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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 2203 of 1989

New Delhi this the 6th day of June, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman

Mr. B.N. Dhoundiyal, Member

Shri Bhadur Singh

House No.402, Police Quarters,

Police Station, Tilak Nagar,

New Delhi.

.....Applicant

By Advocate Shri Shanker Raju

Versus

1. Commissioner of Police,
Delhi.

2. Delhi Administration.

3. Lt. Governor, Delhi.

...Respondents

By Advocate Shri B.S. Oberoi, proxy counsel
for Shri D.K. Sharma, Counsel

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The applicant, a Sub Inspector in the Delhi Police challenges the illegality of the orders dated 14.01.1988 and 31.10.1988, passed by the Additional Commissioner of Police and the Commissioner of Police, respectively. By the former order, the Additional Commissioner of Police had awarded him a punishment of forfeiture of 4 years of approved service permanently. By the latter order, the appellate authority dismissed the appeal of the applicant and maintained the order of the Additional Commissioner of Police.

2. The applicant was subjected to disciplinary proceedings under the Delhi Police Act, 1978 and the Delhi Police (Punishment and Appeal) Rules, 1980. The gravamen of the charge is that on 02.09.1984, when the applicant was posted as a Sub Inspector at the Police Station Tilak Marg, one Constable Ram Singh, who was attached to him accepted an illegal gratification in the room of the applicant and ^{that too} in his presence. The other charge is that in spite of being directed by Shri B.K. Gupta, the then Deputy Commissioner of Police not to leave the Police

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Station, the applicant slipped away. An Enquiry Officer was appointed. He recorded the evidence of Shri B.K. Gupta and other officials. After appreciating the testimony of the witnesses and the written statement filed by the applicant, he came to the conclusion that the charge had been brought home to the applicant. The applicant was furnished with the Enquiry Officer's report along with a show cause notice. He gave an explanation. The disciplinary authority, who had succeeded the officer who had given the show cause notice in his capacity as the disciplinary authority while agreeing with the findings recorded by the Enquiry Officer felt that the punishment proposed by him (the Enquiry Officer) to be given to the applicant will be too harsh. The appellate authority, as already stated, has maintained the order of the disciplinary authority.

3. Shri B.K. Gupta, the Deputy Commissioner of Police directed a preliminary enquiry against the applicant. He entrusted that enquiry to one Shri A.L. Chadda. Shri A.L. Chadda submitted his report to Shri B.K. Gupta, who, in turn, forwarded the same to the Additional Commissioner of Police (Shri R.K. Ohri). Shri Ohri opined that an enquiry under Rules 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 should be conducted against the applicant. An Enquiry Officer was required to be nominated by the Additional Commissioner of Police, New Delhi. Therefore, Shri B.K. Gupta, nominated an Enquiry Officer who conducted the enquiry. The Enquiry Officer got approved the charge from Shri B.K. Gupta.

4. A show cause notice was given to the applicant by, Shri Arun Bhagat, the Additional

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inter alia,
) Commissioner of Police who, /recorded the findings
 that Constable Ram Singh, who was attached with the
 applicant, was trapped in a raid and caught red-handed while
 accepting bribe from one Ramesh. He opined: "the
 conduct of the defaulter immediately after the red-handed
 detection of the Constable in slipping away from the room
 and going out of the Police Station premises is indicative
 of his collusion. It has also been established that Sub
 Inspector Bahadur Singh disobeyed the orders of DCP/New
 Delhi. The misconduct of SI Bahadur Singh constitute gross
 misconduct, negligence carelessness disobedience of orders
 and dereliction of duties". He recorded his
 opinion that the applicant was not a fit person to be
 retained in the Police Force and the punishment of dismissal
 from service should be imposed upon him. He gave 15 days
 time to the applicant to submit his reply.

5. The applicant submitted a detailed reply to
 the disciplinary authority (Shri Ajay Aggarwal). In
 paragraph 3 of the impugned order ^{it is} /observed:-

