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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 927/1989. DATE OF DECISION: 13 -2-1992.

Shri Vijay Pal Singh Applicant.

V/s.

The Commissioner of Police,
Delhi Police & Others ... Respondents.

CORAM: Hon'ble Shri T.S. Oberoi, Member (J).
 Hon'ble Shri P.C. Jain, Member (A).

Shri B.S. Charya, counsel for the applicant.
Shri Dinesh Kumar, counsel for the respondents.

JUDGMENT

(delivered by Hon'ble Shri P.C. Jain, Member)

The applicant, in this application under Section 19 of the Administrative Tribunals Act, 1985, is aggrieved by his dismissal from service. He was appointed as Constable in Delhi Police on 28.6.1975. On allegation of misconduct, he was placed under suspension with effect from 1.1.1987. The allegation against him was as below: -

"It is alleged against const. Vijay Pal Singh No.937/T in that while posted in Gandhi Nagar Circle of traffic unit he was found checking of vehicles along with Const. Niranjana Singh 1457/T at Azad Nagar Chowk unauthorisedly under the influence of liquor on 1-1-87 at 7.45 P.M. when checked by ACP/T East on a secret information. When he was being taken to OPL hospital for medical examination, he made his escape from the custody of S. L. Shiv Raj Singh, A.S. L. Raghu Nath Singh, H.C. Naurang Lal and constable Nirmal Singh of Gandhi Nagar circle by inflicting them injuries with his belt as a result of which ASI Raghu Nath Singh sustained injuries on his finger. He was traced but he could not be located, hence he was marked absent vide DD No.16 dated 1-1-87.

On the basis of the above allegation, which was treated as amounting to gross misconduct and indiscipline and hence liable to be dealt with departmentally under Section 21 of the Delhi Police Act, the Deputy Commissioner of Police,

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Traffic, New Delhi, directed that Constable Vijay Pal Singh and Constable Niranjana Singh be dealt with departmentally under Section 21 of the D.P. Act, vide orders dated 2.2.1987 (Annexure P-4). The Enquiring Officer, who was appointed for the purpose, served the applicant with a Memorandum dated 19.6.87 along with Summary of Allegations, list of witnesses and what they were supposed to state and a list of documents. After recording prosecution evidence, the charge was framed on 28.3.88. The applicant, in his statement of defence dated 2.4.1988 denied the charge. The Enquiry Officer gave his report on 13.4.88, in which he found the charge as proved beyond shadow of any doubt. The Deputy Commissioner of Police issued a Show Cause Notice (Annexure P/10), by which he was asked to show cause within 15 days as to why his suspension period from 1.1.87 to the date of issuing order, may not be treated as non-duty period and he be paid nothing more for his suspension period other than what he had already been paid in the shape of subsistence allowance. He gave his reply to the Show Cause Notice on 2.5.1988. The disciplinary authority passed an order dated 19.5.1988 dismissing the applicant from service with immediate effect as also treating the suspension period from 1.1.1987 to the date of order as period not spent on duty, and that he will not be entitled to pay and allowances for that period except what has already been paid to him as subsistence allowance. The applicant filed an appeal to the Additional Commissioner of Police in June, 1988. The appellate authority vide his order dated 7.3.89 dismissed the appeal; hence, this O.A.

2. The respondents have opposed the O.A. by filing a return, to which the applicant has also filed a rejoinder. We have carefully perused the material on record and also heard the learned counsel for the applicant. No counsel appeared for the respondents at the time of final hearing.

3. The applicant has raised various contentions. It is stated that the summary of allegations was vague and

concocted; that the Enquiry Officer failed to provide the requisite documents; that he did not accede to the request of the applicant to be represented by legally trained person and/or a retired Government servant or other official; that the inquiry has not been conducted in a valid, proper and lawful manner and that principles of natural justice have been violated; that when the first Enquiry Officer was changed, the other Enquiry Officer ought to have held de-novo inquiry; that the Enquiry Officer recorded perverse findings contrary to evidence; that the Enquiry Officer proceeded with a biased and prejudiced mind; that both the orders passed by the disciplinary authority and the appellate authority suffer from non-application of mind; that the disciplinary authority acted beyond the scope of punishment proposed in the Show Cause Notice dated 27.4.1988; that no independent witness against the applicant was examined; and that the punishment of dismissal is extremely harsh, excessive, disproportionate and violative of Article 14 of the Constitution. In addition, the applicant has challenged the validity of sub-clauses (iii), (iv) and (v) of Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980. It was also submitted that copy of the Enquiry Officer's report was not made available to the applicant before the disciplinary authority passed the order of dismissal.

