

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 30/88

199

T.A. No.

DATE OF DECISION 21-5-1993Shri Ishwar Singh

Petitioner

Shri A.S. Grewal

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri Virendra Mehta,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. A.B. GORTHI, MEMBER(A)

The Hon'ble Mr. C.J. ROY, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?

[Signature]
(C.J. ROY)
MEMBER(J)

[Signature]
(A.B. GORTHI)
MEMBER(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(9)

DA.30/88.

Date of Decision: 21.05.1993

Shri Ishwar Singh

Applicant

Versus

Union of India & Ors.

Respondents

CORAM:

The Hon. Mr. A.B. GORTHI, Member(A).

The Hon. Mr. C.J. ROY, Member(J).

For the applicant

Shri A.S. Grewal, Counsel.

For the respondents

Shri Virendra Mehta, Counsel.

J U D G E M E N T

(delivered by Hon.Member(J) Shri C.J.ROY)

This application is filed by the applicant under Section 19 of the Administrative Tribunal Act, 1985, claiming the following reliefs:-

- 1) To quash the order dated 27.2.86 (Annexure-D) awarding the punishment for the forfeiture of 2 years approved service of the applicant having permanent effect entailing reduction in his pay;
- 2) To quash the order dated 18.8.86 (Annexure-E) rejecting the appeal of the applicant; and
- 3) To quash the order dated 1.1.87 (Annexure-F) rejecting the revision petition of the applicant.

2. The facts of the case, as per the version of the applicant in the DA, are as follows:

The applicant, employed as a Constable with the Delhi Police, was issued with a Show Cause notice, vide Annexure-A, in as much, as that he misused the Government car/ and involved in an

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unwanted act with malafide intention that constitute gross misconduct and unbecoming of a Govt. servant in violation of Rule 3(1) 3(iii) of CCS(CCA) Rules, 1964.

The applicant claims to have produced a cogent and plausible defence evidence but the same was ignored by the enquiry officer and the punishing authority, based on the findings of the Enquiry Officer, issued a show cause notice dated 16.12.85 (Annexure ^C) to the applicant proposing the above said punishment. The applicant further claims that his explanation was not considered properly and the said punishment was awarded, as per Annexure D). The applicant's appeal against the punishment order was rejected by Annexure E without assigning any reason and his revision petition also met with the same fate vide Annexure ~~F~~. The applicant alleges that the Enquiry Officer did not conduct the departmental enquiry in a fair and impartial manner, he was not supplied with the copy of the preliminary enquiry report and other relevant documents to enable him to cross examine the PWs, that the departmental action could ~~xxxx~~ not have been initiated without prior approval of the ACM(R), Delhi and that he committed no misconduct but only took the car to take dinner, that was misunderstood by the police witnesses.

3. The applicant further alleges that the three punishments awarded to him are against and in violation of the provisions contained in Section 21 of the Delhi Police Act and Rule 27(c) of the Delhi Police (Punishment & Appeal) Rules, 1980, putting him in financial difficulty, and hence this application.

4. The respondents have filed a counter reply denying the allegations made by the applicant in the OA and reiterating the points made in the Annexures B, C & D and claiming that the said punishments were rightly awarded after considering all the relevant factors. They further claim that the preliminary enquiry is only a fact finding enquiry, same does not form part of the regular departmental enquiry and as such he is not entitled to get a copy of the same. They aver that the charges were correctly framed, the applicant was given full opportunity to defend himself at every stage and the punishment was decided by the disciplinary authority under Rule 8(d) of Delhi Police (Punishment & Appeal) Rules, 1980, which is justified keeping in view the gravity of his misconduct. In view of this, the applicant is not entitled to any relief and therefore the applicant is liable to be dismissed.

5. The applicant has filed a rejoinder more or less reiterating the same points as mentioned in OA and that the applicant was not afforded ample opportunity to defend himself and the departmental enquiry was conducted in violation of Rule 15(1), 15(2) and 16 of the Delhi Police (Punishment & Appeal) Rules, 1980.

6. We have heard the learned counsel for the applicant Shri A.S.Grewal, and the learned counsel for the respondents Shri Virendra Mehta, and perused the records of the applicant produced by the respondents.

7. The three points raised in this case are that no preliminary enquiry report was given to the applicant and sanction as required under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 was not obtained and no speaking orders were passed by the disciplinary authority, nor the appellate authority nor the reviewing authority and the enquiry officer took the role of the prosecutor thereby violating the principles of natural justice.

8. We will first deal with Rule 15(2) with reference to non-obtaining of the approval of the Addl. Commissioner of Police. Rule 15(2) reads as under:

"(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, deptl. 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 deptl. enquiry should be held."

Section 2(c) of the Code of Criminal Procedure, 1973 defines "cognizable offence" as under:

(c) "Cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant."

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Here this case is not a cognizable one. Therefore, permission of the Additional Commissioner of Police for regular enquiry against the applicant is not therefore necessary. In view of this, we do not accept the contention of the applicant's counsel.

9. Coming to the next point that the enquiry officer took the role of prosecutor and put questions can not be accepted because the enquiry officer, who is conducting the enquiry, is always entitled to put questions to elicit information from the witnesses in order to come to ^a conclusion in case such questions are omitted to be put by the Presenting Officer or otherwise. Therefore, we overrule this objection by the applicant's counsel.

