

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 7/1989

NEW DELHI, THIS 25th DAY OF FEBRUARY, 1994

SHRI C.J. ROY, HON'BLE MEMBER(J)
SHRI P.T. THIRUVENGADAM, HON'BLE MEMBER(A)

Shri Virender Gupta
Ex-Constable No.11352/DAP
s/o Shri Banwari Lal Gupta
407-9, DDA Colony, Choukhandi
Tilak Nagar, New Delhi-110012 .. Applicant

By Shri Shankar Raju, Advocate

VERSUS

Delhi Administration, through

1. Chief Secretary
5, Alipur Road
Raj Niwas Marg, Delhi-110054
2. The Commissioner of Police
Police Headquarters, IP Estate
MSO Building, New Delhi-110 002
3. Shri V.K. Chauhan
Inspector, Delhi Police
10th Bn., DAP, Pitampura, Delhi .. Respondents

By Shri M.C. Garg, Counsel

O R D E R
(BY HON'BLE SHRI C.J. ROY, MEMBER(J))

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved by the order dated 21.10.87 dismissing him from service and he has claimed the following reliefs:

- i) Quashing of dismissal order dated 21.10.87, rejection order dated 18.2.88 by the ACP and also final rejection order dated 11.7.88 by the Commissioner of Police;
- ii) Directing the respondents:-
 - a) for his reinstatement in service and payment of all consequential benefits;
 - b) to fix his seniority, give promotion from the date of his juniors were promoted and also give him consequential benefits thereof; and

c) to treat the period from the date of dismissal to the date of reinstatement as spent on duty without any break in service.

2. Brief facts of the case, as alleged by the applicant, are that he joined the Delhi Police on 18.2.64 as a Constable under the Punjab Police Rules and while he was working in the P.S. Hauz Qazi, Delhi, the applicant was charge-sheeted vide order dated 18.9.87 for grave misconduct of violation of Rule 15(1) of CCS(Conduct) Rules, by doing a business of Chit Fund Committee and stopping payment of the subscribers. A departmental enquiry was held and based on its findings, the applicant was issued with a show-cause notice of dismissal from service vide order dated 12.10.87 (Annexure 5). The applicant filed his reply to the show-cause notice, but the disciplinary authority made the final order of dismissal dated 21.10.87 (Annexure 8). The applicant preferred an appeal on 28.10.87 which was dismissed on 18.2.88 and his revision appeal dated 7.3.88 to the Commissioner of Police was also dismissed on 11.7.88. Hence, this application claiming the above reliefs.

3. The respondents have filed their counter affidavit stating that on receipt of a complaint dated 8.7.86 from one Shri L.D.Gulati, it was detected that the applicant alongwith his wife was running a Chit Fund Committee in the name of Gupta Committee Centre with the intention of cheating the public. A preliminary enquiry was held and the allegations against the applicant were substantiated. After this, a departmental enquiry was conducted, when ample opportunity was given to the applicant to defend himself, but it transpired that the

said Chit Committee was actually run by the applicant himself alongwith his wife personally and when the subscribers of the said committee demanded their money, the applicant threatened them with dire consequences. They aver that the charges framed against the applicant stood proved and he was again heard in the orderly room on 21.10.87 but he had nothing new to say in his defence than what he had already stated in his written reply. Thus, he was not found fit to be retained in service and therefore he was rightly dismissed.

4. The applicant has filed his rejoinder more or less reasserting what he has stated in the OA.

5. We have heard the learned counsel for the parties and perused the records.

6. The learned counsel for the applicant attacks the case on the following grounds:

- a) The dismissal order was not issued by the competent authority;
- b) Enquiry Officer has taken the role of prosecution and acted in a biased manner by cross examining the witnesses himself;
- c) Copy of the preliminary enquiry conducted and relied upon has not been given to the applicant;
- d) documents relied upon in the enquiry were not supplied to the applicant;
- e) There is no clear cut finding given for the misconduct as well as unfitness which is mandatory for the disciplinary authority to impose the punishment; and
- f) Cards of the Chit Committee reported to have been written in applicant's own handwriting and relied upon were not issued to the applicant.

