

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A.No.1324/90.

Date of Decision: 24.09.1991

Ex. Const. Aftab Ahmad

Applicant

Shri Shankar Raju

Counsel for the applicant

Vs.

Commissioner of Police
and Others

Respondents.

Shri M.K. Sharma

Counsel for the respondents.

CORAM

The Hon'ble Mr. P.K. KARTHA, Vice Chairman(J).

The Hon'ble Mr. B.N. DHOUNDIYAL, Member(A).

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 Member Shri B.N.Dhoundiyal)

This O.A. has been filed by Shri Aftab Ahmad, former Constable in Delhi Police against his dismissal by the impugned orders dated 18.09.1989, issued by the Deputy Commissioner of Police (Traffic), order dated 15.01.1990, issued by the Additional Commissioner of Police (Security & Traffic), rejecting his appeal and order dated 14.05.1990, issued by the Commissioner of Police, Delhi rejecting his revision petition.

2. The factual position is as follows:

The application joined Delhi Police as a Constable on 16.09.1982 and was attached as a Wireless Operator with A.C.P. Randhir Singh in Jeep No.5493 on 09.10.1987. It was alleged that on that day he demanded money from the driver of a truck No.RNB-3829, Shri Manohar Singh and when he refused to pay, snatched his papers. A preliminary inquiry was conducted by Inspector Shri H.S. Gill, who found that the allegations were substantiated against the

bn

applicant and his two colleagues viz. Constable Sultan Singh and H.C. Siri Kishan. A Memorandum was issued to the applicant on 28.07.1988 proposing to hold an enquiry against him under Section 21 of the Delhi Police Act, 1978.

The following charge was framed by the Inquiry Officer Inspector Surjeet Singh:-

"I, Surjeet Singh, Inspector of DE Cell, charge you H.S. Siri Kishan No.14/T, Const. Aftab Ahmad No.1170/T and driver Ct.Sultan Singh No.1672/T, that on 09.10.1987, at about 10.40 p.m. while posted in traffic, took jeep No.DDA 5493 allotted to Sh.Randhir Singh ACP/T(then H.Q) near ITO, stopped truck No.RNB 3829, took it's papers along-with 'Behti' from it's driver, demanded Rs.100/- from the driver for return of the papers. On his inability to pay the said amount, took the papers with you and later returned the papers to the driver of truck No.RNB 3829 in RND Traffic line.

Your, H.C.Siri Kishan's Ct.Aftab Ahmed's and Ct.Sultan Singh's above mentioned acts, collectively and individually, amount to grave misconduct, unbecoming of a police officer and render all of you liable for punishment u/s 21 of Delhi Police Act,1978".

3. In the list of witnesses accompanying the Memorandum dated 28.07.1988, the names of S/Shri Mahabir Singh, Shamlal and Randhir Singh were mentioned. Mahabir Singh was the driver of Truck No.RNB 3829 from whom the papers were allegedly taken by the defaulters. Shri Shamlal is the person to whom the complainant allegedly told the whole story and the defaulters returned back the documents of the truck. The defaulters allegedly handed back the documents of the truck in the presence of Shri Randhir Singh while S/Shri Shamlal and Randhir Singh were produced as prosecution witnesses in the inquiry. Shri Mahabir Singh failed to turn up for the inquiry in spite of repeated summons but his statement recorded during the preliminary inquiry by Inspector Harpal Singh was relied upon by the Inquiry Officer.

BN

6

4. We have gone through the records of the case and have considered the rival contentions. The stand of the respondents is that the punishment was awarded to the applicant after conducting the inquiry in accordance with the law and that the appellate authority has given reasons for the rejection of the appeal. The stand of the applicant is that he was not given reasonable opportunity to defend himself in the inquiry and that the appellate order is a **bald** and non speaking^{ly} order.

5. We are not impressed by the contentions of the respondents. The respondents have relied upon Rule 16(iii) and Rule 16(viii) of the Delhi Police (Punishment and Appeal) Rules, 1980.

According to Rule 16(iii) of the D.P.(P&A) Rules, 1980 the Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officers be procured without undue delay, inconvenience or expense, if he considers such statement necessary.

According to Rule 16(viii) of the D.P.(P&A), Rules, 1980 the Enquiry officer may examine any other witness to be called "Court Witness" whose testimony he considers necessary for clarifying certain facts not already covered by the evidence brought on record in the presence of the accused officer who shall be permitted to cross examine all such witnesses.

6. In our opinion, the non-examination of Shri Mahabir Singh who was a key witness is a fatal flaw in the enquiry vitiating the entire proceedings. The applicant had relied upon numerous judicial pronouncements in this regard and we have duly considered them.

