IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 560/1989
~~T.A. No.~~ xxxxxx 199

DATE OF DECISION 7.8.1991

Arvind Kumar — Petitioner

Shri J. P. Verghese — Advocate for the Petitioner(s)

Versus

Delhi Admn. & Anr. — Respondent

— Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman (J)

The Hon'ble Mr. S. Gurusankaran, Member (A)

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

Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH:DELHI

O.A.NO. 560 OF 1989 DATE OF DECISION:7-8-1991.

Arvind Kumar. .. Applicant.

Vs.

Delhi Administration and another. .. Respondents.

CORAM:

Hon'ble Mr.G.Sreedharan Nair, ..Vice-Chairman.
Hon'ble Mr. S.Gurusankaran, ..Member(A)

Shri J.P. Verghese, Counsel for the applicant.

None for the respondents.

G.SREEDHARAN NAIR, VICE-CHAIRMAN (J):

JUDGMENT

The applicant who was a constable in the Delhi Police, was proceeded against departmentally. A memorandum of charges was issued against him on 19-1-1988. The imputation was that he earned 44 departmental punishments as a result of which he was passed over thrice from being made quasi permanent. The applicant submitted reply. The disciplinary authority by its order dated 1-3-1988 holding the charge is proved imposed upon the applicant the penalty of removal from service. The appeal submitted by the applicant was rejected by the order dated 28-9-1988. The revision petition preferred by him also did not meet with success. The applicant has prayed for quashing the order imposing the penalty and for issue of a direction to the respondents to reinstate him in service. It is urged that after the framing of the charges, no evidence was recorded to establish the same and hence the procedure followed is violative of the principles of natural justice and infringes Articles 14, 16 and 311 of the Constitution of India. In this context, the applicant has also

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prayed for a declaration that Rules 15 and 16 of the Delhi Police (Punishment and Appeal) Rules,1980 (for short 'the Rules') are violative of Sections 21 and 22 of the Delhi Police Act,1978 and also violative of Articles 14, 16 and 311 of the Constitution of India.

2. The applicant has also urged that the disciplinary authority has not arrived at the findings before the imposition of the penalty and as such there has not been compliance with clause (ii) of Rule 16 of the Rules. There is also the plea that the impugned orders have been passed mechanically and without application of mind.

3. In the reply filed on behalf of the respondents, it is stated that the Inquiry Officer found that the imputation against the applicant is proved and tentatively agreeing with the same, the Disciplinary Authority proposed the penalty of removal from service and issued show cause notice to the applicant and after considering the reply of the applicant and hearing him, the penalty was imposed. The appeal as well as the revision petition submitted by the applicant were duly considered and rejected.

4. Sri J.P.Verghese, counsel of the applicant, stressed three points at the time of final hearing. Firstly, he stated that there has been denial of the well recognised principle of natural justice of the necessity for affording a reasonable opportunity of being heard before the imposition of the penalty, in so far as the prosecution witnesses were not examined after the service of the memorandum of charges. In support of this submission, he took us through clauses (iv) and (v) of Rule 16 of the Rules. The former clause provides that when the evidence in support of the allegation has been recorded, the Inquiry Officer shall proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them. Clause (v)

lays down that the accused officer shall be required to state the defence witnesses whom he wishes to call. It proceeds to lay down the manner in which the testimony of those witnesses is to be recorded. Laying stress on the provisions contained in these two clauses, it was argued that it is manifest that after the framing of the charges there is no provision in the Rules for examining ~~all~~ the prosecution witnesses or to lead evidence on behalf of the prosecution, the provision being only to call upon the accused officer to adduce defence evidence. The submission of counsel would have been very much acceptable if Rule 16 which lays down the procedure to be followed in departmental enquiries did not provide anything further. We have to read the provisions contained in clauses (iv) and (v) of Rule 16 of the Rules along with the earlier clauses. When so read, we have the least hesitation to hold that there is no merit in the submission of counsel of the applicant.

5. Clause (i) of Rule 16 is extracted hereunder:-

> " (i) A police officer accused of misconduct shall be required to appear before the disciplinary authority, or such Enquiry Officer as may be appointed by the disciplinary authority. The Enquiry Officer shall prepare a statement summarising the misconduct alleged against the accused officer in such a manner as to give full notice to him of the circumstances in regard to which evidence is to be recorded. Lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon or prosecution shall be attached to the summary of misconduct. A copy of the summary of misconduct and the lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution will be given to the defaulter free of charge. The contents of the summary and other documents shall be explained to him. He shall be required to submit to the Enquiry Officer a written report within 7 days indicating whether he admits the allegations and if not, whether he wants to produce defence evidence to refute the allegations against him."

It is evident that at the commencement of the inquiry when the accused Police Officer appears before the disciplinary authority or the Inquiry Officer appointed by it a statement summarising the alleged misconduct against him

is to be prepared and the delinquent is to be given notice of the same along with the lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for establishing the truth of the imputation are also to be furnished to the delinquent. Indeed the Disciplinary Authority or the Inquiry Officer as the case may be is bound to explain to the delinquent officer the summary of the imputations with reference to the documents, if any, under which they are to be established and the delinquent is to be afforded an opportunity to submit his written statement as to whether he admits the allegations.