7. Dealing with point (a) above, it would be seen that the applicant was originally appointed under Punjab Police Rules and subsequently by virtue of Delhi Police Act, 1978 he has been absorbed in Delhi Police. However for application of Rules, his position is safeguarded with reference to Punjab Police Rules. Though the Punjab Police Rules are repealed, Delhi Police Act retains the benefit of the Punjab Police Rules by virtue of 149(2) of the Delhi Police Act, 1978. Third explanation to the commentary reads as under:

"Third to make this position clear that whatever action has been taken under this Act detailed in Schedule II would remain effective and for that reason it would be deemed as if this Act (Delhi Police Act, 1978) has not been enacted. The Section 149 Proviso(1) clearly saves the operation of the Punjab Police Rules to the Union Territory of Delhi"

8. Also the rights of the applicant against dismissal are safeguarded under Article 311 of the Constitution of India, which reads as follows:

"No person who is a ~~member~~ ^{member} of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed"

9. It is also relevant to mention the following decisions on this point:

TA 709/85 dated 17.10.88 (CW 1073/81)-Lakhi Ram Vs UOI-1989(3)(CAT)-321: "It is well established that what is material for the purpose of Article 311(1) of the Constitution is who actually appointed and not the competent authority who could have appointed the person concerned. What is involved in matter of appointment and removal for the purpose of Article 311 is the status and rank of the employee and the status and rank of the authority taking action. In the present case, the petitioner was actually appointed as a Constable by

the SSP exercising the powers of DIG Police who, in terms of rank and status, was higher than that of ASP. The ASP who was a lower authority was therefore not competent to initiate disciplinary proceedings against the petitioner"

T-459/85 dt. 28.4.88 (CW 433/79)-Braham Singh Vs. UOI-ATR 1988(2)CAT-293: "...Since in his case, he was appointed as a Constable by the Senior Supdt. of Police, exercising the powers of DIG of Police, he could not be dismissed from service or any penalty could be imposed on him by the SSP(Lines), Delhi, who is an inferior and subordinate authority to the DIG of Police".

10. It is also relevant to mention here that as per Rule 5 of the Delhi Police (Punishment & Appeal) Rules, 1980, only the appointing authority is competent to impose a major penalty after a regular departmental inquiry. The case of the applicant is that he was appointed by the DGP, who is equivalent to the rank of ACP. We have seen from the appointment order at Annexure A-I that it was issued by the Superintendent of Police/Commandant for DIG of Police. But in this case, the punishment was imposed by the DCP who is lower in the rank to the appointing authority, i.e. ACP.

11. So, on this point the applicant scores in his favour, as the applicant has not been removed by the competent authority.

12. Regarding point (b) above, it has been held in various cases as under:

OA 1095/86 dated 28.9.90-Jagbir Singh Vs. Lt. Governor, Delhi-1991-16-ATC 192-"Cross examination of defence witnesses by the Enquiry Officer himself was in plain violation of the principles of natural justice and consequently the enquiry proceedings were vitiated"

OA 591/90 dated 30.8.93-SLJ-1993(3)-564 - Rajinder Prasad Vs. UOI: "Enquiry Officer himself cross examining the witnesses is violative of principles of natural justice".

{6}

OA 1283/92 dated 29.10.92 - Malkhan Singh Vs. ACP-Principal Bench, New Delhi: "The Inquiry Officer should not have acted as a prosecutor as well as a judge. The cardinal principle of natural justice is that a person who is acting as an Inquiry Officer should be a person with detached mind and should participate in the cross-examination of a witness".

13. Referring to point (c) (d) & (f) above, it is relevant to mention here the following decisions:

OA 30/88 dated 21.5.93-Ishwar Singh Vs. UOI-Principal Bench, New Delhi: "Therefore, it is clear that if a preliminary enquiry report is not furnished to the charged officer, whether he requests or not, it goes against the principles of natural justice and effective cross examination can be done. Preliminary enquiry report plays an important aspect and denial of it is certainly a matter of causing great prejudice to the applicant".

TA 4/85 dated 4.4.86-Sankari Pada Mukherje Vs. UOI-SLJ-1986(2)(CAT)-286: "The preliminary enquiry of the CBI is the basis on which the allegations are being levelled against the delinquent and therefore, in our opinion all reasonable opportunity should be given to the delinquent for the ends of justice to pursue the report enabling the delinquent to effectively defend himself and we can not agree with the contention of the respondents that the report is only meant for the disciplinary authority".

CA 2571/77 dt. 15.5.86-SLJ-1986(2)SC-279-Kashinath Dikshita Vs. UOI: "In the facts and circumstances of the case we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charge levelled against him".

