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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2337/2000

New Delhi, this the 25th day of July, 2001

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shankar Raju, Member (J)

Ex. Ct. (Dvr.) Dharambir Dutt
No.4965/PCR (PIS No.28893154)
S/o Shri Lakhi Ram,
R/o Village & P.O. Katevra
P.S.Narela, Delhi.

...Applicant

(By Advocate Mrs. Avnish Ahlawat)

V E R S U S

1. Commissioner of Police,
Police Headquarters, I.P.Estate,
New Delhi.
2. Additional Commissioner of Police,
Police Headquarters, Police Control,
Room, I.P.Estate, New Delhi.
3. Additional Dy.Commr. of Police,
Police Headquarters, Police Control Room,
I.P.Estate, New Delhi.

...Respondents

(By Advocate Shri Devesh Singh)

O R D E R (ORAL)

By Hon'ble Shri Shanker Raju,

In the present OA, the applicant, an Ex-Constable has assailed an order of dismissal dated 20.05.1999 which was affirmed by the applicant vide an order dated 26.11.1999.

2. Briefly stated, the applicant while posted as Driver in PCR P-21 was placed under suspension on a complaint of one Shri Jasbir Singh regarding extortion of money for which preliminary Inquiry was held by Inspector Shri Amrik Singh and on the basis of Inquiry Report, a Departmental Inquiry was ordered. The complainant and other witnessess were examined but failed to identify the applicant and denied the

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charges against him. The Inquiry Officer held the applicant guilty of the charge which was further agreed upon by the Disciplinary Authority and Appellate Authority.

3. The learned counsel for the applicant stated that the copy of the preliminary Inquiry report which was placed reliance during the D.E. has not been served upon him and the Inquiry Officer has not recorded a reasoned finding as mandated under Rule 16 (9) of the Delhi Police (Punishment & Appeal) Rules 1980. It is also stated that the present case is of no evidence and the applicant has been held guilty on merely suspension and even after application of the test of common prudent man on judicial review, the findings are arbitrary and perverse.

4. On the other hand, the learned counsel for the respondents strongly rebutting the contentions of the applicant stated that the Inquiry has been conducted in accordance with the laid-down procedure and rules and the present case does not come under the category of no evidence cases and the findings are based on evidence and sufficient reasons and the applicant has been identified. It is also stated that a reasoned order has been passed by the Appellate Authority, taking into consideration the contentions of the applicant.

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5. We have carefully considered the rival contentions of the parties and perused the material placed on record.

6. As provided under Rule 15 (3) of the Delhi Police (Punishment & Appeal) Rules, in case the Inquiry Officer decides to bring on record any documents from the file of preliminary Inquiry, the same should be provided to the delinquent officer. The applicant in the present case has specifically asked for the copy of the Preliminary Inquiry Report which was placed reliance by both the Inquiry Officer as well as Disciplinary Authority while making specific observations as to the identification conducted by Shri Amrik Singh. In this view of the matter, we are fortified by the ratio of Apex Court in State of U.P. Vs. Shatrughan Lal Anr. 1998 Volume-6 SCC 55 wherein it has been held that if despite request for copy of preliminary Inquiry Report as well as statements the delinquent officer is prejudiced by denial of effective cross examination which vitiates the enquiry. Admittedly, the Inquiry Report was not served upon the applicant which has deprived the applicant a right of effective cross examination being a substantive provision of the procedural Rules. In our considered view, the non-compliance has certainly prejudiced the applicant.

h 7. As regards, the plea of the applicant of non consideration of his defence by the Inquiry Officer, we have perused the findings and find that after mentioning the defence and prosecution evidence,

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the defence contentions of the applicant have not at all been mentioned or discussed. No reasons have been recorded by the Inquiry Officer to come to the conclusion as to the fact of proof of the charges. The Inquiry Officer as per Rule 16(9) (supra) is mandated to record his reasons on each Article of charge and has to show as to why the prosecution evidence has not been found apt in comparison to the defence evidence. The aforesaid ratio has been held by the Apex Court in Anil Kumar Vs. Presiding Officer (1985 SCC Labour & Service 815). As per the ratio the Inquiry Officer has to record reasons in support of the findings. Being a non-reasoned finding contrary to the Rules, the Inquiry Officer has clearly ignored the defence of the applicant which is not legally sustainable.

8. During the Departmental Inquiry, the witness has clearly denied the allegation of demand of receipt of Rs.100/- by the applicant and stated that he is not the person who demanded and accepted the same. Even on cross examination by the Inquiry Officer, nothing has been brought on record to establish that the applicant has demanded or accepted the money for which he has been charged and dealt with in the Departmental Inquiry. The other witnessess are not eye witnessess and have not deposed anything with regard to demand or acceptance of money. The only evidence which has been placed reliance upon is the testimony of Amrik Singh who had conducted the fact finding inquiry. In his statement, it is stated that the identification memo was signed by the complainant

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and other witnessess. It is further found from the record that the Disciplinary Authority placed reliance on a previously recorded statement of the witnessess discarding his Departmental statement recorded in the Departmental Inquiry which is not permissible as per Rule 16 (3) of the Delhi Police (Punishment & Appeal). The aforesaid provision can only be resorted only in cases where the witnessess are not available or their presence cannot be procured. Apex Court in Kuldip Singh Vs. Commissioner of Police 1999 (Volume 8) JT 603 has elaborately discussed this provision and has held that the same cannot be resorted to when a witness is available in the Departmental Inquiry.

9. We are, however, aware of our constraint to interfere in the Departmental Inquiry. The role of the Tribunal is limited and it is impermissible to re-appraise the evidence and to come to a conclusion different to what has been arrived at by the Departmental Authorities. However, in the case of Kuldip Singh (supra), Apex Court has laid-down that that judicial review is permissible in case the finding is perverse based on no evidence and does not pass the test of a common prudent man. Applying the aforesaid ratio to the facts and circumstances of the present case, we find that the complainant has not deposed anything against the applicant. The other witnessess have also not substantiated the charge of illegal gratification against the applicant. Moreover, the Disciplinary Authority has placed reliance on an extraneous matter which has been discarded by the Inquiry. After perusal of the

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evidence recorded and brought on file by the respondents, we have no hesitation to hold that the findings of the Inquiry Officer are based on no evidence and is perverse as the orders of the Disciplinary Authority is also based on this perverse finding, the same are not legally sustainable. The Inquiry Officer has failed to record reasons and the Disciplinary Authority also passed a non-speaking order. The appellate order is also rendered illegal as based on extraneous and perverse finding.

In view of the discussion made above, the OA is allowed. We set aside the order of dismissal, Appellate order as well as the finding of the Inquiry Officer. The respondents are directed to re-instate the applicant in service with all consequential benefits within a period of three months from the date of receipt of the copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

(Govindan S. Tampi)
Member (A)

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