7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. No. 1743/1990 Date of Decision : 3.1.1995

CORAM

Hon'ble Shri N.V. Krishnan, Vice Chairman(A)

Hon'ble Smt.Lakshmi Swaminathan, Member(J)

Shri Mahabir Singh
s/o Shri Mange Ram,
R/o Village & P.O. Ladpur,
P.S. Nanglei, Delhi

... Applicant

(By Advocate Shri Shanker Raju)

Versus

1. Delhi Administration
through its Chief Secretary,
5,Alipur Road, Delhi-110054

2. The Additional Commissioner of Police,
(Armed Police) Police Headquarters,
M.S.O. Building, I.P.O.Estate,
New Delhi.

3. The Deputy Commissioner of Police,
9th Bn.Delhi Armed Police (DAP)
Pitampura, Delhi-110034

... Respondents

(By Advocate Shri Jog Singh)

ORDER

Hon'ble Smt.Lakshmi Swaminathan, Member(J)

The applicant who was working as Constable (Driver) in the Delhi Police was dismissed from service after holding an departmental enquiry by the impugned order dated 11-9-1989(Ann.A.6). His

8

appeal against the dismissal order was dismissed by the appellate order dated 15-1-1990(Ann.A.8) and the revision petition filed by the applicant has also been dismissed by the Commissioner of Police by his order dated 23-5-1990 (Ann.A.10). Hence this OA to quash the penalty orders and to re-instate him in service.

2. The charge framed against the applicant reads as follows:-

> " ....that you were detailed for Govt. duty on truck No.DEG-559 to bring back the Jawans of IX Bn.D.A.P.from village Bharthal. On the way back to Pitam Pura Lines, you Constable(Driver) Mahabir Singh No.10997/DAP. drove the vehicle negligently and rashly in a zigzag manner as per the version of the staff travelling in the vehicle and consequently the Govt.vehicle hit the rear side of a taxi (number not known) near Dabri Village. Later on when S.I. Ram Pal No.D/5267 came close to you, the S.I. found you under the influence of the liquor. The above said act on the part of you amounts to gross negligence, carelessness, misconduct and dereliction in the discharge of officials duties and makes you liable for punishment under section 21 of Delhi Police Act, 1978. "

3. An enquiry was ordered against him under Section 21 of the Delhi Police Act, 1978. The Enquiry Officers report is placed at Ann.A.5. The Enquiry Officer after examining the prosecution witnessess, relevant documents and materials on records and after giving an opportunity to the applicant to produce DWs in his defence, which however he did not produce, came to the conclusion that the conduct of the applicant " amounts to gross negligence, carelessness misconduct and dereliction in the discharge of his official duties" and he found the charge fully proved beyond any reasonable doubt and recommended him for departmental action./ The Disciplinary Authority after perusal of the Departmental enquiry file, proof on record and findings of the enquiry officer passed the penalty order of dismissal from service forthwith.

4. We have heard Shri Shanker Raju, learned counsel for the applicant, and Shri Jog Singh, learned counsel for the respondents at length and perused the records, including/departmental proceeding file which was produced by the respondents.

5. Shri Shanker Raju has raised the following grounds against the validity of the impugned penalty order:-

(1) That this is a case where the findings are not based on any evidence as there was no proof adduced in the departmental enquiry to show that the applicant had driven the Govt.Vehicle on 18-10-1988 " negligently and rashly in a zigzag manner." He states that none of the staff travelling in the vehicle had been called to show that he had driven the truck in a zigzag manner.

(2) In the facts of the case since the applicant is alleged to have driven the Govt.vehicle under the influence of liquor rashly and negligently in a zigzag manner having regard to rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980, no criminal case has been registered but only a departmental enquiry had been ordered, which is against this Rule.

(3) The Enquiry Officer had not given any detailed finding on the charge, thereby violating the provisions of Rule 16(ix) of the Delhi Police(Punishment and Appeal) Rules, 1980.

(4) The punishment order dated 11.9.89(Ann.A.6) passed by the disciplinary authority has taken into account certain past facts about the applicant being under influence of liquor and he has referred to him as having an"incorrigible type of person" without complying with the requirements of Rule 10 of the Delhi Police(P & A) Rules.

(5) He has relied on the judgment of this Tribunal in Haribash Mallik v.UOI & Ors 1990(2) CAT Cuttak Bench page 268) and claims that the disciplinary authority has taken into account material which was not brought on record in the disciplinary proceeding thereby making the penalty order illegal.