6. In case the delinquent Police Officer does not admit the misconduct, the further procedure to be followed is detailed in clause (iii) of Rule 16, which lays down that the Inquiry Officer shall proceed to record evidence in support of the accusation, as is available. It is highlighted therein that the witnesses shall be examined in the presence of the accused, who shall be given an opportunity to take notes of their statements and cross-examine them. The statements and the documents brought on record through the witnesses shall be read out to the delinquent and he is to be given opportunity to take notes. It is only after the conclusion of this part of the inquiry that in cases where the Inquiry Officer does not choose to discharge the accused on the ground that the allegations are not substantiated that he is ordained to frame a formal charge in writing. It is thereafter that the procedure laid down in clause (v) dealing with the examination of defence witnesses is to be followed.

7. On a conspectus of the aforesaid provisions, it is abundantly clear that they provide ample safeguards with a view to afford the delinquent officer reasonable opportunity of defence. It cannot at all be said that at the commencement of the inquiry itself the delinquent official is called upon

to produce his evidence; on the contrary it is only after the entire evidence for the prosecution is let in and only where the Inquiry Officer is prima facie satisfied regarding the truth of the allegations that the accused officer is required to let in his evidence.

8. Evidently it is the provision in sub-clause (b) of clause (iv) of Rule 16 which states that the Inquiry Officer shall "proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them" that has given room for such an argument. It is to be noted that what is referred to there in is the formal charge (emphasis added). The imputations are actually explained to the accused officer at the beginning of the inquiry itself and it is only where he choses to deny the same that the prosecution witnesses are examined, with the opportunity to the delinquent officer to eross-examine them. Hence, the framing of a formal charge thereafter cannot be relied upon by the delinquent officer to insist that the very same witnesses should be examined over again and that the prosecution shall let in the very same evidence once more. We cannot agree with the counsel of the applicant when he submits that what is contemplated under clauses (i) and (iii) of Rule 16 is only a preliminary enquiry. The stage of preliminary enquiry is over when the departmental inquiry commences. Rule 16 governs the procedure in the departmental inquiry itself. The preliminary inquiry is regulated by the provisions contained in Rule 15 of the Rules. The submission that there is no charge as such prior to the framing of the formal charge under sub-clause (b) of Clause (iv) of Rule 16 of the Rules has also to be rejected. No doubt under clause (i) the expression used is 'summary of the misconduct'. Whether the expression

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used is 'summary of misconduct', 'imputations', 'allegations' or 'charge', it makes little difference. In this context, it hasto be pointed out that actually the expression 'charge' is used in clause (iii) of Rule 16 of the Rules.

9. Counsel of the applicant invited our attention to the decision of a Bench of this Tribunal in JAGADISH RAM KATARIA v. UNION OF INDIA [(1987) 3 ATC 468]. We have gone through the said decision. That was a case where the delinquent officer did not turn up at the stage of examinatio of prosecution witnesses under clause (iii) of Rule 16 of the Rules. It was held that in view of the provision contained in clause (iii), it was incumbent on the Inquiry Officer to recall the witnesses "examined by him already in an ex-parte manner, if not to re-examine them again, atleast to give an opportunity to the petitioner to cross-examine them after giving him a date of hearing". This decision cannot be relied upon by the counsel for the proposition that after such portion of the inquiry covered by clause (iii) of Rule 16 is over and a formal charge is framed, witnesses already examined under clause (iii) have to be summoned again, though they were cross-examined earlier.

10. In view of what is stated above, the plea of the applicant that Rules 15 and 16 of the Rules are violative of Articles 14, 16 and 311 of the Constitution of India has to be rejected and we do so. Nor, is there anything in those rules infractive of Sections 21 and 22 of the Delhi Police Act. Section 21 deals with the powers of punishment and Section 22 with the procedure for awarding the same.

11. The second point that was canvassed by the applicant's counsel was that before a show cause notice is issued under sub-clause (c) of Clause (xii) of Rule 16 of the Rules, the Disciplinary Authority has to enter findings on the

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charges. It was stated that since no such finding has been given, the proceedings are vitiated. This submission too does not deserve acceptance. The show cause notice dated 5-2-1988 establishes that the Disciplinary Authority has gone through the findings of the Inquiry Officer and has actually found that the Inquiry Officer has correctly concluded therein that the applicant was passed over from quasi permanency for three consecutive occasions. It was on the strength of this finding that the penalty of removal from service was proposed and the notice was issued.

12. The counsel of the applicant has invited our attention to a Division Bench decision of this Bench in BACHI SINGH v. UNION OF INDIA (O.A.No.474/89 decided on 6-12-1990) on which one of us was a member (Shri G.Sreedharan Nair, VC). No reliance can be placed on the same, in view of what is stated in the preceeding paragraph. That was a case where the Disciplinary Authority had failed to arrive at his own conclusion with respect to the charges.

13. The last submission of counsel of the applicant deserves to be mentioned only for the purpose of rejecting the same. Placing reliance on the order of the revisional authority wherein there is a mention that the applicant was dealt with departmentally "under Rule 8 of the Central Civil Services (Temporary Service) Rules,1965" it was stated that the departmental proceedings are completely vitiated since Rule 8 of the CCS (Temporary Service) Rules was repealed long prior to the initiation of the proceedings. The mere statement in the order to that effect will not vitiate the proceedings. It is trite that the reference to a wrong provision of law cannot vitiate the proceedings. Besides, there is no reference to the aforesaid rule in the memorandum of charges or in the report of the Inquiry Officer or in the

order of the Disciplinary Authority.

14. The application is dismissed.

7/8/1991
MEMBER(A)

7-8-1991
VICE-CHAIRMAN.