

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No: DA-179/87

Date: 4.9.1992

Shri Bir Singh Applicant

Versus

Delhi Administration ... Respondents
& Others

For the Applicant Shri Shyam Babu, Advocate

For the Respondents Shri S.C. Puri, Advocate,
Proxy for Ms. Anjana Hussain,
Advocate

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. B.N. Dheundiyal, Administrative 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*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, while working as Sub-Inspector in the Delhi Armed Police, has challenged in this application the validity of the impugned order of punishment dated 28.1.1985 after holding an ex parte enquiry against him which was initiated under Section 21 of the Delhi Police Act, 1978. The punishment imposed on him is forfeiture of three years' approved service permanently entailing reduction in his pay from Rs.600/- p.m. to Rs.545/- p.m. from the date of issue of the order.

2. We have gone through the records of the case and have heard the learned counsel for both the parties. The

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basic question arising for consideration is whether in the facts and circumstances, the holding of ex parte enquiry is legally tenable and whether the alleged procedural irregularities ~~amounted~~ to the root of the matter so as to vitiate the enquiry.

3. The applicant was posted as Sub-Inspector at Police Station, Palam Airport, New Delhi, in March, 1982. On 3.11.1982, the Deputy Commissioner of Police, Palam Airport, New Delhi, ordered an enquiry against him in respect of the following summary of allegations:-

"Summary of Allegations

It is alleged against SI Bir Singh No. D.1296 that while he was posted at P. S. Delhi Airport, he was entrusted with the investigations of case FIR No. 23 dt. 8.3.82 u/s 409 IPC, PS Palam Airport. He had detained one Prem Chand for two days and let him off on 24.3.82 evening only after the SI was contacted and paid Rs. 1500/- by one Sh. Hari Singh at the instance of Prem Chand. He used Govt. vehicle No. DHL 7221. But on enquiry of the case it has been found that SI did not indicate about Prem Chand in case diaries from 8.3.82 (date of registration of case FIR No. 23/82) till 28.3.82.

2. The above act of SI Bir Singh No. D/1296 amounts to grave misconduct indiscipline, in violation of rule 3(i) (iii) of the CCS(Conduct) Rules 1964 punishable u/s 21 of the Delhi Police Act, 1978."

4. Thereafter, the following charge was framed against the applicant:-

"While you were posted at P.S. Palam Air Port, you were entrusted with the investigation of case FIR No. 23 dated 8.3.82 under Section 409 IPC P.S. Palam Air Port. You used Government vehicle Pick-up No. DHL-7221 for bringing Prem Chand from his house to the Police Station where he was detained for two days. You let him off on 24.3.82 after you were contacted and paid Rs. 15.00 by Shri Hari Singh at the instance of Prem Chand. You did not

mention about Prem Chand's detention or interrogation in case diaries from date of registration of case till 25.3.82."

5. The Enquiry Officer came to the conclusion that the charge has been proved against the applicant. On that basis, a show-cause notice dated 28.4.1984 was issued proposing tentatively to dismiss him from the Force. After going through the explanation given by him, the impugned order of punishment dated 28.1.1985 was passed by the Deputy Commissioner of Police, East District, Delhi. The appeal filed by him was rejected by the appellate authority by his order dated 11.11.1985. The revision petition filed by him was also rejected by order dated 3.11.1986.

6. At the outset, we may consider the contention of the applicant that the Deputy Commissioner of Police, East District, was not competent to pass the impugned order of punishment.

7. Rule 14 (4) of the Delhi Police (Punishment and Appeal) Rules, 1980 provides as under:-

"The Disciplinary action shall be initiated by the competent authority under whose disciplinary control the Police Officer concerned is working at the time it is decided to initiate disciplinary action".

8. The procedure to be followed in cases where the defaulting officer is transferred under the disciplinary control of another authority is set out in the following

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instructions issued by the Commissioner of Police on
17.1.1983:-

"However, in case, the defaulting subordinate officer is transferred under the disciplinary control of another authority before initiation of disciplinary action, then in that case, the disciplinary authority under whose disciplinary control the defaulter was working at the time he committed the alleged misconduct should send the report containing all the facts and other necessary material to the disciplinary authority under whose disciplinary control the defaulting officer is working at that time, for taking necessary action against him. On receipt of such an intimation the disciplinary authority concerned should take necessary action for initiating disciplinary action against the defaulter in accordance with the rules".

9. In the instant case, the departmental enquiry against the applicant was ordered by the Deputy Commissioner of Police, Palam Airport and after he was transferred to East District, the Enquiry was also transferred to East District and the punishment order was passed by the Deputy Commissioner of Police, East. The impugned order cannot, therefore, be called in question on the ground of want of jurisdiction.