4. Learned counsel for the applicant strongly urged at the bar that the applicant was not allowed the assistance of a person for his defence, even though he had made a request to that effect, but such a request was not recorded by the Enquiry Officer. The respondents, in their reply, have categorically stated that the applicant never requested to be represented by a retired Government servant or a legally trained person even in his written statement submitted on 2.4.88. We find from the Memorandum dated 19.6.87 served

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on the applicant (Annexure P/5) that in the Memorandum itself, the applicant was informed "that he may if he so desires, take assistance of another police official for assisting him in inspecting the documents". We also find that in his written statement dated 2.4.88 given by him before the Enquiry Officer concluded his inquiry, he neither made such a request, nor made any reference of his request having been made by him earlier. This plea of the applicant, therefore, does not have any force.

5. Learned counsel for the applicant also strongly urged that the Show Cause Notice given to him by the disciplinary authority asked only to show cause as to why the period of suspension be not treated as a period not spent on duty and no other punishment was proposed in that Show Cause Notice, but the disciplinary authority in the impugned order passed by him, not only treated the period of suspension as a period not spent on duty, but also passed an order of dismissal of the applicant from service. He, therefore, argued that this was against the provisions of Delhi Police (Punishment & Appeal) Rules, 1980. Sub-clause (xii)(c) of Rule 16 of the aforesaid Rules provided as below: -

"(xii) If the disciplinary authority, having regard to his findings on the charges, is of the opinion that a major punishment is to be awarded, he shall:

(a)

(b)

(c) give him a show cause notice stating the punishment proposed to be awarded to him and calling upon him to submit within 15 days such representation as he may wish to make against the proposed action."

6. The respondents, in their reply on this point, have stated that "No fresh show cause notice for the dismissal was, however, issued in accordance with the provisions of Notification No.F.5/8/85 Home(P)/Estt.(I) dated 4.9.86 (copy enclosed)". In reply to ground (1), the respondents have stated that as per the aforesaid Notification, "if the

disciplinary authority having regards to the findings on all or any of the charges and on the basis of the evidence adduced during the enquiry is of the opinion that any of the penalties specified in the rule 5(i to vii) should be imposed on the police officer, it shall make an order imposing such penalty and it shall not be necessary to give the police officer any opportunity of making representation on the penalty proposed to be imposed".

A copy of this Notification has not been enclosed to the counter-affidavit, though it is stated in the reply that it is enclosed. However, in his rejoinder, the applicant has pleaded that that "Without prejudice to the contention of the applicant that the alleged substitution in the Rule is not valid and tenable. The same is shown to have been notified only on 4.9.1988 whereas the order is said to have been passed on 19.5.1988. The said notification could not have retrospective effect. Even otherwise, the applicant is entitled to have an opportunity to represent against the findings before final order is passed." From the above, it is clear that the applicant does not dispute the issue of notification in substitution of sub-clause (xii)(c) of Rule 16 of Delhi Police (Punishment & Appeal) Rules, 1980, but contests the same as not valid and tenable. In his O.A., he has no-where challenged the aforesaid notification. Further, his contention that the notification was issued only on 4.9.88 is not substantiated by a clear statement in counter-affidavit that it is dated 4.9.1986 and not 4.9.1988. Thus, this plea does not have any force.

7. Another contention urged before us was that the Enquiry Officer failed to provide the requisite documents, particularly in support of the statement of allegations despite demand made in this behalf and also did not record the request of the applicant made in that behalf. The respondents, in their reply, have controverted the above contention and have stated that "the applicant was served summary of allegations alongwith relevant papers on

22-6-87 by the Enquiry Officer." There is nothing on record to show that the above contention of the applicant is valid.