" The DE was entrusted to Shri R.L. Meena,
 ACP/Ch.Puri, who completed the enquiry and
 submitted his finding on 25.06.86. I have
 carefully gone through the DE and connected
 papers having regard to the finding and on the
 basis of evidence adduced during inquiry. A
 show cause notice for dismissal was issued to
 him vide this office No.26208/VIG/AC.VI dated
 11.09.86. His reply has been received which
 has been considered. He was also given a chance
 to appear before the undersigned and heard.
 I have heard the delinquent. He has pleaded
 mercy. He has nothing else to say. Though
 I entirely agree with the remarks of my
 predecessor fully, yet I feel that punishment
 of dismissal will be too harsh for him. He
 may be given a chance to redeem himself otherwise
 not only he, his entire family will be ruined.
 The SI is repentent and I sincerely feel that
 given one chance may redeem himself. As such
 taking a lenient view, I forfeit his 4 years
 approved service permanently. I, Ajay Agarwal,
 Additional Commissioner of Police (Range) New
 Delhi hereby order that 4 years approved service
 of SI Bahadur Singh No.D/485 be forfeited
 permanently entailing reduction from Rs.1880/-
 to Rs.1640/-".

4.
The learned counsel for the applicant has urged that undoubtedly the applicant submitted a detailed reply to the Enquiry Officer's report. He has submitted that the disciplinary authority, instead of examining evidence himself, merely contented himself by agreeing with the remarks of his predecessor, the Additional Commissioner of Police. This contention appears to be correct. No doubt, the disciplinary authority has observed that, he has carefully gone through the departmental enquiry and the connected papers and the findings on the basis of evidence adduced during the enquiry. Nonetheless, there can be no getting away from the fact that the disciplinary authority acted under some misconception of law. He probably felt that the purpose of giving an opportunity to show cause against the Enquiry Officer's report, was confined to the quantum of punishment to be given to the applicant. That was the position in Article 311 of the Constitution, prior to the 42nd Amendment to the Constitution.

6. The appellate authority did not enter into the merits of the case nor considered the evidence recorded by the enquiry officer. He, however, has already stated, upheld the order of the disciplinary authority.

7. The learned counsel for the applicant has urged that undoubtedly the applicant submitted a detailed reply to the Enquiry Officer's report. He has submitted that the disciplinary authority, instead of examining evidence himself, merely contented himself by agreeing with the remarks of his predecessor, the Additional Commissioner of Police. This contention appears to be correct. No doubt, the disciplinary authority has observed that, he has carefully gone through the departmental enquiry and the connected papers and the findings on the basis of evidence adduced during the enquiry. Nonetheless, there can be no getting away from the fact that the disciplinary authority acted under some misconception of law. He probably felt that the purpose of giving an opportunity to show cause against the Enquiry Officer's report, was confined to the quantum of punishment to be given to the applicant. That was the position in Article 311 of the Constitution, prior to the 42nd Amendment to the Constitution.

8. It has now been finally settled by the Supreme Court that furnishing of the Enquiry Officer's report to a delinquent servant forms part of the reasonable opportunity guaranteed under Article 311(2) of the Constitution. It has also been held that such a requirement is a must as ^{so} the principles of natural justice demand. In the case of Managing Director, ECIL, Hyderabad Vs. B. Karunakar, JT 1993(6) SC 1, their Lordships have emphasised that the recommendation of the Enquiry Officer, upon the appreciation made by him of the evidence, produced before him and upon the


consideration of the defence version that the charge has been brought home to the delinquent servant constitutes an additional material (apart from the documentary and oral evidence produced before the Enquiry Officer) and, therefore, justice and fair play require that the delinquent servant should be given an opportunity to meet that additional material. Such an action would conform to the principles of natural justice. In paragraph 26, after emphasising the purpose, for which the Enquiry Officer's report is to be given to a delinquent servant, their Lordships observed:-

".....the disciplinary authority is then required to consider the report of the enquiry officer and the representation of the employee against it.....".

9. The consideration required is an objective one upon due application of mind. This apparently was not done in the present case. Therefore, the orders of the disciplinary authority and the appellate authority must fall.

10. Before parting with this case, we may observe that the appellate authority has not accepted ^{the} prosecution case that bribe had been offered to another police officer in the room of the applicant and in his presence and has upheld the order of punishment simply on the ground that the applicant was ordered by the then Deputy Commissioner of Police to stay in the Police Station but he ran away.

11. The disciplinary authority shall pass a fresh order on merits and in accordance with law and in the light of the observations made in this order and in the light of the judgment of the Supreme Court in ECII's case (supra). He shall consider the evidence led by the department and the defence offered in the disciplinary proceedings in detail.



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12. It goes without saying that if the disciplinary authority again passes an order, adverse to the applicant, it will be open to the applicant to prefer an appeal against that order.

13. The impugned orders are quashed. There shall be no order as to costs.


(B.N. DHOUNDIYAL)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

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