

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.670/2000

New Delhi this the 9th day of March, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMN)

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Head Constable Jasbir Singh
and Another

-Applicants

(By Advocate Shri V.K. Raina)

-Versus-

Govt. of NCT Delhi & Others

...Respondents

(By Advocate Shri Vijay Pandita)

1. To be referred to the Reporters or not? YES/46 ✓

2. To be circulated to other Benches of the Tribunal? No

S. Raju
(Shanker Raju)
Member (J)

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.670/2000

New Delhi this the 9^M day of March, 2001.

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

1. Head Constable, Jasbir Singh
No: 1582/PCR
(PIS No:28810065)
C/o III Bn. Vikas Puri,
New Delhi.

2. Head Constable(Driver)
Jai Singh, No:4150/PCR
(PIS No.29220041)
C/o Control Room PCR Delhi.

(By Advocate: Shri V.K. Raina)

...Applicant

-Versus-

1. Govt. of N.C.T.,
Commissioner of Police,
I.P. Estate
New Delhi.
2. Addl. Commissioner of Police
Delhi PCR Commissioner - Delhi.
3. Dy. Commissioner of Police
Control Room
Delhi.
4. Inquiry Officer
South Zone, PCR

(By Advocate: Shri Vijay Pandita)

...Respondents

O R D E R

By Mr. Shanker Raju, Member (J):

MA-878/2000 for joining together is allowed as the cause of action and the reliefs claimed in this application are identical.

The applicants, Head Constables in Delhi Police have assailed an order passed by the disciplinary authority on 18.5.99 whereby after the departmental enquiry the applicant No.1 Head Constable Jagbir Singh had been inflicted a major punishment of reduction in rank to that

of Constable for a period of five years and also awarding a major punishment to Head Constable Jai Singh, applicant No.2 while forfeiting his approved service permanently with cumulative effect and also treating the period of suspension w.e.f. 6.10.97 to 18.5.99 has not spent on duty. The applicants carried their punishment to the appellate authority and vide an order dated 10.12.99 punishment of applicant No.2, Jai Singh was maintained but the punishment awarded to applicant No.1 Jagbir Singh has been modified to that of forfeiture of five years' approved service at par with the other co-defaulter.

2. The brief facts leading to the filing of the present OA are that the applicants have been placed under suspension and thereafter a preliminary enquiry was conducted by Inspector Amrik Singh and on submission of his report a departmental enquiry was ordered after seeking the prior approval of the Additional Commissioner of Police vide order dated 24.8.98 on the allegation that the applicants were detailed for duty at PCR No.P-70 on the intervening night of 19/20.9.97. On receipt of a call regarding quarrel at Ravi Hotel it was found that one Surender Singh was found shot by Dilbagh Singh. The PCR van got admitted the accused Dilbagh Singh in hospital and claimed that they did commendable work by overpowering accused Dilbagh Singh by seizing the weapon of offence. Later, on verification the story of the applicant was found false. It was found that the accused Dilbagh Singh was beaten by the colleagues of injured Surender Singh and the snatched mouser was handed over to the PCR staff along with the accused. It is further alleged that the accused Dilbagh later on disclosed that the PCR staff extorted

9

(3)

Rs.17,000/- from him. Later on, this money was returned by HC Jagbir Singh to the Investigating Officer, on which the seizure memo was prepared. In this background the applicants have been alleged to have committed a grave misconduct and involved themselves in corrupt activities. After recording of the evidence and submission of defence by the applicants in a joint enquiry the enquiry officer through his findings dated 26.2.99 held the applicant guilty of the charge. The disciplinary authority on the basis of the finding of the enquiry officer imposed a major punishment which was later on maintained by the appellate authority.

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

4. It is firstly contended that though the allegations levelled against the applicants do constitute a cognizable offence in discharge of official duties in relation with the public, the respondents without application of mind proceeded the applicant in a departmental enquiry and despite a cognizable offence made out no case has been registered and investigated against the applicants. On the other hand, respondents contended that the Additional Commissioner of Police while according approval under Rule 15 (2) of the Delhi Police (Punishment and Appeal) Rules, 1980 (for short, the Rules) applied his mind to this aspect and vide his orders decided to proceed the applicants in a departmental enquiry. In our considered view the Additional Commissioner of Police had, after application of his mind to the facts and

10

(4)

circumstances of the case, thought it fit to deal the applicants departmentally instead of going for registration of a criminal case and the same cannot be faulted with, as the provisions of Rule 15 (2) of the Rules *ibid* had already stood complied with.

