DE proceedings were also provided to applicant.

7. We have carefully considered the rival contentions of the parties and perused the material on record. As per Rule 15 (iii) in the event any document from the file of PE record is brought on DE file it cannot be done without supplying copy of the same to the delinquent official.

8. Moreover, in Vijay Singh's case (supra) the following observations have been made by the Tribunal taking note of circular of Delhi Police dated 1.5.80, which has not yet been withdrawn or superseded by any fresh instructions:

"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 OA-874/96 Prem Pal Singh v. Union of India & Others in which one of us (Sh. S.R. Adige, Member (A) as he then was a Member). In its order dated 5.3.97 while allowing that OA the Bench noticed that respondents on instructions dated 1.5.80 para (11) of which ran of follows.

The officers who had conducted the preliminary enquiry was cited and examined as PW but copy of his preliminary enquiry report was not furnished by the EO to the defaulter denying him an opportunity to cross examine the witness. That has affected a proper cross examination of such witness and goes against the principles of

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natural justice vitiating the departmental enquiry ab initio. Copy of PE report in such cases should have been supplied suo moto at the initial stage along with the summary of allegations even if no specified 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 PE, the same was not supplied to him.

Relying upon several other ruling the Bench in Prem Pal Singh's case (supra) held that non supply of the PE report to the delinquent when respondents on circular dated 1.5.80 required it to be supplied was and infirmity grave enough to vitiate the entire DE. 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."

9. A Division Bench of the Delhi High Court in Ex-Constable Randhir Singh, CRPF v. Union of India & Others, 1991 (5) SLR 731 observed as under:

"We find great force in the contention of the learned counsel for the petitioner. In order to negate the charge levied against a delinquent, it is necessary that he should be furnished with the material on the basis of which the action is proposed against him. As held by the Supreme Court in Kashi Nath Dikshita v. Union of India & Ors. (supra) "when a government servant is facing a disciplinary proceeding he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner, and no one facing departmental enquiry can effectively meet the charge unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies how can the concerned employees prepare his defence, cross examine the witnesses and point out their inconsistencies with a view to show that the allegations are incredible."

Admittedly respondents had not furnished to the petitioner the report of the preliminary enquiry preceding, the commencement of the enquiry. Thus though he was present at the time of examination of the witnesses and had also been afforded an opportunity to cross examine, he did so without having the opportunity of seeing all the material. Thus adequate opportunity as required under the law was not afforded to the petitioner. In our view failure to supply preliminary enquiry report itself vitiated the enquiry. On the second question regarding supply of enquiry report submitted by the enquiry officer is

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concerned, the question raised is fully covered by the judgment of the Supreme Court in Union of India and others v. Mohd. Ramzan Khan's case (supra). The Supreme Court has considered the question of supply of enquiry report to a delinquent government employee even after the amendment of Article 311 by way of 42nd amendment. The Supreme Court has held as follows:

"Deletion of the second opportunity from the Scheme of Article 311 (2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the enquiry in Article 311 (2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the enquiry officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendation of the enquiry officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this court making rules of natural justice applicable to such an enquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the enquiry report along with recommendations if any in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would therefore be entitled to supply of a copy thereof. The forty second amendment has not brought about any change in this position."

5. From the above observations of the Supreme Court it is clear that even if Sub-rule 7 of Rule 27 of Central Reserve Police Rules, 1955 stood deleted by way of amendment made in the year 1980 the position did not change and the petitioner was entitled to get a copy of the inquiry report. No doubt Sub-rule 7 of Rule 27 of Central Reserve Police Rules, 1955, which provides for issuance of second show cause notice before imposition of penalty specifically stated that the report of the Inquiry shall also be furnished and that rule stands deleted by way of an amendment made in the year 1980. However, this does not mean that the petitioner is not entitled to know the reasons given by the Inquiry Officer while finding him guilty of the charges levelled against him, more so because denial of the inquiry report deprives

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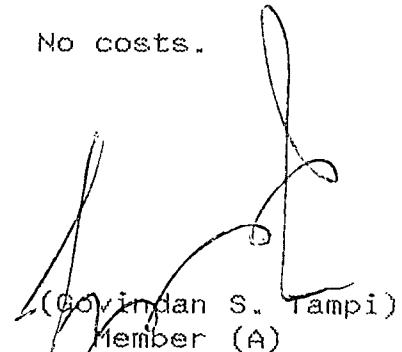
the delinquent employee of the opportunity of making an effective appeal and revision provided under the Rules itself."

10. If one has regard to the ratio laid down by the High Court in the facts and circumstances of the case when R.S. Dogra who conducted the PE was examined as a PW and his report has been relied upon a copy of the same should have been furnished to applicant in consonance with Rule 15 (iii) as well as Rule 16 (i) of the Delhi Police (Punishment & Appeal) Rules, 1980, as this report has not been served upon applicant as the same does not find mention in the list of documents annexed with the summary of allegations, we are of the view that a grave prejudice has been caused to applicant as denial of effective cross-examination. This cannot be countenanced and the same is not in consonance with the principles of natural justice and fair play as well constitute violation of substantive procedure of holding DE.

11. In the result, for the foregoing reasons, though not adjudicating the other legal contentions adduced by applicant, OA is partly allowed. Impugned orders are quashed and set aside. However, this shall not preclude the respondents, if so advised, from proceeding further in the departmental enquiry from the stage of furnishing a copy of the PE report to applicant. No costs.

S. Raju
(Shanker Raju)
Member (J)

"San."



(Govindan S. Tamai)
Member (A)