

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 138
T.A. No.

1987

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DATE OF DECISION 11.9.1987

Shri Naresh Chand Petitioner

Shri B.S. Charva, Advocate for the Petitioner(s)

Versus

Commissioner of Police & Ors. Respondent


Shri J.S. Bali, Advocate for the Respondent(s)

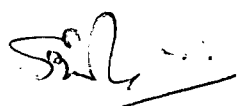
CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?


(Ch. Ramakrishna Rao)
Judicial Member


(S.P. Mukerji)
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: DELHI

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Regn.No.OA-138/87

Date: 11.9.1987

Shri Nresh Chand

... Applicant.

Versus

Commissioner of Police & Anr.

... Respondents.

For Applicant

... Shri B.S.Charya,
Advocate.

For Respondents.

... Shri J.S.Bali,
Advocate.

CORAM: Hon'ble Shri S.P.Mukerji, Administrative Member
Hon'ble Shri Ch.Ramakrishna Rao, Judicial Member

JUDGEMENT

(Delivered by Shri Ch.Ramakrishna Rao)

The facts giving rise to this application are briefly as follows: The applicant was appointed as Constable of the Delhi Police with effect from 13.5.1964 and promoted as Head Constable in 1971. He was served with a Memorandum dated 29.3.85 by Shri Amrik Singh, Assistant Commissioner of Police, Delhi (ACP), Kamla Market, Delhi who, acting as Inquiry Officer (IO) informed him that a departmental inquiry would be held against him under the Delhi Police Act, 1978. In the summary of allegations annexed to it, it is stated that "while posted as I/C. Clothing Store, Central Distt. at P.S.Patel Nagar on 1.9.84^{he} was caught taking away the articles of General Store/Clothing Store and has misappropriated the clothing articles by resorting to wrong entries and forged signatures in the issue/stock registers of the Upper-Subordinates." A list of witnesses and a list of documents were also enclosed to it. The IO recorded the statements of several witnesses. Thereafter, he framed a formal charge on 23.8.85 and served it on the applicant. The charge was inquired into. As a result of the findings arrived at by the IO, the Deputy Commissioner of Police, who was the disciplinary authority, issued a show cause notice on 29.1.86 to the applicant provisionally proposing the

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punishment of removal from service. The applicant submitted his reply thereto after considering which, the DCP passed an order dated 17.8.86 removing him from service. Aggrieved by this order he has filed this application.

2. The contention of Shri B.S.Charya, learned Counsel for the applicant is three-fold. ^{The} First is that the allegations set out in the statement summarising the conduct of his client pursuant to which the inquiry was held under Rule 16(1) of the Delhi Police (Punishment and Appeal) Rules, 1980 (for short, the rules) is not the same as the charge framed under 16(iii) of the Rules. The second is that his client was not afforded an opportunity to cross-examine the persons whose statements were obtained by the department in the inquiry held under Rule 16(i) for the purposes of the latter inquiry under Rule 16(iii). The third is that the crucial documents relied upon by the department for substantiating the charge that his client made forged entries in the check sheets for misappropriating the articles belonging to the Government, as alleged in the memorandum of charge dated 23.8.85, were not made available to his client. The point sought to be made out by Shri Charya is that if his client had been made aware of these documents, he ^{could} have had an opportunity to disprove the allegations that forged entries were made by his client in the check sheet.

3. Shri J.S.Bali, learned Counsel for the respondents, submits that there is no substantial change in the allegations of misconduct originally communicated to the applicant and the memorandum of charge subsequently issued and the applicant was allowed to cross-examine the persons on whose statements the Department relied for establishing the charge. Shri Bali further submits that the provisions of the Evidence Act do not apply to the Departmental

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Proceedings and it is not, therefore, necessary to prove documents on which reliance is placed by the department in the manner in which it is done in a Court of law and in support of his submission relied upon decisions of the Supreme Court and the High Courts to which we shall presently refer.

