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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2013/2000

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New Delhi this the 22nd day of November, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

Inspector Chandra Has No.D1/628
S/O Late Shri Prabhu Singh
R/O 336, Tarun Enclave Pitam Pura
New Delhi-34.Applicant

(By Shri Sachin Chauhan, Advocate)

-versus-

1. Union of India
Through its Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Joint Commissioner of Police
Operations
Police Head Quarters, I.P.Estate
M.S.O.Building
New Delhi. Respondents

(Shri George Paracken, Advocate)

O R D E R (ORAL)

Justice V.S.Aggarwal:-

Inspector Chanda Has by virtue of the present application seeks setting aside of the order dated 11.4.2000 purported to have been passed by the Joint Commissioner of Police, Operation, Delhi and seeks that he should be discharged from the departmental enquiry.

2. The relevant facts are that the applicant had joined the Delhi Police as Sub Inspector in March 1971. On 21.2.1989, he was promoted as

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Inspector. He was posted at Police Station Anand Parbat. A departmental enquiry had been ordered against him. He was served with summary of allegations. An enquiry officer had been appointed. In pursuance of the summary of allegations, 5 witnesses had been examined by the department. The enquiry officer held that the allegations against the applicant were not proved and the charge was not made out. In pursuance thereto, the inquiry officer did not frame any charge. On receipt of the finding of discharge, the disciplinary authority is alleged to have ordered the enquiry and got prepared the summary of allegations and list of documents and witnesses.

3. By virtue of the present application, it has been asserted that before passing such an order, the disciplinary authority did not give any reasonable opportunity of hearing to the applicant. It is further the claim of the applicant that the disciplinary authority could not direct witnesses to be re-examined who were not earlier examined and further the witnesses already examined could not be re-examined. A plea has also been raised that since the charge had not been framed, the disciplinary authority could not act under Rule 16(x) of the Delhi Police (Punishment & Appeal) Rules, 1980 (for short, "the Rules") and on these counts, it is claimed that the order passed by the

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Joint Commissioner of Police cannot be sustained.

4. In the reply filed, the application has been contested. It has been asserted that the impugned order is within the frame-work of the provisions of law and the rules on the subject. It is denied that a finding can be given by the inquiry officer only after framing the charge and recording the statements of the witnesses and the disciplinary authority is stated to have the right to act under Rule 16(x) of the Rules.

5. Earlier this Tribunal had followed a decision of the another co-ordinate Bench of this Tribunal in the case of **ASI Sube Singh v. Union of India & Others** in OA No.1751/2000 and quashed the impugned order holding that the Joint Commissioner of Police had no powers to act as such. The order so passed was set aside by the Delhi High Court and the matter had been remitted back to this Tribunal. Hence the necessity of re-hearing the present application.

6. The first and foremost argument which was highlighted on behalf of the applicant was that the disciplinary authority had made a report holding that the allegations levelled against the applicant had not been proved. The operative part of the

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same reads:-

"Keeping in view the above facts and material on record in DE proceeding I am of the view that the allegations levelled against Inspr. Chander Hass and SI Vikram Singh Rathi could not be proved and as such no charge is made out. Since there is no material to frame charge against the defaulters, it is preferred to submit finding under Rule 16(iv) of Delhi Police Punishment and Appeal) Rules 1980."

It is alleged that by passing the impugned order thereby it had been directed that fresh witnesses should be examined who had earlier not been examined. No opportunity of hearing had been granted to the applicant and that in that process, the principles of natural justice had been violated.

7. It is well-known that the principle of natural justice or the principle of audi alteram partem cannot be defined in a straight jacket formula. It has to be verified and examined in the facts and circumstances of each particular case. Somewhat similar argument was advanced before the Supreme Court in the case of **Shri Baikuntha Nath Das & Anr. v. Chief District Medical Officer, Baripada and Anr.**, JT 1992 (2) S.C.1. The question before the Supreme Court was as to whether the principles of natural justice would be violated in case of compulsory retirement or not. The Supreme

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Court held:-

"12. As far back as 1970, a Division bench of this court comprising J.C. Shah and K.S. Hegde, JJ. held in **Union of India v. J.N. Sinha** [1971 (1) SCR 791] that an order of compulsory retirement made under F.R. 56(j) does not involve any civil consequences, that the employee retired thereunder does not lose any of the rights acquired by him before retirement and that the said rule is not intended for taking any penal action against the government servant. It was pointed out that the said rule embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution and that the rule holds the balance between the rights of the individual Government servant and the interest of the public. The rule is intended, it was explained, to enable the Government to energise its machinery and to make it efficient by compulsorily retiring those who in its opinion should not be there in public interest. It was also held that rules of natural justice are not attracted in such a case. If the appropriate authority forms the requisite opinion bonafide, it was held, its opinion cannot be challenged before the courts though it is open to an aggrieved party to contend that the requisite opinion has not been formed or that it is based on collateral grounds or that it is an arbitrary decision. It is significant to notice that this decision was rendered after the decisions of this court in **State of Orissa v. Dr. Binapani Devi** [1967 (2) S.C.R. 625] and **A.K. Kraipak v. Union of India** (AIR 1970 SC 150). Indeed, the said decisions were relied upon to contend that even in such a case the principles of natural justice required an opportunity to be given to the government servant to show cause against the proposed action. The contention, was not accepted as stated above. The principles enunciated in the decision have been accepted and followed in many a later decision. There has never been a dissent-not until 1987."