5. It is next contended that during the course of the departmental enquiry the enquiry officer had not adopted the correct procedure in recording the evidence of the witnesses. According to the applicant's counsel instead of recording the evidence of witnesses directly in presence of the applicants previously recorded statements of the witnesses, i.e., PW-4 and PW-6 were exhibited and treated as the evidence given in the departmental enquiry. Though it is admitted that the statement of these two witnesses recorded in the preliminary enquiry had already been served upon the applicants. The applicants' counsel Sh. V.K. Raina stated that due to non-recording of evidence of the witnesses the demeanour of that witness cannot be impeached by the applicants by way of cross-examination as the witness was not allowed to state his evidence afresh in the departmental enquiry. According to him such a procedure is not permissible when the witnesses are available for deposition. The applicants' counsel relied upon the ratio of this Tribunal dated 16.2.2000 in OA-1234/96 - Constable Sheo Ram Singh v. Union of India & Another, wherein the aforesaid procedure was held contrary to Rule 16 (3) of the Rules *ibid* and prejudice has been observed to be caused to the applicant therein which was in violation of the principles of natural justice. The applicant has also relied upon the ratio of the Hon'ble Apex Court in Union of India v. Sardar

(11)

(5)

Bahadur, 1972 SLR SC 355 to contend that the earlier statements recorded in the court cannot be relied upon in the departmental enquiry. We have carefully considered the judgements cited by the applicants as well as the deposition of PW-4 and PW-6 in the departmental enquiry. No doubt, it is true that statement of PW-4 Constable Satender Kumar has not been recorded directly in presence of the applicants and what has been done is to bring his statement of the preliminary enquiry on record in the departmental enquiry and by exhibiting PW-4/A the same was considered as his statement given in the departmental enquiry by recording that the witness did not want to add any thing more to his previous statement. The applicants have also vehemently and effectively cross examined this witness and rather the material brought on record through cross examination supported the case of the applicants. Likewise the statement of PW-6 Prem Chand Bansal was also recorded by referring to his previously recorded statement. While coming to the conclusion the enquiry officer had relied upon the testimony of PW-4 by observing as under:

As regards para D & E, PW-4, Constable Satendra Kumar No.983/West Distt. who was on emergency duty with the SHO/Nangloi, has stated that he certify and standby his statement recorded earlier by Inspr. Amrik Singh. In his statement which he certifies during D.E., he has clearly stated that in the hospital he came to know that Rs.16000/17000 of injured Dilbagh Singh were missing and staff of PCR Van P-70 was being suspected and interrogated in this connection. Barring minor contradictions, he has also revealed by and large the same facts during his cross examination. By the time he reached DDU hospital with SHO/Nangloi, the matter of taking away money by PCR staff was already under scrutiny and this PW was an eye witness to the subsequent developments. Since this PW was is an eye witness to the recovery of Rs.16050/-

from the Van, his vacillating views during cross examination caste a shadow of doubt to some extent on the prosecution story. As pointed out by the defence section 15(3) of Delhi Police(Punishment & Appeal) Rules, 1980, statements of PWs recorded during D.E. only are being considered.

6. Under Rule 15 (3) of the Delhi Police Rules ibid a preliminary enquiry statement can be brought on record by the enquiry officer in the event the conditions enumerated in Rule 16 (iii) are met out. According to this provision if the presence of a witness is not easily possible due to delay, inconvenience or expense only then his preliminary enquiry statement can be brought on record. Apart from it, if the witness is available then the previously recorded statement cannot be treated as the statement given in the departmental enquiry. These statutory provisions which are of substantive nature mandates recording of evidence in the departmental enquiry directly in presence of the accused. In our considered view a statement recorded in the preliminary enquiry cannot be made part of the deposition of the witness and it is incumbent upon the enquiry officer to record a direct statement of the witness. We are in respectful agreement with the ratio of this Tribunal in Sheo Ram's case (supra). The necessity of recording a direct statement despite existence of a preliminary statement is two fold. Firstly the preliminary enquiry is held behind the back of the police official where he is deprived of a right of cross-examination and in the departmental enquiry the witnesses if examined direct and to give his evidence afresh there is a possibility that he may give a different statement regarding the allegation as the testimony of the witness in preliminary enquiry is an exparte account of the



