

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 1723/90
T.A. No.

199

DATE OF DECISION 15.2.1991.

Shri Dewan Ram

xPetitioner Applicant

Shri S.C. Luthra,

Advocate for the Petitioner(s) Applicant

Versus
Delhi Admn. & Another

Respondent

Smt. Avnish Ahlawat

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, 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
3. Whether their Lordships wish to see the fair copy of the Judgement? /Ab
4. Whether it needs to be circulated to other Benches of the Tribunal? /Ab

(Judgement of the Bench delivered by Hon'ble
Mr. D.K. Chakravorty, Administrative Member)

The applicant, who has worked as a Cook in the
Delhi Police, filed this application under Section 19
of the Administrative Tribunals Act, 1985, praying for
the following reliefs:-

(i) to quash the impugned order of dismissal

dated 10.8.1989;

(ii) to quash the order passed by the Appellate
Authority dated 11.12.1989, whereby the
appeal preferred by him against the
impugned order of dismissal was rejected;

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(iii) to quash the impugned memo. dated 7.6.89, whereby the Class IV employees of the Delhi Police were required to undergo training for a period of one month;

(iv) to quash the order of suspension; and

(v) to pay back wages to him with all consequential benefits like increments, etc.

2. The facts of the case in brief are that the applicant joined as a Cook in the Delhi Police on 26.9.1959. He is stated to be the President of the Delhi Administration Cooks & Watermen Union. At the time of filing of the application, he had put in about 30 years of service.

3. On 14.6.1989, the applicant was posted as a Cook on temporary duty of P.T.S., Jhorodakalan, New Delhi. It was alleged that on that day at about 5.00 p.m., he went to 8th Bn. D.A.P. Complex, Malviya Nagar, New Delhi and instigated the cooks working there not to undergo basic training and did not obey the orders of his superiors. A report to that effect was entered in the Daily Diary vide Entry No.83 at 5.35 P.M. It was further alleged that the applicant absented himself unauthorisedly from PTS, Jharoda Kalan on 14.6.1989.

(b)

4. On 15.6.1989, the applicant was placed under suspension and a departmental inquiry was ordered against him. The articles of charge framed against him were as under:-

"Article-I"

That, Cook Shri Diwan Ram, No.16/C (Under suspension) while temporarily posted to PTS Jharoda Kalan, New Delhi came to 8th Bn.DAP, Complex Malviya Nagar, New Delhi at about 5 PM on 14.6.89 and instigated the Cooks, working in 8th Bn. DAP not to undergo basic training and did not obey the orders of his superiors. He thereby committed gross indiscipline and showed lack of devotion to duty and acted in a manner unbecoming of the C.C.S.(Conduct) Rules, 1964.

Article-II

That, Cook Shri Diwan Ram, 16/C absented himself unauthorisedly on 14.5.89 from PTS Jharoda Kalan, New Delhi. He thereby committed gross indiscipline and showed lack of devotion to duty and acted in a manner unbecoming of a Govt. Servant and violated rules 3(i) (ii) and 3(i) (iii) of the C.C.S.(Conduct) Rules, 1964."

5. The applicant submitted his reply on 26.6.1989, denying the charges.

6. After holding an inquiry, the respondents passed the impugned order dated 10.8.1989, whereby the punishment of dismissal from service with immediate effect was imposed on the applicant. The appeal and revision application filed by the applicant against the impugned order of punishment were also rejected.

7. The applicant has raised numerous contentions. Admittedly, a copy of the report submitted by the

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Inquiry Officer was not given to the applicant and he was not given an opportunity to make a representation against the same before the impugned order of dismissal was passed. This is clear from the following para. contained in the impugned order:-

"A copy of this order alongwith a copy of findings be given to the defaulter Cook Diwan Ram No.16/C against his proper receipt free of cost. He can file an appeal against this order to the Addl. C.P.(A.P.), Delhi within 30 days of its receipt by enclosing therewith a copy of this order if he so desires."

8. In this context, the learned counsel for the applicant relied upon the decision of the Full Bench of this Tribunal in Shri Prem Nath K. Sharma Vs. Union of India & Others, 1988 (3) SLJ 449 (CAT) wherein it was held that the findings of the disciplinary authority are bad in law because the applicant was not given a copy of the report of the Inquiry Officer and was not heard and given an opportunity of making his representation before arriving at the findings. It was further observed that hearing did not mean oral hearing. An opportunity to make a representation to the disciplinary authority against the report in writing would constitute hearing and would amount to affording a reasonable opportunity to the charged officer.