8. Another contention of the applicant is that in the first week of January, 1988, he was required to be present before Inspector Bhagwant Singh without there being any specific order by the disciplinary authority in that behalf, and that he had not received any intimation or orders that Shri Bhagwant Singh was being appointed as the Enquiry Officer to succeed Shri Ram Karan Meena. It is further stated that the applicant did not know as to whether Shri Pooran Mal, Inspector was at any time ever appointed as an Enquiry Officer, and that he had raised objection regarding the competence of Shri Bhagwant Singh, but his objection was not recorded. In their reply, respondents have stated that the departmental enquiry was transferred to DE Cell and entrusted to Shri Puran Singh, Inspector of DE Cell by the DCP/DE Cell vide order No.2740-46/R:DCP:DE Cell dated 27-10-87 and again entrusted to Shri Bhagwant Singh, Inspector/DE Cell by DCP/DE Cell vide order dated 1-1-88 and that the applicant attended the departmental enquiry after receiving the information. In his rejoinder, the applicant has stated that "The respondents have again failed to controvert the specific allegation that Shri Bhagwant Singh was not empowered to hold enquiry by any written order because the applicant had not received the same as has been specifically alleged under para 4(vii) of the application. The applicant was not aware when Shri Puran Mal, Inspector was appointed as the enquiry officer." The respondents, in their reply, as already indicated above, had given the order number and date by which Shri Puran Singh and Shri Bhagwant Singh were appointed. Further, there is nothing to show that the applicant had raised any objection in any proceedings before either of these Enquiry Officer. This contention also, therefore, has no force.

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9. Still another contention of the applicant is that after Shri Ram Karan Meena ceased to be the Enquiry Officer, the new Enquiry Officer should have started the enquiry de-novo. He has, however, failed to cite any rule or instruction in support of this contention. The respondents, in their reply, have stated that there is no provision for de-novo proceedings when the Enquiry Officer changes under the rules, and all the evidences are not required to be recorded in the presence of the changed enquiry officer as findings on the basis of recorded evidence in the departmental enquiry are submitted by the E.O. which are finally considered by the disciplinary authority. In the absence of any provision for holding of de-novo inquiry consequent upon the change of the Enquiry Officer, the contention of the applicant on this point is without force.

10. Another important contention raised by the applicant is that he was not supplied with a copy of the Enquiry Officer's report before the disciplinary authority passed the order of punishment. This contention appears to be substantiated because there is nothing in the material on the record to show that the applicant was supplied with the Enquiry Officer's report before the disciplinary authority passed the impugned order dated 19-5-1988.

In the case of UNION OF INDIA & OTHERS v. MOHD. RAMZAN KAHN, decided by the Supreme Court on 20.9.90 (Judgements Today 1990(4) SC 456), their lordships of the Supreme Court held as below:

"We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof."

A Full Bench of this Tribunal in O.A. No.209/1987 decided on 11.7.91 - ATJ 1991(2) 278 - Shri Balwant Singh Kumar

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Singh Gohil v. Union of India and another, held as below: -

"The law laid down by the Supreme Court in the case of U.O. I and Ors. v. Mohd. Ramzan Khan is applicable to all cases where finality has not been reached and in cases where finality has been reached, the same cannot be reopened. The law laid down by the Supreme Court in the above case is binding on all concerned."

In view of these pronouncements, the impugned order dated 19-5-88, by which the applicant was dismissed from service etc. and the order dated 7.3.89 passed in appeal by which the appeal against the order of dismissal etc. was dismissed, cannot be sustained, because a copy of the Enquiry Officer's report was not supplied to the applicant before the disciplinary authority passed the impugned order dated 19-5-88. In view of our findings on this point, we do not consider it necessary to go into the merits of the remaining contentions raised by the applicant.

11. In view of the foregoing discussion, the impugned order dated 19-5-88 and the order passed in appeal dated 7-3-89 are quashed and hereby set aside. The applicant is entitled to be taken back in service and this should be done by the respondents as expeditiously as possible and preferably within a period of two months from the date of receipt of a copy of this order. The respondents shall, however, be free to revive the inquiry proceedings from the stage of supplying a copy of the Enquiry Officer's report to the applicant and the applicant should then submit his representation, if any, against the findings of the Enquiry Officer within one month of the receipt of the Enquiry Officer's report. The competent authority may then pass the order in accordance with law/rules within a period of two months from the date of receipt of the representation, if any, made by the applicant. The pay and allowances for the period from the date of suspension,

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i.e., 1.1.1987 upto 7.3.89 when the appeal of the applicant was dismissed, shall be governed by the orders which may finally be passed in the revived inquiry. However, from 8.3.89 till the date of reinstatement, as directed above, the applicant shall be entitled to monetary benefits of pay and allowances as admissible under the rules and these should be paid to the applicant within a period of four months from the date of receipt of a copy of this order. No costs.

Cec 13/2/1992
(P.C. JAIN)
Member(A)

T. Oberoi 13.2.92
(T.S. OBEROI)
Member(J)