10. Now coming to the last point of non-submission of preliminary enquiry report and violation of principles of natural justice, no reasoned orders were given by the disciplinary authority, appellate authority or the reviewing authority, we find from the counter that the respondents have stated that the preliminary enquiry is only a fact finding enquiry and the same does not form part of a regular enquiry. It was not relied upon in the departmental enquiry, the applicant is not entitled to the same.

11. In para 15(1) of Delhi Police (Punishment & Appeal) Rules, 1980, it is stated that:

"A preliminary enquiry is a fact finding enquiry. Its purpose is (i) is to establish the nature of default and identify of defaulter(s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above mentioned points

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exists a preliminary enquiry need not be held and Departmental Enquiry may be ordered by the disciplinary authority straight away. In all other cases a preliminary enquiry shall normally precede a departmental enquiry."

12. It is no doubt clear from the above that the preliminary enquiry report forms part of the very foundation of the regular departmental enquiry. If, in a preliminary enquiry, no case is disclosed, the case will be closed and there need not be any regular enquiry, but in case of any disclosure of any sort, regular enquiry will be ordered. So, it assumes enormous importance in structuring a regular enquiry.

13. In the parlance of the criminal jurisprudence, whenever a charge sheet is issued to the accused, all the documents relied upon by the prosecution and the statements of witnesses, panchnamas and other relevant material on which prosecution relies on, to prove the case against the accused are given to him. If the accused officer is in possession of the preliminary enquiry report, he will have the full opportunity to examine the case against him and formulate his defence and cross examine the witnesses effectively. If the preliminary enquiry report is not given, whether it is followed in the regular enquiry report or not, whether it is asked for, or not, a serious prejudice is caused to the applicant by denying it, which is violative of principles of natural justice, in our opinion.

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14. In this connection, extracts from the letter No. 6368-6493/CR-III dated 1.5.80 issued by the DCP/HQ(1)/Delhi is reproduced below:

"(ii) The officer who had conducted the preliminary enquiry was cited and examined as PW, but a copy of his preliminary enquiry report was not furnished by the Enquiry Officer to the defaulter giving him an opportunity to cross examine the witness. This has affected proper cross examination of such witness and goes against the principles of natural justice vitiating the departmental enquiry ab initio. Copy of preliminary enquiry report in such cases should have been supplied suo-moto at the initial stage alongwith the summary of allegations even if no specific request is made by the defaulter"

15. Therefore it is clear that if a preliminary enquiry 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 not be done.

16. Besides, in TA No.370/86 of OJC 1868/84, the Cuttack Bench of the Tribunal held that:

(ii) Preliminary Enquiry Report, supply copy of-ApPLICANT wanted the preliminary enquiry report and evidence collected against him-refused - alleges denial of reasonable opportunity - Held the refusal to give Preliminary Enquiry report was a denial of Reasonable Opportunity - Penalty set aside.

The above judgement was relied upon ATR 1986(2) SC 186=1986(2) SLJ 279(SC) (Kashinath Dikshita Vs. UOI) and 1975 SCC(L&S) 18 (State of Punjab Vs. Bhagat Ram) wherein their Lordships held:

"When a Govt. servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant documents and statements to be used against him are made available to him. In absence of such copies, how can the concerned employee prepare his defence, cross-examine

the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf"

his Lordship further observed:

"The disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes. But even in this connection the reasonable request of the appellant to have the relevant portions of the documents extracted with the help of his stenographer was refused. He was told to make such notes himself as he could"

The Hon'ble Supreme Court has quashed the order of punishment imposed on Kashinath Dikshita because of non-compliance of the requirements for compliance of principles of natural justice. In the case of Bhagat Ram, preliminary report prepared by the Vigilance Department was not supplied to the delinquent officer at the stage of filing of his written statement that has caused prejudice to him.

17. It is therefore clear from the above observations, that the PE report plays an important aspect and denial of it is certainly a matter of causing great prejudice to the applicant. It is, thus, seen that a serious prejudice is caused to the applicant and also resulted in violation of natural justice by not giving him the PE report.

18. We have seen the orders of the disciplinary authority, appellate authority and reviewing authority, enquiry reports and the departmental files. Appellate order (Annexure E) simply narrates the story in paras 1, 2 and 3 and it is stated in para 4 that "I have examined their appeals and the record of PE and deptl. enquiry minutely" and has given his conclusion.

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19. Therefore, it is not only not based on proper reasoning but also seems to have been influenced by the FE Report. It also does not appear to be a reasoned order.

20. We have seen the records of the applicant which shows that he has got commendation cards on more than 100 occasions in recognition of his good work, high ~~xx~~sense of responsibility and devotion to duty, and subsequently got promotion. Also some of his ACRs contain 'outstanding' grading.

21. In the conspectus of the above facts and circumstances of the case, we quash the orders of the disciplinary authority, appellate authority and reviewing authority at Annexures D, E & F. We give liberty to the Respondents to conduct a fresh enquiry if they so ~~choos~~ from the stage of preliminary enquiry report, in accordance with our above observations and as per Rules.

22. The petition is allowed with no orders as to costs.

(C. J. Roy) 21/5/93
Member (J)

(A. B. Gorthi)
Member (A)

21/5/93