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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A.No. 112/90

Date of Decision: 21.10.1993

Shri Dayalu Ram
Sh. J.P. Verghese

..... Petitioner
Advocate

Vs

Delhi Admn. & Ors
Sh. Anup Bagai
Coram:

..... Respondents
Advocate

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

JUDGEMENT

Delivered by Hon'ble Shri J.P.Sharma, Member (J)

The applicant was constable in Delhi Police. A disciplinary enquiry was initiated against him under Section 21 of the Delhi Police Act 1978 vide office Order dated 5.12.1986. The allegations against the applicant are that while posted at Police Station, Kotla Mubarakpur, he absented himself from duty on a number of occasions. Inspector Pratap Singh was appointed as Enquiry Officer who came to the conclusion that the charge of unauthorised absence from duty has been fully proved against him. The disciplinary authority by the order dated 8.6.1988 passed the order of dismissal from service. Against this order the applicant filed an appeal. It was rejected by the Appellate Authority, Additional Commissioner of Police by the Order dated 22.9.1988. Aggrieved by both these orders this application is being filed for the grant of the reliefs that the Impugned Order of Punishment dated June 1988 and September 1988 be quashed. The Rule 15 & 16 of the Delhi Punishment Appeal Rule 1900 are violative of Article 311(2) of the Constitution. Further directions be issued to the respondents to reinstate the applicant with all the consequential benefits. A notice was issued to the respondent who contested the application and in their written statement stated that the disciplinary authority

according to the findings of the Enquiry Officer about the charges having been proved beyond doubt, ^{ed}pass^a the order of dismissal from service which was upheld by the Appellate Authority. The applicant has no case. 6

We have heard the learned counsel for the parties at length. We ordered the respondents to produce the departmental enquiry proceedings but the same has not been produced. It was ordered on September 16, 1993 that if the ^{DE File on file} said proceedings are not produced no further adjournment will be granted and the case will be decided on merits on the basis of the records. The learned proxy counsel Shri B.S.Obroi appearing for Shri Anup Baggai, Counsel appointed by the respondents showed his inability to produce the records of the disciplinary enquiry. The said record, it is said is untraceable. When the record is not produced ~~that~~ adverse inference has to be drawn against the party withholding the record. 6

The learned counsel for the applicant argued that the enquiry was held without giving any opportunity to the applicant since no document was supplied to him. We have perused the pleadings of the parties. The case of the respondent is that during departmental enquiry proceedings the applicant was asked to attend the departmental enquiry but he did not attend the same. This fact however, is not substantiated by the respondents. The only record to substantiate this fact would have been the proceedings of the departmental enquiry. The departmental enquiry file has not been produced in spite of the order of the Tribunal and sufficient time was granted for the same. The counsel for the respondents stated that the record is untraceable. It is not 6

the case that the applicant has manouvered to get the record withheld at his level by the concerned authority. It was the duty of the respondents to maintain the record in proper custody and to produce the same in order to substantiate the averments made in the reply and to counter the allegations of the applicant that he was not given due opportunity during the enquiry proceedings. On this account alone it transpires that the disciplinary enquiry was not held according to the procedure prescribed in the Delhi Punishment Appeal Rule 1980. Even if the applicant was not coming forward to cooperate with the departmental enquiry then under the provisions of sub rule 2 of Rule 18, the approval of the disciplinary authority to proceed ex-parte against the applicant should have been obtained from the disciplinary authority. That is not the case averred in the reply by the respondents. What is stated is that the applicant did not come forward to attend the disciplinary enquiry. There is no mention that the disciplinary enquiry proceeded ex-parte after due approval from the disciplinary authority. In such a situation the proceedings of the disciplinary enquiry have been faulted with. It is further stated that under Rule 18 that even in case of ex-parte enquiry the procedure prescribed under Rule 16 of the Delhi Punishment Appeal Rule 1980 taking evidence etc. has to be followed. There is no document on record nor any averment in the reply that the due procedure of examining the witnesses and framing of charges has been followed. A perusal of the Impugned Order dated 3.6.1988 goes to show that the showcause notice was issued to him according ^{to} ~~with~~ the findings of the enquiry officer which was received by the applicant on 22.4.1988. There is no mention that the enquiry officer ^{has} ~~have~~ recorded the evidence of the witnesses. There is only mention of not filing of the reply of the showcause

