

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 474/89
T.A. No. 199

DATE OF DECISION 6.12.90

Bachi Singh Petitioner
Mrs. Panjak Verma Advocate for the Petitioner(s)
Versus
UDI and others Respondent
Mr. M.M. Sudan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.D. Mukerji, V.C.

The Hon'ble Mr. G. Sreedharan Nair, V.C.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? ☒
4. Whether it needs to be circulated to other Benches of the Tribunal ? ☒


(G. Sreedharan Nair)
Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Registration NO. DA 474 of 1989

Date of order 6.12.1990

Bachi Singh

Applicant

- versus -

Union of India and others

Respondents

CORAM Hon'ble Shri S.P. Mukerji, V.C.
CORAM Hon'ble Shri G.Sreedharan Nair, V.C.

Counsel for the applicant : Mrs. Pankaj Verma

Counsel for the respondents : Mr. M.M. Sudan

ORDER

Hon'ble Shri G.Sreedharan Nair, V.C.:-

The applicant, who was a Head Constable attached to the Delhi Police, was proceeded against departmentally under the Delhi Police (Punishment and Appeal) Rules, 1980, for short the Rules, for gross misconduct unbecoming of a Government servant and for being under the influence of intoxicating drink, by the order dated 6.4.1984. An enquiry was conducted. The Enquiry Officer submitted his report holding that the charge is established. The disciplinary authority agreeing with the finding of the Enquiry Officer issued a show-cause notice to the applicant provisionally proposing to award the penalty of dismissal. After considering the reply submitted by the applicant, the proposed penalty was reduced to one of removal from service, and accordingly the order imposing the penalty was issued on 21.11.1985. The applicant preferred an appeal which was rejected. A revision petition filed by the applicant also met with the same fate.

2. The applicant prays for quashing the order imposing the penalty. It is urged that as the enquiry was initiated in violation

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of sub-rule (2) of rule 15 of the Rules, it is without jurisdiction. It is also contended that the disciplinary authority did not form an opinion in regard to the imputations. There is also the plea that since the criminal proceedings initiated against the applicant in connection with the same incident ended in acquittal, the departmental proceedings are illegal.

3. The respondents have filed reply traversing the various grounds urged by the applicant.

4. After hearing counsel on either side, we are of the view that the applicant is to succeed on the first two grounds, though the third ground has no substance.

5. Sub-rule (2) of rule 15 of the Rules is as follows:-

"(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

There is no plea in the reply filed by the respondents that the Additional Commissioner of Police had considered the question as to whether a criminal case should be registered and investigated or a departmental enquiry should be held. Nor has the respondents produced any material to establish the same. What emerges from the records is that simultaneously the criminal proceedings as well as the departmental enquiry were held. No doubt, the criminal proceedings were under sections 91 to 93 of the Delhi Police Act while the departmental proceedings was for misconduct. However, both were based on the same incident relating to the alleged commission of cognizable offence by the applicant, a Head Constable,

in his official relations with the public. As such, the departmental proceedings are vitiated for non-compliance with the provision in the aforesaid sub-rule of rule 15 of the Rules.

6. Clause (x) of rule 16 of the Rules provides that on receipt of the report of the Enquiry Officer, the disciplinary authority shall consider the record of the enquiry and pass his orders on the enquiry on each charge.

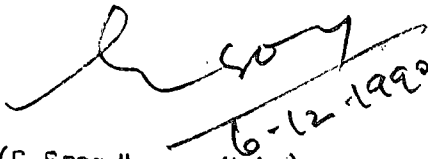
Clause (xii) lays down that if the disciplinary authority, having regard to his findings to the charges is of the opinion that a major punishment is to be awarded, a show-cause notice is to be given to the accused officer stating the proposed punishment and calling upon him to submit his representation against the proposed action.

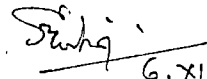
A conspectus of the aforesaid provisions makes it abundantly clear that on the basis of the record of the enquiry conducted by the Enquiry Officer, the disciplinary authority has to arrive at his own conclusion with respect to the charges, and that only after entering such findings can the disciplinary authority proceed to issue the notice regarding the proposed penalty. The object of the provision, manifestly, is to afford the delinquent official reasonable opportunity of defence, and a fair enquiry. In the instant case, it is seen that the disciplinary authority has failed to do so and that it was only after the applicant submitted his explanation in response to the show-cause notice proposing the penalty that the disciplinary authority has actually applied its mind. At that stage there is no question of entering a finding as to the truth of the imputations, for the only question that is to be gone into at that stage is regarding the quantum of penalty.

7. The decision of a Bench of this Tribunal in Satpal v. Delhi Administration, II (1990) ATLT (CAT) 375, is directly in point.

8. In view of the foregoing the order dated 21.11.1985 as confirmed in appeal and revision is hereby quashed. The applicant shall be reinstated in service forthwith. The respondents shall immediately pass orders in accordance with law and having regard to this order, as to how the period of suspension from 13.3.1984 to 21.11.1985, as well as the period from 22.4.1985 till his reinstatement is to be treated.

9. The application is disposed of as above.


(G. Sreedharan Nair)
Vice-Chairman


(S.P. Mukerji)
Vice-Chairman

C. Mahto
6.12.90