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IN THE CENTRL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. 1760/87

Date of decision 3.8.92

Sri Bhagwan

Applicant

Shri Shankar Raju

Counsel for the applicant

vs.

Union of India

Respondents

Shri B.R. Prashar

Counsel for the respondents

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. I.P. Gupta, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment?
 2. To be referred to the Reporter or not?
 3. Whether their Lordships wish to see the fair copy of the judgment?
 4. Whether it needs to be circulated to other Benches of the Tribunal?
- (Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

The applicant in this O.A. challenges Annexure A-1 dated 27.1.87 by which he was removed from service after a departmental inquiry. Aggrieved thereby, he filed an appeal before the appellate authority. The appellate authority by Annexure A-13 on 18.8.87 dismissed the appeal. Hence, the applicant prays for quashing these two orders in this O.A. filed under Section 19 of the Administrative Tribunals Act of 1985. He also prays for consequential reliefs in case both the orders are quashed.

2. The applicant was appointed a constable in Delhi Police in 1972 and has been working in Central Workshop at Old Police Lines since 1977. On 17.7.1985, he was placed under suspension for contemplated departmental inquiry against his alleged misconduct.

After the inquiry, he was removed from service on 27.1.1987.

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Before the departmental inquiry began, a preliminary inquiry was held in which the statements of prosecution witnesses were recorded. The disciplinary authority after being satisfied that a prima facie case is made out against the applicant, appointed an Inquiry Officer and the inquiry proceeded against him. He was facing the inquiry for the allegation that the applicant had delayed the files of repairs of Car No. DIW-5555 and approached Sat Pal of Satpal Motors with ulterior motive. During the inquiry, P.W.1. Mahinder Kumar Rishi, Inspector, P.W.2. Sohan Lal, S.I., P.W.3 Head Constable Shiv Nath, P.W. 4 S.I. M.S. Bist, P.W. 5, S.I. Khyali Ram, P.W.6, Satpal Singh and P.W.7 Maman Singh, ACP, were examined. P.W.7, Shri Maman Singh, had conducted the preliminary inquiry against the applicant.

During the inquiry, the applicant filed several applications for the supply of documents/statements of the witnesses whose statements were recorded during the preliminary inquiry. Though the applicant has raised several grounds in the O.A., but we shall take up this ground first which is with regard to the non-supply of the copies of the statements of the witnesses which were recorded during the course of the preliminary and who were subsequently prosecution witnesses in the departmental inquiry. The question is whether the non-supply of these statements to the applicant was in accordance with law or the applicant has been prejudiced in the ^{inquiry} ~~trial~~ for non-observances of the provisions of Rule 15 of the Delhi Police (Punishment and Appeal) Rules of 1980 (hereinafter referred as 'Rules').

For convenience, Rule 15 is being reproduced below:

"15. Preliminary enquiries. (1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity 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 exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally precede a departmental enquiry.

(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, departmental enquiry shall be ordered after obtaining prior

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approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.

(3) The suspected Police Officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witnesses. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer."

3. According to this Rule, the preliminary enquiry is a fact-finding enquiry and its purpose is to establish the nature of default and identity of the defaulter, to collect prosecution witnesses; to judge quantum of default and to bring relevant documents on record to facilitate a regular enquiry. Where the preliminary inquiry discloses the commission of misconduct, the departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be filed or a departmental enquiry should be held. Sub-rule (3) of this Rule provides that the suspected Police Officer may or may not be present at the preliminary enquiry, but when present, he shall not cross-examine the witnesses. It further provides that the file of the preliminary inquiry shall not form part of the normal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. It further provides that there shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. It further provides that all the statements recorded during the preliminary enquiry shall be signed by the person making them and attested by the Enquiry Officer. A similar provision is provided in Section 161 of the Code of Criminal Procedure where 'during the course of the investigation, the Investigating Officer is required to record the statements of the witnesses connected with the crime or intended to be produced

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during the time of the trial. Under Section 173 of the Code of Criminal Procedure, copies of the police diary, statements and other documents are required to be supplied to the accused before the charge is framed. The statements recorded during the investigation form part of the prosecution documents, but can be used only for the purpose of contradicting the prosecution witnesses if they are examined during the trial. The accused gets a right under Section 145 of the Indian Evidence Act to confront the witness with his previous statement, including the previous statement recorded during the course of investigation under Section 161 of the Code of Criminal Procedure, but these provisions of the general law (Code of Criminal Procedure and Indian Evidence Act) are not applicable to a departmental inquiry conducted under the Delhi Police Act. That is why, under Rule 15, limited provisions have been so made as to conform with the principles of natural justice.