OA 138/87 dt. 11.9.87-ATR 1988(1)CAT-169-Naresh Chand Vs. Commissioner of Police & Anr.: "The Rules of natural justice and the principles of fair play should be observed in departmental proceedings, too".

CA 322/57 dt. 1.11.60-SLR 1967-SC-759 - Tirlok Nath Vs. UOI: "Therefore in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as FIR and the statements recorded must be held to have caused prejudice to the appellant in making defence at the Inquiry".

14. Again, as regards point (f) above, admittedly the cards of the Chit Committee alleged to have been written in his own handwriting by the applicant

himself and which were relied up in this case, were not supplied to the applicant, which is also bad in law inasmuch as that the applicant was not afforded a reasonable opportunity to defend himself.

15. As regards (e) above, i.e misconduct, it has been held by this Tribunal as follows:

OA 442/91 dated 31.1.92-SLJ1992(3)CAT-28-H.K.Sharma Vs. UOI: "When once an offence has been condoned by the competent authority, it can not be reopened after some time".

OA 1712/91 dated 10.9.93-Shri Mool Chand & Ors. Vs. Delhi Admn. & Others: "We have already emphasised that the punishing authority and the appellate authority committed an error of jurisdiction in failing to record a finding that the misconduct attributed to the petitioners amounted to a grave misconduct. That was a condition precedent to the exercise of power of dismissal. We have also held that power under Rule 8(a) could not be exercised against the petitioners as no finding has been recorded that they were completely unfit for police service. This was also an error of jurisdiction. We have further held that the authorities passed illegal orders while recording the finding that the petitioners misconducted themselves in the discharge of their official duties".

So, on these points also the applicant scores himself in his favour.

16. It is the case of the applicant that the alleged Chit Committee was being run by his son and that he was not even remotely connected with his business. It is evident from Annexure A-14, which is letter from DCP, West District to DCP, Hqrs., that reads as under:

"There is no written complaint made by members of Gupta Committee Centre in our office. However, in the month of October, 1986 four persons namely Smt. Maharani, Smt. Madhu Rana, Smt. Illam and Shri L.D.Gulati (all residents of DDA colony,

۱۷

۱۷

۱۷

- ۱۷

۱۷

- ۱۷

۱۷

۱۷

۱۷

۱۷

{9}

17. We also find at Annexure A-13, a compromise letter dated 3.11.86 (written in Hindi) from Shri L.D.Gulati, complainant, to the effect that he has settled the matter with the said Gupta Committee run by the son of the applicant by realising the amount due to him and that he has no complaint against the applicant. Therefore it would be seen that the Chit Committee was started by the son of the applicant, as admitted by the complainant, who is the same complainant on whose complaint the enquiry was started. Therefore when Shri Gulati is a party to the compromise arrived at before the DCP and that finding of DCP(Hqrs) is not questioned by the respondents, now it is not left ^{to} the respondents to rely upon the same complaint of Shri Gulati to turn the table against the applicant stating that the applicant himself was running the Chit Fund Committee. Therefore, under no circumstances we feel that it can be said that the applicant is a party to the chit fund committee.

18. The Enquiry Officer has formed his opinion without any evidence. As discussed supra, the complainant who has compromised before the DCP(Hqrs.) again chose to give a complaint on the same fact on which this enquiry was started resulting in dismissal of the applicant. Therefore, the punishing authority has acted in utter violation of natural justice. Since there is no valid evidence before the enquiry officer to come to conclusion, we feel the punishment is arbitrary and exhibits a complete bias.

19. Following the guidelines stated supra and in view of the fact that the copy of the preliminary report and other documents relied upon were not made available to the applicant to afford him a reasonable opportunity to defend himself, we feel that the action of the respondents in merely relying upon the preliminary enquiry and dismissing him from service is against the principles of natural justice. We have no hesitation to hold that the applicant has made out a case for our interference. In the circumstances, we allow the application. The impugned orders dated 21.10.87, 18.2.88 and 11.7.88 are quashed and set aside.

20. The respondents are directed to reinstate the applicant in service forthwith and he will be entitled to all consequential benefits, including ^{the} arrears of pay and allowances and promotion as if he had continued in service throughout. There will be no order as to costs.

P. T. Thiruvengadam

(P.T.Thiruvegandam)
Member(A)

msm 28/2/94
(C.J. Roy)
Member(J)

/tvgr/