(7)

incident. Secondly, by recording a direct evidence, a police officer is being afforded an opportunity to test the demeanour of the witness. A preliminary enquiry statement cannot be brought on record as an evidence of a witness unless the witness is not available. In our considered view the enquiry officer by taking into consideration the preliminary enquiry statements of PW-4 and PW-6 and treating it as an evidence given in the departmental enquiry has acted contrary to the laid down procedure under Rule 16 (iii) of the Rules. It is now to be examined whether such procedure had caused prejudice to the applicants in view of the ratio laid down by the Apex Court in State Bank of Patiala & Others v. S.K. Sharma, JT 1996 (3) SC 722. We have perused the material on record and find that the enquiry officer while concluding his findings against the applicants took into reckoning the previously recorded statement of PW Satender Kumar. The disciplinary authority had also placed reliance on the statement of PW-4 recorded during course of the preliminary enquiry. As the enquiry officer had treated the PE statement of PW-4 as an evidence in the departmental enquiry and the fact that the same was relied upon by the disciplinary authority to award the applicant a major punishment, we are of the considered opinion that by not following the substantive provisions of Rule 16 (iii) ibid the applicants have been prejudiced and deprived of a reasonable opportunity which is violative of the principles of natural justice. We are also fortified in this view of ours of a ratio laid down by the Hon'ble Apex Court in Kuldeep Singh v. Commissioner of Police, JT 1998 (8) SC 603, wherein it has been held that the

14

(8)

procedure under Rule 16 (iii) of the Rules ibid can be by-passed only if the witness is not available for deposition.

7. It has been next contended that in order to hold the applicants guilty of the charge the enquiry officer relied upon exhibit PW-2/A and PW-2/B, i.e., the original page of call book as well as the changed page of the same book. The applicants flashed the message in the hope of getting some credit and award but later on when another version had come in order to save themselves a modified message was fabricated. According to the applicants though the original and modified message in the call book were exhibited and relied upon, copies of the same have not furnished to them which is also missing from list of documents provided to the applicants. Relying on Rule 16(1) of the Rules ibid it has been contended that non-supply of these documents has greatly prejudiced the applicants in their defence and the rule mandates supply of the same in case of being relied upon by the enquiry officer. We have perused the enquiry officer's report wherein the enquiry officer had categorically admitted that Inspector Amrik Singh PW-2, the preliminary enquiry officer did not report any statement in support of the allegations, yet exhibited 8 PW-2/B, PW-2/C as documentary evidence. The aforesaid piece of documentary evidence was also relied upon by the disciplinary authority to come to the conclusion and further imposing punishment upon the applicants. As it has been held by the Constitution Bench of the Apex Court in State of Tamil Nadu v. Thiru K.V. Perumal & Others, JT 1996(6) SC 604 that non-supply of documents vitiates the enquiry if the prejudice is caused

15

(9)

to the delinquent officer. In our view, the enquiry officer has relied upon these messages in the call book and further the same were exhibited during the course of the enquiry and also relied upon by the disciplinary authority, yet the copy was not served upon the applicant and it had not formed part of the list of the documents. As these documents are the basis of the punishment imposed upon the applicants, non-supply of the same has greatly prejudiced them. On this account also the enquiry is vitiated.

3. In the result, the OA is allowed. The impugned order dated 18.5.99 as well as the appellate order dated 10.12.99 are quashed and set aside. The matter is remanded back to the respondent to be taken from the stage of supply of the documents stated above and examination of PWs 4 and 6 in accordance with Rule 16 (3) of the Rules ibid with reasonable opportunity to the applicants to defend the charges in the enquiry. Thereafter the question of grant of consequential relief to the applicants shall be considered by the disciplinary authority after the conclusion of the departmental enquiry in accordance with rules and instructions. The respondents are further directed to complete this exercise within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

'San.'

V.K. Majotra

(V.K. Majotra)
Member (A)