(6) The Enquiry Officer's report does not refer to his defence statement. Further he alleges that the reference made by the Enquiry Officer in his report that the applicant had pleaded guilty to the charge should not be taken into account by the enquiry officer, and

(7) Relying on the recent decision of the Supreme Court in Krishan Lal v/s State of J & K (1994 (SCC) (L&S) (885) he alleges that there has been violation of the principle of natural justice inasmuch as the disciplinary authority did not give him the enquiry officers report thereby denying him reasonable opportunity to show cause against the proposed punishment.

6. The Respondents have stated that the penalty orders have been issued after holding the departmental enquiry in accordance with the rules. The applicant has been afforded reasonable opportunity to defend himself before the final penalty order was passed. They have stated that since no criminal case has been

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registered against the applicant there was no question of following the procedure laid down under rule 15(2) of the Delhi Police(Punishment and Appeal) Rules, 1980. We agree with the submissions of the learned counsel for the respondents, Shri Jog Singh that it was in the discretion of the competent authority to decide whether criminal case should be registered and investigated or a departmental enquiry should be held, and in this case there has been no violation of this Rule.

7. The Disciplinary authority has passed a speaking order. He has noted that the enquiry officer had held that the charge against the defaulter was fully proved beyond any reasonable doubt. The disciplinary authority has mentioned that the defaulter is an incorrigible type of person which was based on the facts noted by him when the applicant was given an opportunity for personal hearing before him in the orderly room first on 7-9-89 and again on 8-9-89. He has stated that he was informed that the applicant could not

13

appear in the orderly room because he was under the influence of the liquor on 7-9-89 and again on 8-9-89 he found him under influence of liquor and it was in this context that he has referred to the applicant as an" incorrigible type of person.". This does not necessarily mean that procedure under rule 10 is attracted because even on the finding in the departmental enquiry, he had found the applicant guilty of the charge and totally unfit for the police department.

8. Shri Jog Singh, learned counsel for the respondent has tried to distinguished the facts in this case and these before the Supreme Court in the Krishan Lal case (Supra), inasmuch as a personal hearing had been given to the applicant in the orderly room by the disciplinary authority to put forward his case, so that there has been no violation of the principles of natural justice.

9. We have carefully considered the arguments of both the learned counsel and the records in this case.

10. As mentioned above, we find that there has been no violation of Rule15(2) of the Delhi Police(Punishment

and Appeal) Rules, 1980 since a decision had been taken by the competent authority to proceed with the departmental enquiry in this case.

11. We find that the enquiry officer has, after considering the evidence of the witnessess who were produced before him and taking into account the statement submitted by the applicant, which was also discussed in the report, come to the findings that the charge was proved against the applicant.Although, he has mentioned that the defaulter constable (driver) had pleaded guilty to the charge, he has made special mention in his report to the statement made by the applicant dated 20-7-1989 in his defence to the charge (English translation of which is also placed on the record). He has mentioned that the defaulter constable has admitted that he has consumed' Sura' which is also an alcohal due to some stomach up-set which evidence he has not believed. He has also referred to the admission of the defaulter that he had hit the taxi. Regarding the allegation of the defaulter that SI Ram Pal had taken this action due to some previous revenge he has stated this is not based on any facts. Therefore, the allegation of the learned counsel for

the applicant that applicant's defence statement has been ignored by the Inquiry Officer is rejected. It may also be added that the enquiry officer has, after going through the evidence of the prosecution witnesses, including the evidence of the Doctor of the Civil Hospital, Rajpur Road, Delhi who had examined the applicant and P.W. I, SI Ram Pal, who had given a statement that the smell of alcohal was coming from the applicant on the basis of which he had lodged the complaint vide DD No.19 on 18.10.1988 in the absence of any defence witness being produced by the applicant, come to the conclusion that the charge, including driving the vehilcle on 18.10.1988 under the influence of liquor was fully proved. Even if it is taken that the applicant has taken only the medicine" Sura," as he claims, we are of the view that it is highly unlikely that the effect of the medicine would have lasted till the medical examination was done by the Doctor. More probably he had consumed liquor and not medicine.

12. In view of the above, the submission of the learned counsel for the applicant that the penalty orders are based on no evidence and is, therefore, perverse is rejected. The mere fact that there was no finding of the competent authorities that the applicant had driven the vehicle rashly and negligently in a zigzag manner does not invalidate their specific finding that the charge against the defaulter was proved of driving the Govt.vehicle under the influence of liquor. The fact that he was under the

influence of liquor has been referred to in the evidence of PW-4, Dr.G.S. Sain of the Civil Hospital who had examined him and PW-1, SI Ram Pal. Since the disciplinary authority has agreed with the findings of the enquiry officer, there was no need for him to give further detailed reasons for arriving at the same conclusion. Both the orders of the disciplinary authority and appellate authority are speaking orders giving reasons for their conclusion in imposing the penalty order and rejecting the appeal of the applicant, respectively.

