CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2589/2000

New Delhi this the 16th day of July, 2001.

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

H.C. Ranbir Singh,
No.2092/DAP
IIIrd Bn. DAP,
Kingsway Camp,
Delhi. -Applicant

(By Advocate Shri S.K. Shukla)

-Versus-

1. Deputy Commissioner of Police,
   3rd Bn. DAP, Delhi,
   Kingsway Camp, Delhi.

2. Addl. Commissioner of Police,
   Armed Police, Delhi. -Respondents

(By Advocate Shri Ram Kanwar)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant, who has been working as a Head Constable, has challenged an order passed by the disciplinary authority on 24.2.90, whereby in a common enquiry he has been awarded a major punishment of forfeiture of two years' approved service alongwith reduction of pay and his period of suspension has been treated as not spent on duty. The punishment order was carried in an appeal and by an order dated 15.11.99 the order of punishment was maintained. The brief relevant facts are that the applicant while posted at PS Maya Puri on 15.5.96 alongwith Constable Satnarain brought two persons in a Maruti Van having liquor and subsequently a FIR No.157/1996 under Section 61/1/14 of Excise Act, was registered. It is alleged that the applicant had let off other persons and arrested only the driver of the Van. Before the enquiry on 16.5.96 one of the co-defaulter, i.e, Constable Satnarain has given a statement whereby he

admitted that two persons have been brought by the applicant both of them have been let off by him. After examination of prosecution witnesses and submission of defence evidence and statement the enquiry officer in his finding has held the applicant guilty of the charge by placing reliance on the testimony of PW-3 and 4 as well as the alleged admission of co-defaulter Satnarain before Inspector Gian Singh. On reply to the finding the punishment was imposed which was on appeal confirmed by the appellate authority.

2. We have carefully considered the rival contentions of the parties and perused the material on record, including departmental record. The applicant has assailed the impugned order on the ground that he has been denied a reasonable opportunity as the alleged admission of co-deafaulter which though relied upon by the enquiry officer to hold him guilty of the charge has not been furnished to him at the time of initiation of the enquiry, which resulted in denial of a reasonable opportunity in violation of the principles of natural justice and also in derogation of Rule 16 (1) of the Delhi Police (Punishment & Appeal) Rules, 1980, which provides furnishing of the relied upon documents to the delinquent official. By drawing our attention to the summary of allegation it is contended that the statement of Satnarain has not been made part of the list of documents. To substantiate his plea, learned counsel of the applicant has placed reliance on the ratio of the Apex Court in Chandrama Tewari v. Union of India, 1987 (Supp) SCC 518 as well as decision of this Court dated 25.9.2000 in OA No.642/97 - Constable M. Sambaiah v. The Commissioner of Police & Anr. and has

also placed reliance on the decision of the Allahabad High Court in U.P. State Road Transport Corporation & Anr. v. Sarfaraz Hussain & Others, 1995 LAB I.C. 1971 to contend that in case there is a plea of defective enquiry the burden of proof lies on the employer to show that the same has been properly held. In this conspectus it is stated that as the admission of Satnarain has been relied upon by the disciplinary authority as well as appellate authority as the same has been made part of the charge and on which basis the applicant was held guilty by the enquiry officer, its non-supply has vitiated the proceedings.

3. On the other hand, the learned counsel of the respondents rebutted the contentions of the applicant and stated that all relevant documents have been served upon the applicant and furthermore, the co-defaulter Satnarain despite knowing that the alleged admission was fraudulently taken by adding line in the admission, has not objected the same before the authorities. No prejudice has been caused to the applicant by non-furnishing of the statement of the co-deafulter. It is further contended that apart from it, there is ample evidence of PWs 3 and 4 to substantiate the charge against the applicant and as such the Tribunal is precluded from assuming the role of appellate authority to reapprise evidence if there is some evidence in the enquiry to sustain the charge. It is also contended that if there is no prejudice established by the applicant even non-compliance of procedural rules would not be of any avail to him. For this the learned counsel for the respondents placed reliance on the ratio of the Apex Court in State Bank of Patiala & Others v. S.K. Sharma, JT 1996 (3) SC 722.