BN

7. It has been held by the Supreme Court that the statements made by the prosecution witnesses during the investigation or preliminary inquiry should be supplied to the charged officer before the regular hearing in which those witnesses are examined. Such statements should be supplied in full and not only synopsis (vide State of M.P. Vs. Chintaman, AIR 1961 SC 1623; State of Punjab Vs. Bhagat Ram, AIR 1974 SC 2335). The purpose of supply of these copies is to enable the charged employee to cross examine the official witnesses effectively. In the instant case, the Enquiry Officer had held the charge as proved against the applicant on the basis of the statement of Shri Mahavir Singh, the Truck driver, recorded during the course of the preliminary enquiry. The non-examination of Mahavir Singh during the course of departmental enquiry and reliance by the Enquiry Officer upon the exparte statement of Mahavir Singh recorded during the course of preliminary enquiry, have vitiated the proceedings.

8. In Mangal Singh Vs. Commissioner of Himachal Pradesh, 1975(1) SLR 500, the Deputy Suptd. of Police was an important witness in a disciplinary inquiry held against the petitioner under the CCS(CCA) Rules, 1965. It was the Deputy Suptd. of Police who submitted a report that he had found that the Petitioner had allowed the passengers to board the vehicle and travel in it without tickets being issued to them. The High Court of Himachal Pradesh held that the non-examination of the Deputy Suptd. of Police vitiated the disciplinary proceedings. Shri R.S. Pathak, C.J. as he then was, observed as follows:

"When the Deputy Superintendent of Police was not produced in evidence and was not available for cross-examination by the petitioner it is apparent that the report submitted by him cannot be relied on as material against the petitioner. In my opinion, the General Manager was wholly wrong in holding that the two

Dr

8

charges stood notwithstanding the absence of the Deputy Suptd. of Police as a witness. Consequently, the very basis on which the show cause notice against removal was issued stands vitiated".

9. There are authoritative judicial pronouncements to the effect that in a departmental inquiry, reliance should not be placed on the earlier statements of witnesses without securing their presence at the inquiry and without affording an opportunity to the delinquent Government servant to cross-examine them.

10. In Union of India Vs. Shri T.R. Verma, AIR 1957 SC 882 at 885, a constitution Bench of the Supreme Court has observed as follows:

"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them".

11. In Shri M.C. Jayaram Naidu Vs. University of Mysore (1974 SLJ 699 at 701) which related to a departmental inquiry conducted against an employee of the University of Mysore, Shri Venkataramiah J., as he then was observed as follows:

"In such enquiries, it is desirable that all witnesses on whose testimony the management relies in support of its charge against the workman should be examined in his presence. Recording evidence in the presence of the workman concerned serves a very important purpose. The witness knows that he is giving evidence against a particular individual who is present before him, therefore, he is cautious in making his statement. Besides, when evidence is recorded in the presence of the accused person there is no room for persuading the witness to make convenient statements, and it is always easier for an accused person to cross-examine the witness if his evidence is recorded in his presence. Therefore, we would discourage the idea of recording statements of witnesses ex-parte and then producing the witness before the employee concerned for cross-examination after serving him with such previously recorded statements even though the witnesses concerned make a general statement on the latter occasion that their statements already recorded correctly represent what they stated. In our opinion unless there are compelling reasons to do so the normal procedure should be followed and all evidence should be recorded in the presence of the workman who stands charged with the commission of acts constituting misconduct."

BN

9

12. There are similar observations in Om Prakash Sharma Vs. General Manager, Haryana Roadways, 1980(1) SLR 167 at 168 decided by the Punjab & Haryana High-Court and in Narayana Misra Vs. State of Orissa and Others, 1982 (2) SLR 506, decided by the Orissa High-Court.

13. Yet another infirmity in the proceeding is that Appellate Authority and the revisional authority have not passed speaking orders while disposing of the appeal and revision filed by the applicant. According to Rule 25(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 it is obligatory on the Appellate Authority to pass a reasoned order in the appeal. The Supreme Court has observed orders made by the Appellate Authority must contain reasons for the conclusions reached vide R.P. Bhatt Vs. Union of India, (AIR 1986 SC 1040); Ramchander Vs. Union of India, (AIR 1986 SC 1173).

14. In the conspectus of the facts and circumstances of the case, the application is allowed and it is disposed of with the following directions:-

- (i) The impugned order dated 18.09.1989 of dismissal of the applicant from service passed by the Disciplinary Authority is set aside and quashed. The impugned orders passed by the Appellate Authority on 15.1.90 and passed by the revision authority on 14.5.90 are also set aside and quashed.
- (ii) The applicant will be deemed to have continued in service during the period from 18.9.89 and will be entitled to all consequential benefits.
- (iii) The respondents shall comply with the above directions within a period of 3 months from the date of receipt of this order.

15. There will be no order as to costs.

(B.N. DHOUNDIYAL)
MEMBER(A) 24/9/91

(P.K. KARTHA)
VICE CHAIRMAN(J)