The ratio deci dendi of the said decision by the Supreme Court is very much applicable to the facts

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of the case. A balance has to be struck between the rights of an individual Government servant and the nature of the order passed. The order under challenge would not attract the principles of natural justice because the rules as would be seen hereinafter only require application of mind by the disciplinary authority. The disciplinary authority in exercise of those powers if deemed appropriate can direct examination of further witnesses etc. and even may disagree with the report of the inquiry officer. It may be challenged before a court of law in judicial review but to state that the applicant must have been heard before passing such an order would not be correct for reasons already recorded. Therefore, this particular argument necessarily must fail.

8. The Rules also provide the procedure to be adopted in departmental enquiries. Rule 16 of the Rules comes into play with respect to the procedure to be adopted primarily in cases of major punishments to be awarded. Sub-rule (i) to Rule 16 of the Rules provides that the inquiry officer shall prepare a statement summarising the misconduct alleged against the accused officer to give full notice to him of the circumstances appearing against him. Where the police officer who is accused of misconduct does not admit the misconduct, the inquiry officer shall proceed to

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record the evidence. However, sub-rule (iv) to Rule 16 reads as under:-

"16(iv). When the evidence in support of the allegations has been recorded the Enquiry Officer shall-

(a) If he considers that such allegations are not substantiated, either discharge the accused himself, if he is empowered to punish him or recommended his discharge to the Deputy Commissioner of Police or other officer, who may be so empowered or,

(b) Proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them."

It clearly provides that if the inquiry officer finds that allegations are not substantiated after recording evidence, he can recommend the discharge of the said person to the concerned disciplinary authority. Otherwise if the allegations in his opinion are substantiated, he can frame a charge. Thereafter, the accused officer is required to state the defence witnesses whom he wishes to call and examine. Sub rule (x) of Rule 16 of the Rules further unfolds itself into the following words:-

"(x) On receipt of the Enquiry officer's report the disciplinary authority shall consider the record of the inquiry and pass his orders on the inquiry on each charge. If in the opinion of the disciplinary authority, some important evidence having a bearing on the charge has not been recorded or brought on the file he may record the evidence himself or sent back the enquiry to the same or some other enquiry officer, according to the

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circumstances of the case for such evidence to be duly recorded. In such an event, at the end of such supplementary enquiry, the accused officer shall again be given an opportunity to lead further defence, if he so desires, and to submit a supplementary statements, which he may wish to make."

9. Perusal of sub-rule (x) of Rule 16 of the Rules reveals that when the report of the inquiry officer is received, the disciplinary authority can, if in his opinion, some important evidence having a bearing on the charge had not been recorded, may record the evidence himself or sent back the enquiry to the inquiry officer. In such an event, at the end of such supplementary enquiry, the accused officer shall again be given an opportunity to lead further defence in this regard.

10. The learned counsel for the applicant had argued that in the present case, there was no report of the inquiry officer contemplated because the charge even had not been framed. We have no hesitation in coming to the conclusion that the said argument is totally devoid of any merit. We have already reproduced above the penultimate paragraph of the report of the enquiry officer. The inquiry officer reported that the allegations were not substantiated and thus there was no material to frame a charge against the applicant. Once such is the finding, it must be taken that it was the report of the inquiry officer and, at any time, it may be submitted and will not make any

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difference if it is submitted before the charge is framed.

11. It has further been urged that a de novo enquiry could not have been ordered even in exercise of Rule 16(x) of the Rules. We have already referred above to the provisions of Rule 16(x). It provides in unambiguous terms as already referred to above, that if there is evidence which has a bearing on the charge, further enquiry could be directed. When in this background, the impugned order is viewed, we have no hesitation in concluding that it is not a de novo enquiry that had been ordered. Certain witnesses who had been mentioned in the impugned order had been directed to be examined who were earlier not examined. It was directed that summary of allegations should be re-drawn. Thus it becomes necessary for the reason that a reference has to be made to one order of the Deputy Commissioner of Police and certain witnesses. It is not a de novo enquiry but it would be a supplementary enquiry in face of the powers given under Rule 16(x) of the Rules.

12. Our attention was drawn to the fact that such a power under Rule 16(x) could be exercised only in case where the charge had been framed. The learned counsel for the applicant referred to the

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words "on receipt of the Enquiry Officer's report the disciplinary authority shall consider the report of the inquiry and pass his orders on the inquiry on each charge". Reading of the abovesaid Rule 16(x) clearly shows that emphasis is "on receipt of the Enquiry Officer's report". Rule 16(x) has to be read along with Rule 16(iv) of the Rules because as already referred to above, whenever the report of the inquiry officer is submitted, the disciplinary authority applies its mind and can act. It could even exercise the powers under sub-rule (x) to Rule 16 if no charge had been framed and the report of the inquiry officer is received and even in those cases further evidence can be directed to be recorded if it falls within the ambit of Rule 16(x) of the Rules.

13. In that event, our attention was drawn to the fact that some of the witnesses already examined are being re-examined. We do not find this to be a part of the impugned order but by way of abundant caution, we make it clear that the witnesses already examined need not be re-examined because that would be beyond the scope of sub-rules (iv) and (x) to Rule 16 of the Rules.

14. For these reasons, we accordingly partly allow the application and it is held that the

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report of the enquiry officer whether submitted at any time would be an enquiry report to the disciplinary authority. Under Rule 16(iv), the disciplinary authority could direct the witnesses for re-examination, who were not earlier examined. Witnesses already examined cannot be directed to be re-examined. In Rule 16(x), the words "pass his orders on the enquiry on each charge" have to be read along with preceding sub-rule (iv) of Rule 16 and it would include cases where the charges had not been framed. It would be over-emphasising that de novo enquiry has not been ordered and it would be in Rule 16 (x). The order is made accordingly. No costs.

Announced.

V.K. Majotra

(V.K. Majotra)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

/sns/