4. We have given careful thought to the contention of the applicant as well as the respondents. Admittedly the copy of the admission of Satnarain was not figuring as a list of document and there is no material in the departmental record to show that the same was ever served upon the applicant. We also find from the finding of the enquiry officer that while holding the applicant guilty the written statement of Satnarain given to Inspector Gian Singh has been placed reliance and the same has been figured in the appellate order too. But, while passing the order of the disciplinary authority we find that the disciplinary authority has concurred with the finding of the enquiry officer but as there was ample evidence of PWs 3 and 4 to support the charge the finding of the enquiry officer has been believed and the punishment was imposed. No doubt, it is true that non-supply of the document vitiates the enquiry and the enquiry officer is mandated under Rule 16 (1) of the Rules ibid to serve upon the relied upon documents to the delinquent official, but it should not be visual and all the proceedings invariably would not be vitiated in case no prejudice is caused to the applicant. We find that the document was not served upon the applicant and this fact of the written statement was very much in the knowledge of the co-defaulter in this common enquiry as he had objected to it for the first time in his written statement of defence. If this was the position the same would have been objected at the outset and the copies should have been demanded from the department. The applicant has not at all asked for the copy of the said admission of Satnarain from the respondents and for the first time he took this plea in his

appeal which appears to be an after thought. As regards the prejudice caused to the applicant is concerned, we find that though the enquiry officer has held the applicant guilty of the charge not solely on the basis of the alleged statement of co-defautler but also on the evidence of other police official. The disciplinary authority also at the time of imposition of punishment has not placed reliance on the alleged admission of Satnarain but rather agreed with the finding of the enquiry officer on the basis of the testimony of PWs 3 and 4 to impose the punishment upon him. The appellate authority too has also not placed any reliance on the admission of Satnarain. Mere mention of the alleged admission in the charge would not vitiate the enquiry of the said admission has not been placed reliance. Had there been a situation where the only evidence against the applicant is the alleged admission of Constable Satnarain then the non-supply of this admission would have prejudiced him. But having availability of other evidence, we are of the confirmed view that due to non-supply of this admission the applicant has not at all been prejudiced in the departmental enquiry.

5. The applicant has also taken the plea that he has been deprived of an opportunity to cross-examine PWs 3 and 4. We have seen the record of the enquiry and considered the contention of the respondents that the applicant himself has not availed the opportunity to cross-examine these witnesses, as such he has not been denied any reasonable opportunity or has not at all been prejudiced in the conduct of the enquiry.

6. The applicant has also contended that the enquiry officer has not recorded reasons in support of the finding and has held the applicant guilty merely on suspicion, surmises and no evidence. In this regard we find that the reasons have been recorded by the enquiry officer in support of his finding on the charge and on the basis of the evidence recorded during the course of the enquiry. From the perusal of the evidence of PWs 3 and 4 we find that to persons were brought in the Maruti Van carrying liquor and were seen by the police official who are independent witnesses and their testimony has not been impeached by the applicant as such if there is some evidence in support of the findings of the enquiry officer the Tribunal would not interfere in the matter of evidence to take a different view by way of assuming the role of the appellate authority and re-apprise the evidence as held in Kuldeep Singh v. Commissioner of Police, reported in JT 1998 (8) SC 603. In this view of the matter we are of the confirmed view that as there is evidence against the applicant in the departmental enquiry the present case cannot be categorised as the case of 'no evidence' to warrant our interference.

7. No other legal grounds have been raised by the applicant to assail the impugned order.

8. In the result, having regard to the discussion made and the reasons recorded we do not find any merit in the present OA. The same is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member(J)

V.K. Majotra

(V.K. Majotra)
Member(A)

/SAN/