4. We have considered the rival contentions carefully. We are satisfied that there is no material discrepancy between the allegations of misconduct initially made against the applicant on 29.3.85 and the memorandum of charge issued subsequently on 23.8.85. In the latter, details such as the place at which the applicant was caught red handed while taking away the articles of general stores/clothing stores and the description and quantity of the stores have been set out. We are not persuaded to hold that the addition of these details in the memorandum of charge has, in any way, prejudiced the applicant.

5. Nor do we find any substance in the second contention urged by Shri Charya. From a perusal of the file relating to the departmental inquiry held against the applicant, we find that he was afforded an opportunity to cross-examine all the witnesses on whose statements reliance was placed by the department. In fact, he has not made a grievance of the lack of opportunity to cross-examine the witnesses in the written statement dated 24.11.85 submitted by him to ACP/I.C. We do not, therefore, find any force in this contention.

6. Turning to the third, we note that in the list of documents appended to the memorandum dated 29.3.1985 issued by the IO, there is no mention, whatever, of the documents relied upon by the department. However, in the written statement dated 24.11.85, the applicant has adverted to

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the fact that the documents relevant for the purposes of the inquiry and favourable to him were not summoned by the IO in spite of repeated requests. These documents listed in the written statement include the check sheet of Constable Mohd. Arif Khan; Check Sheet of H.C. Naresh Chand (applicant); and IVth Class issue register from 1.8.84 to 1.9.84 concerning Mochi Shet Singh with Goshwara and Mochi repair items and tools. In the findings recorded by the IO, there is a copious reference to the ^{so-called} forged entries in the stock/issue register and the discrepancies noticed by him in the stock/issue register. The IO concluded:

"Thus from above discussion defaulter HC Naresh Chand did not issue clothing articles to 5 Upper Subordinates but had only shown as issued in stock/Issue Register by making forged signatures in token of receipt of the articles."

It is apparent from the above that the IO relied fully on the entries in the stock/issue register for arriving at the finding that the applicant made forged signatures in token of receipt of the articles. In so doing, it was incumbent upon the IO to have afforded an opportunity to the applicant to have access to the stock/issue register so that he could have disprove the allegation that the signatures appearing therein were forged. Otherwise, the Rules of natural justice and the principles of fair play would be violated thereby vitiating the proceedings.

7. Shri Bali calls in aid the decision of the Supreme Court in State of Andhra Pradesh Vs. S.Sree Rama Rao AIR-1963-SC-1723 in support of his contention that the standard of proof required in departmental proceedings is of a lower order than that obtaining in a criminal proceeding and even if some material is available to sustain the charge the adequacy of the same cannot be questioned by the delinquent. Shri Bali also invites our attention to the

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decision of the Supreme Court in State of Haryana Vs. Rattan Singh 1977(1)SLR-750 wherein it was held:

"It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such materials and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act.

The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good."

8. We do not, for a moment, suggest that the standard of proof in departmental proceedings should be the same as that governing a criminal proceeding and the provisions of the Evidence Act would be applicable to departmental proceedings. These decision however, in our view do not countenance non-observance of rules of natural justice as clearly stated by the Supreme Court in the decision in State of Haryana cited supra. As observed by the Supreme Court in Avtar Singh Vs. I.G. of Police, Punjab, 1968-SLR-131

"Every public servant, however, bad he may be is entitled to have the whole matter brought to his notice before he was asked to show why a particular punishment should not be meted out to him."

We are satisfied that the applicant was not afforded adequate opportunity to present his defence in respect of the charge of forgery and reliance on the check-sheets by the department for substantiating the charge of forgery without making them available to the applicant is illegal. We, therefore, hold that the departmental proceedings are vitiated and we accordingly, set aside the same.

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9. In the view we have taken, we do not consider it necessary to refer to other decision cited at the Bar.

10. In the result, the appeal is allowed. There will be no order as to costs.

Ch. Ramakrishna Rao
(Ch. Ramakrishna Rao)
Judicial Member

S.P. Mukerji
(S.P. Mukerji)
Administrative Member