9. In Union of India & Others Vs. E. Bashyan, AIR 1988 S.C. 1000, a Division Bench of the Supreme Court

observed that non-supply of the inquiry report would constitute violation of principles of natural justice and will be tantamount to denial of reasonable opportunity within the meaning of Article 311 (2) of the Constitution.

The Supreme Court observed that a decision on this point will affect millions of employees in service and, therefore, the matter needs careful consideration in depth.

The matter has, therefore, been referred to the Hon'ble Chief Justice for consideration by a Larger Bench.

10. In a similar case which arose before the Principal Bench (Dr. Ashok Kumar Vs. Union of India & Others, 1990 (1) SLJ (CAT) 593), the Tribunal has quashed the order of the disciplinary authority and directed it to consider the matter afresh after affording the applicant an opportunity to make a representation in writing against the report of the Inquiry Officer.

11. A similar view has been taken in Union of India Vs. Mohamad Ramzan Khan, 1990 (2) SCALE 1094.

12. In view of the above, the impugned order dated 10.8.1989 is not legally sustainable.

13. Another infirmity in the proceedings is that none of the Cooks who were alleged to have been instigated by the applicant, were produced to substantiate the charges. Those who tendered evidence on behalf of the prosecution, were only the Police officers.

14. Yet another infirmity in the proceedings is that the applicant was not given a reasonable opportunity to defend himself by engaging a defence Assistant of his choice, and the enquiry was held in undue haste. The articles of charge were served on the applicant on 22.6.1989. The applicant gave his reply to the same on 26.6.1989. On 26.6.1989, the Enquiry Officer and the Presiding Officer were appointed. On 3.7.1989, the Enquiry Officer wrote to the applicant directing him to appear before him on 5.7.1989. He added that he may take the assistance of any Government servant to present his case except a legal practitioner as provided under Rule 14 (7) and 8(a) of the C.C.S.(CEA) Rules, 1965. The applicant was left with only one day to nominate his defence Assistant and also to get clearance from the Head of Department of the person concerned. He could not do this at such short notice. Five PWS were examined on 5.7.1989 and three on 12.7.1989. The cross-examination of the witnesses was deferred on 15.7.1989 because of the non-availability of the defence Assistant (Vide Annexure 13(Colly) pages 31-32 of the paper-book). On 12.7.1989, the applicant wrote to the Enquiry Officer as follows:-

"To defend me in the departmental enquiry being conducted by your goodself, I wish to appoint the undermentioned person:-

Sh. Gurdeep Singh, Sr. Inspector,
Industrial Section,
Cooperative Societies Department
Sansad Marg, New Delhi.

(1)

Kindly approach the department of the above said person so that he may be spared to appear in the DE to defend me."

15. The respondents did not accede to his request.

On 8.8.1989, the Enquiry Officer submitted his report and on 10.8.1989, the disciplinary authority passed the impugned order of dismissal from service.

16. In Bhagat Ram Vs. State of H.P., AIR 1983 S.C. 454 at 458, the Supreme Court has observed as follows:-

"The principle deducible from the provision contained in sub-rule (5) of Rule 15 upon its true construction is that where the department is represented by a Presenting Officer, it would be the duty of the delinquent officer, more particularly where he is a class IV Government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding inquiry, that he is entitled to be defended by another Government servant of his choice. If the Government servant declined to avail of the opportunity, the inquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the inquiry shows that the delinquent Government servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presenting Officer and as in the present case, a superior officer, co-delinquent, is also represented by an officer of his choice to defend him the absence of anyone to assist such a Government servant belonging to the lower echelons of service would unless it is shown that he had not suffered any prejudice, vitiate the Inquiry."

17. In the instant case, it would appear that effective cross-examination of the Prosecution witnesses was not possible and thereby prejudice was caused to the applicant.

18. One of the procedural safeguards to the delinquent

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Government servant is contained in Rule 14 (18) of the C.C.S.(CCA) Rules, 1965, which reads as under:-

"(18). The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

19. The above procedure was not complied with in the instant case.

20. In the conspectus of the facts and circumstances of the case, we set aside and quash the impugned order dated 10.8.1989, the order of the appellate authority dated 11.12.1989 and the order of the Revisional authority dated 5.4.1990. The respondents are directed to reinstate the applicant in service immediately. He will also be entitled to all consequential benefits, including arrears of pay and allowances from 10.8.1989 till the date of reinstatement.

There will be no order as to costs.

D.K. Chakravorty
(D.K. Chakravorty) 15/2/91
Administrative Member

P.K. Kartha
(P.K. Kartha) 15/2/91
Vice-Chairman(Jud.)