10. The next point for consideration is whether the holding of an ex parte enquiry was justified. The report of the Enquiry Officer indicates that the applicant did not submit his reply to the allegations by 19.1.1983, and that he

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did not attend the proceedings on 19.1.1983 and 20.1.1983. He did not attend on 25.1.1983 and 26.1.1983. On 31.3.1983, he came and submitted in writing that due to election duty in the area, he could not attend the proceedings and that he may be given a suitable date after the Elections. The proceedings were adjourned to 7.2.1983 which was got noted by him. He neither attended the proceedings on 7.2.1983 and 8.2.1983, nor did he send any information regarding the reasons of his absence. A DD No. 10-8 was lodged at P.S. Seema Puri for his appearance on 9.2.1983 at 3.00 p.m., but he did not attend. PWs 1 and 2 were examined in the ex parte proceedings. A letter was sent to S.H.O., Seema Puri that ex parte proceedings were fixed for 14.2.1983 and 15.2.83 for prosecution witnesses. S.H.O., Seema Puri, intimated that the S.I. was on E.L. till 16.2.1983 and will resume duty on 17.2.1983 and as such, the proceedings were adjourned for 17.2.1983 and 18.2.1983, but the applicant did not turn up and the statement of PW3 was recorded in his absence. On 9.3.1983, he attended the proceedings but abruptly went away when the statements of PWs 4 and 5 were recorded in ex parte proceedings. On 17.3.1983, he attended and requested for supplementary statement of PW4 and the same was recorded in his presence but he refused to sign the statement and walked away in the midst of the proceedings. On 1.4.1983, the statement of PW6 was also recorded ex parte as he did not attend.

11. The applicant has stated that the Enquiry Officer issued to him a memorandum dated 16.3.1983, stating that he proposed to hold the enquiry and was directed to appear before the Enquiry Officer on 19.3.1983. But he had started the proceedings some time in January, 1983 and had examined PWs 1 to 5 before 19.3.1983. According to the respondents, the Enquiry Officer issued the memorandum on 16.1.1983 and not on 16.3.1983 and the same was received by the applicant against his proper signature and he was directed to appear before the Enquiry Officer on 19.1.1983. The date of "19.3.1982" was inadvertently mentioned in the said memo. In the Departmental enquiry proceedings and order dated 16.1.1983, it has been specifically recorded that further proceedings shall take place on 19.1.1983 and which was noted by the applicant. The applicant has stated in his rejoinder affidavit that the respondents did not issue any corrigendum to rectify the alleged mistake. In our opinion, the surrounding circumstances indicate that there is no reason to disbelieve the version of the respondents.

12. In the facts and circumstances of the case, it cannot be said that the recording of the evidence of the

PWs in the absence of the applicant was illegal as he had been given due intimation about the dates of hearing and the Enquiry Officer had also fixed the dates of hearing after ^a taking into account the preoccupation of the applicant with other departmental duties including election duty and his illness.

13. The applicant has contended that he was denied reasonable opportunity to defend himself in the enquiry as the Enquiry Officer did not supply to him a copy of the order of initiation of the preliminary enquiry, statement of the witnesses recorded against him during the preliminary enquiry and also a copy of the order of the ex parte proceedings against him. The respondents have stated that the preliminary enquiry has not been made part of the departmental enquiry file and that there is no mention of the preliminary enquiry in the order and the summary allegations. In our opinion, the contention of the applicant is untenable.

14. The applicant has argued that the statements of PW4 and PW6 were recorded by the Enquiry Officer on 17.3.1983 and 1.4.1983 respectively whereas the charge was framed by him on 12.3.1983. His action in framing the charge before the conclusion of the evidence in support of the allegations has been challenged as arbitrary and illegal. According to the respondents,

the date "12.3.1983" mentioned the charge has been given inadvertently and that it was served on the applicant on 11.1.1984. The Enquiry Officer has stated in his report that a copy of the charge was sent to D.C.P., 9th Battalion on 6.1.1984. We see no reason to disbelieve the version of the respondents in this regard.

15. The applicant has argued that there has been total non-application of mind by the authorities. The summary of allegation states that he was paid Rs.1500/- by Hari Singh at the instance of Prem Singh whereas the charge as framed states that he was paid Rs.15/-. In the charge framed, the amount is mentioned as "Rs.15.00". The respondents have stated that the amount and date have been given inadvertently. In our opinion, a typographical error has occurred as regards the amount due to the dot inserted after the figure "15" and this would not vitiate the enquiry.

16. The learned counsel for the applicant argued that the Enquiry Officer has not assessed the evidence and given reasons for the conclusion reached by him and in this context, relied upon the decision of the Supreme Court in *Anil Kumar Vs. Presiding Officer*, 1985 SCC (L&S) 815. In that case, the Supreme Court observed that the

report must be a reasoned one. In the instant case, the Enquiry Officer has stated the circumstances leading to the enquiry in which the applicant did not participate and that he has come to the conclusion that the charge against the applicant has been proved after carefully going through the entire record of the proceedings. In view of this, we are of the opinion that there is no merit in the contention of the applicant.

17. In the conspectus of the facts and circumstances of the case, we do not, consider it appropriate ~~to interfere~~ with the impugned order of punishment dated 28.1.1985. The application is accordingly dismissed, leaving the parties to bear their respective costs.

B.N. Dholiyal
(B.N. Dholiyal) 4/9/82
Administrative Member

Parvez
4/9/82
(P.K. Kartha)
Vice-Chairman (Judl.)