

Central Administrative Tribunal  
Principal Bench: New Delhi

OA No.1854/88

New Delhi this the 25th Day of January, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)  
Shri B.S. Hegde, Member (Judicial)

Ishwar Singh,  
son of Shri late Amilal,  
r/o village & P.O. Chattarpur,  
Haryana. ...Applicant

(By Advocate Sh.M.P. Raju, proxy for Sh.J.P. Verghese,  
Counsel.)

Versus

1. Delhi Administration  
through its Secretary,  
Old Secretariat,  
Delhi.
2. Commissioner of Police,  
Delhi Police, Police Headquarters,  
New Delhi. ...Respondents

(By Ms. Veena Kalra, proxy counsel for Ms. Gita Luthra,  
Counsel.)

ORDER(ORAL)  
(Hon'ble Mr. N.V. Krishnan)

This application by a dismissed Constable is against the order dated 12.6.87 of the Deputy Commissioner of Police (Traffic) - disciplinary authority by which he dismissed the applicant from service on the charge of absenting himself from duty without any information/leave during the period from 14.1.86 to 14.10.86. This penalty was imposed taking into account his past record of habitual absent~~e~~ which was made part of the charges against him. The appeal filed has been dismissed by the order dated 1.3.88 (Annexure-VIII) by the Additional Commissioner of Police. The applicant has assailed these orders on a number of grounds, one of which is that, in violation of the statutory rules, this order was passed without sending to the applicant the findings of the Enquiry Officer and without giving him a show cause notice in regard to the punishment.

2. The respondents have filed a reply contending that the proceedings have been conducted in accordance with law and that the application has no merit. In regard to the specific allegation about a show cause notice not having been sent, the respondents have stated as follows:-

"6(f). That the contents of para No.6(f) of the application are admitted. According to the amendment of Rule 16 & 17 of Delhi Police (Punishment & Appeal) Rules, 1980 issued by the Delhi Administration, Delhi's notification No.F.5/8/85/H(P)/Estt. dated 4.9.1987, it is not necessary to give any show cause notice before awarding punishment. His appeal was considered and rejected by the Addl. Commissioner of Police (S&T), Delhi on merits.

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6(h) That the contents of para No.6(h) of the application are denied. In view of the amendment, it was not necessary to serve him show cause notice before awarding punishment."

3. The nature of the amendment made has not been explicitly stated in the reply.

4. In view of the submissions made, we are of the view that the question for consideration is whether the mandatory provisions of the rules have been complied with or not. We refer to 'Police Law in Delhi' by Sh. O.P. Tiwari, Advocate, Supreme Court (1992 Edition). We notice therefrom that the Delhi Police (Punishment and Appeal) Rules, 1980 have been promulgated, obviously, in pursuance of the provisions of Section 21 readwith Section 147 of the Delhi Police Act. Rule-16 deals with the procedure of departmental enquiry. Sub Rule

(xii) of Rule 16 reads as follows:-

"(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) furnish to the accused officer free of charge a copy of the disagreement, if any, with the finding of the Enquiry Officer.

(b) Where the disciplinary authority is himself the Enquiry Officer statement of his own findings, and

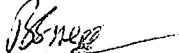
(c) give him a show cause notice stating the punishment proposed to be awarded to him and calling upon him to submit within 15 days such representation as he may wish to make against the proposed action."

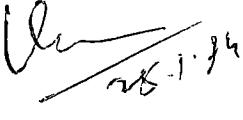
5. We do not find any mention of any amendment having been made in Rule 16(xii) of the nature referred to in the respondents' reply, extracted above. It appears that, notwithstanding the amendment of Article 311 of the Constitution by the 42nd Amendment, rule 16 (xii) (c) requires the disciplinary authority to issue a show cause notice to the delinquent intimating him about the provisional punishment proposed to be awarded and asking him to show cause why it should not be imposed. No doubt, this is a requirement of the Constitution. But, some statutory rule requires such a procedure to be followed and gives an added protection to an employee, that cannot be taken away, nor can it be infringed by the disciplinary authority. That apart, we also notice that the order of punishment is dated 12.6.87 (Annexure-V) whereas the amendment referred to by the respondents is stated to have been issued on 4.9.1987. Obviously, the rules in force on that date when the Annexure A-V order was issued would govern the procedure required to be followed by the disciplinary authority. In this view of the matter also we find that the disciplinary authority

had infringed the mandatory provisions of the rules.

6. In the circumstances, without going into the other merits of the case, as mentioned in the OA, we are of the view that the disciplinary authority's order dated 12.6.87 (Annexure-V) is liable to be quashed on the ground of infringement of the mandatory provisions of Rule 16 (xii) of the Delhi Police (Punishment and Appeal) Rules, 1980. We order accordingly and consequently, the appellate order dated 1.3.88 (Annexure-VIII) and order in revision dated 6.7.88 (Annexure-X) are also quashed. The respondents are directed to reinstate the applicant within a period of one month from the date of receipt of this order. In so far as the period between the date of dismissal and the date of reinstatement is concerned, the respondents shall regulate the same in accordance with the provisions of law.

7. The O.A. is allowed, as above, without any order as to costs.

  
(B.S. Hegde)  
Member(J)

  
(N.V. Krishnan)  
Vice-Chairman

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