notice issued to him by the disciplinary authority after receipt of the findings of the enquiry officer's report. The case of the applicant is that he has also not been furnished with the copy of the findings of the enquiry officer. The respondents in their reply stated that the findings of the enquiry officer has been supplied to the defaulter. In the rejoinder the applicant has reiterated the averments made in the application. In order to get the truth, it was necessary to peruse the record. In view of this the contention of the respondent's counsel that the findings of the enquiry officer ~~were~~ ^{have} supplied is not substantiated. Contention of the respondents counsel also is that the disciplinary authority ordered ex-parte proceedings under Rule 18 of the Rules is not established from the perusal of the order passed by the disciplinary authority. In fact the disciplinary authority has passed a specific order to proceed ex-parte in the departmental enquiry against the applicant then that fact should have been mentioned in the Impugned Order dated 8.6.1988. Thus, it is evident that the whole of the enquiry proceedings have been drawn against the applicant without observing the procedure laid down in the Delhi Police (Punishment) Appeal 1980. Now going through the order passed by the Appellate Authority dated September 22, 1988, it is evident that the evidence adduced before the enquiry officer and the findings arrived at by the enquiry officer have not been touched to justify the conclusions reached by the Enquiry Officer. The order passed by the appellate authority is of the general nature only reproducing the grounds mentioned in the Memorandum of Appeal. It is, therefore, evident that the applicant was not given due opportunity in the said departmental proceedings to put up his case and as such there is a gross violation of the principles of natural justice.

The learned counsel for the applicant also argued that in fact there was no evidence on any misconduct in as much as there was no unauthorised absence because the applicant was ill and his leave application was duly supported by the medical certificate. That is the question of fact which is to be considered in the departmental enquiry by the Enquiry Officer. Since the findings given by the Enquiry Officer have not been filed by the respondents, how the Enquiry Officer arrived at the conclusion that the charge is established against the applicant is not available on record. Though the primary function of the Enquiry Officer is to appraise the evidence and given the findings on the charges framed against the applicant, still it is open for judicial review to find out whether there was some evidence in the enquiry which could ^{have} led to such a conclusion arrived at by the Enquiry Officer. The Tribunal cannot appreciate the evidence but can very well see the nature of the evidence to find out as to whether the finding is based on a case having certain evidence or findings have been arrived at while there was no evidence against the defaulter. The Tribunal can also see whether the finding is justifiable or is perverse. Since there is no finding of the enquiry officer on record nor shown to the Bench during hearing by the respondents, in that case the allegations by the counsel for the applicant that it was a case of no evidence could not be scrutinised.

The learned counsel for the applicant has not pressed the relief of vires of the Rules 15 and 16 of the Delhi Punishment Appeal Rules 1980 and the same relief was therefore not considered.

In view of the above facts and considerations, in the interest of justice and for doing equity between the parties, it is necessary to remand the matter to the disciplinary authority who will give an opportunity to the applicant to defend himself by joining the enquiry to be commenced a fresh after the stage of ~~serving~~^{serving} of summary of allegations. The applicant to be provided with all the documents to be produced before the enquiry officer and also the statement of witnesses, if any, to be examined by the department. After taking the reply from the applicant, the disciplinary authority himself or through the Enquiry Officer proceed with the disciplinary enquiry according to the rules.


The ~~applicant~~^{application} is, therefore, partly ~~be~~ allowed and the Impugned Order of Punishment ~~is~~^{is} quashed with the following directions :

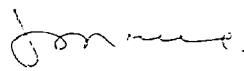
(a) The applicant shall be reinstated in the service within the period of one month from the receipt of the copy of the judgement and shall be placed in the position as he was before passing of the Impugned Order of Punishment. The period from the date of the Order of Dismissal till the date of reinstatement shall be decided by the disciplinary authority at the time of passing of the final order in the enquiry proceedings which shall be commenced a fresh from the stage of serving summary of allegations on the applicant.

(b) The disciplinary authority ~~itself~~^{should} give ~~adequate~~^{adequate} opportunity to the applicant in the said enquiry proceedings and the same be concluded expeditiously.

(c) If no enquiry is proceeded against the applicant under the relevant rules i.e. Delhi Punishment Appeal Rules 1980 in that event also the disciplinary authority shall pass an order regarding the period from the date of dismissal of the applicant from the service till the date of reinstatement in compliance with this order.

Under the circumstances the parties are directed to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)
21.10.93

Mittal