4. On close examination of this Rule, it becomes evident that these principles of natural justice have been enshrined therein.

Statements of PW I to PW 6 were recorded during the course of the preliminary inquiry and subsequently these PWs appeared during the inquiry as prosecution witnesses. The applicant had every right, according to the principles of natural justice, to get a copy of the statements of these prosecution witnesses which were recorded during the course of the preliminary enquiry. Had copies of these previous statements been supplied to the applicant, then he would have availed the opportunity of confronting these prosecution witnesses with the previous statements recorded during the course of the preliminary enquiry. Non-supply of the copies of the statements of prosecution witnesses to the applicant, recorded during the course of the preliminary inquiry, has clearly resulted in prejudice to the applicant. Prejudice is the spider of mind; it is the womb of injustice. Furthermore, non-supply of these copies was also in contravention of the principles of natural justice.

5. Rule 15 of the Rules requires the Inquiry officer to follow the provisions of the rules to the words so that the delinquent may not be prejudiced in the inquiry. The Inquiry Officer should never

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act in a didactic manner and should not divorce himself from the provisions of the Rules.

6. Furthermore, sub-rule (iii) of Rule 16 of the Rules provides that the Enquiry Officer is empowered to bring on record the earlier statement of any witness whose presence cannot be obtained. This provision is similar to that of the provision contained in Section 32 of the Indian Evidence Act.

7. We are fortified in our view by the observations of the apex court in the case of *Kasinath Dikshita v. Union of India* (A.T.R. 1986 (2) SC 186) which are as follows

"When a Government 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 statements and documents to be used against him are made available to him. In the 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? xx xx"


In view of the aforesaid observations of their Lordships, another point which needs to be determined is as to the stage in which the defence is prepared. Defence is prepared at the stage when the explanation is submitted because the provisions contained relating to the procedure laid down as quoted above and under Rule 15 are not meant to be mechanically applied or they are not merely the pious wishes of the rule making authority. Those rules have been framed to be strictly applied and orders according to law have to be passed by the disciplinary authority. The rule contemplates that the Inquiring Officer has to be appointed only when the disciplinary authority is of the opinion that there are grounds to be proceeded against the delinquent officer and the disciplinary authority can come to such a conclusion only when it considers the defence of the delinquent officer. Thus, a Government servant facing the proceeding of departmental inquiry is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. When the prosecution witnesses are to be examined during the inquiry, the previous statements recorded during the preli-

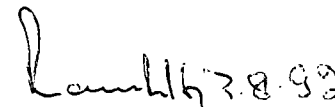
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minary inquiry should, therefore, be supplied to the delinquent officer before the statements of the prosecution witnesses are recorded in the inquiry so that the delinquent may put up effective cross-examination to the witnesses and, if necessary, may confront them with their previous statements. Such documents should be supplied to the delinquent officer before the disciplinary authority appoints an Inquiry Officer or before the disciplinary authority makes up its judicial mind that a prima facie case is made out against the delinquent. We are also fortified in our view by the judgment of this Bench delivered in OA No. 690/86 on 4.2.92 in the case of Shiv Raj Singh vs. U.O.I. & Ors.

8. In view of these findings, recorded by us, we are of the view that the other statements made and grounds raised in the O.A. need not be replied by us. We, therefore, allow this O.A. and quash Annexure A-1, the order passed by the disciplinary authority and Annexure A-13 in consequence, the order passed by the appellate authority. However, we make it clear that the disciplinary authority shall be at liberty to proceed with the departmental inquiry against the applicant from the stage of the supply of the copies of these statements/documents to the applicant and thereafter the prosecution witnesses examined during the inquiry should be recalled for further cross-examination by the delinquent on the basis of the copies supplied to him. The points raised by the applicant in O.A. can be raised by him before the Inquiry Officer/disciplinary authority/appellate authority, if the necessity arises. The respondents shall place the applicant to the position in which he was on the date of imposition of the penalty upon him and conclude the inquiry, as indicated herein-ⁱⁿ above, with/ a period of 4 months from the date of receipt of a copy of this judgment.

9. With the above observations, this O.A. is finally disposed of with no order as to costs.


(L.P. GUPTA) 318792
MEMBER (A)


(RAM PAL SINGH)
VICE-CHAIRMAN (J)