13. The judgment in Haribash Mallik v.UOI& Others (Supra) is also not relevant to the facts in this case. The disciplinary authority has not relied on any fact which was not brought on the record of the disciplinary proceeding amounting to violation of the principle of natural justice. In this case the disciplinary authority has only made a passing reference to the applicant being an incorrigible type of person, having regard to what happened after the incident enquired into, when the applicant was required to appear before him in the orderly room for personal hearing on 7-9-89

when he was told that he failed to come because he was under the influence of liquor and again on 8.9.1989, when he himself found the applicant under the influence of liquor. He has recorded that he found the applicant totally unfit for the police department and he has no option but to dismiss the applicant from service based on the facts and circumstances of the relevant record of the Departmental Enquiry. Therefore, the Haribash Mallik case is distinguishable.

14. After careful perusal of the records in this case, including the departmental proceeding, we are satisfied that this is not a case of no evidence. Although it is correct that none of the prosecution witnesses testified to the fact that the applicant had driven the government vehicle on 18.10.1988 in a "zigzag manner" which is one part of the charge, there is no doubt at all that the competent authority had ample evidence before it to come to the conclusion that the charge that he was under the influence of liquor is fully proved. It is well settled law that the tribunal cannot enter into the domain of the disciplinary authority to reappraise evidence or interfere with the penalty if the conclusion of the

18

Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter (See UOI v.Parmananda AIR 1989 SC 1185)

15. The reliance placed by Shri Raju on the decision of the Supreme Court in Krishan Lal v.J&K (supra) is that since there has been non-supply of the Enquiry officers report there has been violation of natural justice. In this case itself reference has been made to the earlier decision of the Supreme Court in Managing Director, ECIL v.B.Karunakar (1993 25 ATC 704). In paras 27 to 29 of the Krishan Lal judgment, the Supreme Court has held as follows:-

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27. We, therefore, held that the requirement mentioned in Section 17(5) of the Act despite being mandatory is one which can be waived. If, however, the requirement has not been waived any act or action in violation of the same would be a nullity. In the present case as the applelant had far from waiving the benefit, asked for the copy of the proceeding despite which the same was not made available, it has to be held that the order of dismissal was invalid in law.

28. The aforesaid, however, is not sufficient to demand setting aside of the dismissal order in this proceeding itself because what has been stated in ECIL case in this context would nonetheless apply. This is for the reason that violation of natural justice which was dealt with in that case, also renders an order invalid despite which the Constitution Bench did not concede that the order of dismissal passed

without furnishing copy of the Inquiry Officer's report would be enough to set aside the order Instead , it directed the matter to be examined as stated in paragraph 31.....

29. According to us, therefore, the legal and proper order to be passed in the present case also, despite a mandatory provision having been violated, is to require the employer to furnish a copy of the proceeding and to call upon the High Court to decide thereafter as to whether non-furnishing of the copy prejudiced the appellant/petitioner and the same has made difference to the ultimate finding and punishment given. If this question would be answered in affirmative, the High Court would set aside the dismissal order by granting such consequential reliefs as deemed just and proper." (emphasis added)

16. In the ECIL case (supra) the Supreme Court has observed that " the Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present." In the context of natural justice the Supreme Court has observed in the ECIL case as follows:-

"The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact prejudice has been caused to the employee or not.... has to be considered on the facts and circumstances of each case. Where, therefore,..... no different consequences would have followed, it would be a perversion of justice to permit the employee"to resume duty.... It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperation limits. It amounts to an" unnatural expansion of natural justice." which itself is antithetical to justice."
(Emphasis added)

17. The ground raised by Shri Raju has a basis in Rule 16(xii)(a) of the Delhi Police (Punishment and Appeal) Rules, 1980. The Enquiry Officer's Report should have been given if a major penalty was to be awarded. However, this can be waived as stated in Krishan Lal's case. In a present case, the right to get the E.O.'s report has been waived by the applicant as he had not raised it in appeal. Therefore, he cannot make any claim now on this ground as an after thought.

18. We find that in the facts and circumstances of this case the applicant has been given ample opportunity to defend his case and the applicant has in no way been prejudiced by non-supply of the enquiry officer's report. We, therefore, do not find that in the facts of this case and keeping in view the observations of the Supreme Court in the cases referred to above, that there has been infringement of the principles of natural justice justifying the setting aside of the penalty order.

19. In the above facts and circumstances of the case and having regard to the aforesaid judgments of the Supreme Court, we see no reason to interfere with the impugned orders. This application is accordingly dismissed. No order as to costs.

(Lakshmi Swaminathan)
Member(J)

(N.V. Krishnan)
Vice Chairman (A)