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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-1787/90

Date of decision: 25.9.92

Shri Virender Singh Applicant

Versus

Commissioner of Police, Respondents
Delhi & Others

For the Applicant Smt. Avnish Ahlawat, Counsel

For the Respondents Shri B.R. Prashar, Advocate

CORAM:

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

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed
to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant, who is working as a Sub-Inspector
in the Delhi Police, filed this application under Section
19 of the Administrative Tribunals Act, 1985, praying for
the following reliefs:-

- (i) to set aside the dismissal order dated
30.1.1989, the appellate order dated
20.6.1989, and revisional order dated
29.3.1990; and

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(ii) to order his reinstatement in service with all consequential benefits of pay and allowances, seniority, etc.

2. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. On 5.9.1990, when the application was admitted, an interim order was passed directing the respondents not to dispossess the applicant of the Government quarter No.C-22, Type-II, New Police Lines, Delhi, subject to his liability to pay the licence fee, etc., payable under the relevant rules. The interim order has thereafter been continued during the pendency of the present application.

3. The facts of the case in brief are as follows. On 11.5.1987, a departmental enquiry was initiated against the applicant by serving on him the summary of allegations. It was alleged that the applicant while posted at P.S. Janak Puri, Delhi, on 21.10.1986, took Shri Om Prakash to the Police Station from his shop No.C-8, J.J. Colony, but he did not mention this fact in the D.D. of P.S. He obtained an undertaking under duress from Shri Om Prakash that he would pay Rs.77,000/- to one, Shri Kuldeep R/o 47/2, Sadar Bazar, Delhi Cantonment. The application of Shri Kuldeep Sugand, on which the applicant acted, was not diarised at P.S., nor marked by the S.H.O. to him and the entire thing was done off the record with ulterior motive. He has misused his

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official position in his official relations with public.

4. After recording the statements of 12 Prosecution witnesses, the Enquiry Officer served upon the applicant on 23.6.1988 the charge-sheet. In the charge framed against him, the allegations of misconduct contained in the summary of allegations have, by and large, been repeated. It has been added that he failed to put up the result of the enquiry to the S.H.O., that he took Shri Om Prakash to P.S., Janak Puri, detained him there illegally and obtained an undertaking from him on 22.10.1986 under threat that he would pay Rs.77,000/- to Shri Kuldeep Sugand, that he did not make any D.O. entry purposely to this effect, and that he misbehaved and manhandled the father and brother of Shri Om Prakash, who visited the P.S. and contacted him to find out the reason for his detention.

5. The Enquiry Officer, in his report, came to the conclusion that all the charges against the applicant stand proved beyond doubt and on that basis, the impugned order of dismissal from service was imposed on him.

6. The applicant has raised numerous contentions and alleged several infirmities in the conduct of the enquiry, which would have the effect of vitiating the enquiry in its entirety. For the purpose of disposal of the present

application, we think that only the very important infirmities pointed out by the applicant need be considered.

7. The applicant has contended that the departmental enquiry was conducted in total violation of the principles of natural justice and also Rules 15(iii) and 16(iii) of the Delhi Police (Punishment & Appeal) Rules, 1980. Rule 15(iii) is to the effect that the file of preliminary enquiry shall not form part of the formal departmental record but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. Rule 16 (iii) provides, inter alia, that as far as possible, the witnesses shall be examined direct and in the presence of the accused who shall be given opportunity to take notes of their statements and cross-examine them.

8. In the instant case, the applicant has alleged that the statements of witnesses were brought on record in the departmental inquiry through the witnesses, who merely stated that the statements were true and confirmed the same. Copies of the statements were ^{not} given to the applicant in advance. Thus, he was denied the right to defend his case properly as he could not effectively cross-examine the witnesses.

9. In our opinion, there is force in the above contention. In the report submitted by the Enquiry Officer, he stated that

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PW4 "has owned his signatures on his earlier statements dated 30.10.1986 and 10.11.1986, recorded by Inspector R.L. Sharma and confirmed the contents true. His statements are marked Exhibit P4/A". (Vide page 36 of the paperbook). There are statements to the same effect in the case of the deposition of PW5 (page 40 of the paperbook), PW9 (page 43 of the paperbook), PW11 (page 45 of the paperbook), and PW12 (page 45 of the paper-book). There is nothing on record to indicate that the copies of the statements of these witnesses recorded during the preliminary enquiry were given to the applicant in advance in order to enable him to cross-examine these witnesses effectively. There is also no indication that the copies of these statements recorded during the preliminary enquiry were given to the applicant, in the file concerning the departmental enquiry which was submitted by the respondents for our perusal.

10. In Trilok Nath Vs. Union of India, 1967 SLR 759, the Supreme Court observed that the public servant concerned must be afforded an adequate opportunity of defending himself. If required for his defence, he is to be furnished with copies of all the relevant documents, viz., documents sought to be relied upon by the Enquiry Officer or required by the public servant for his defence. In Jug Raj Singh Vs. Delhi

Administration, 1970 SLR 400, the Delhi High Court observed that an important aspect of the defence is to cross-examine the witnesses by using their previous statements to contradict them. Denial of the previous statements would disable the delinquent from defending himself and would result in the denial of reasonable opportunity to him (see also Deputy Managing Director (Technical), Indian Airlines, New Delhi & Others Vs. U.B. Corieya, 1978 SLJ 517; J.K. Mishra Vs. Director General of Police and Others, 1981 (2) SLJ 428; S.D. Bhardwaj Vs. Union of India and Others, 1982 (2) SLJ 515).

11. Another basic infirmity in the enquiry is the cross-examination of the defence witnesses and some Prosecution witnesses, who deposed in favour of the applicant, by the Enquiry Officer. The Enquiry Officer has cross-examined PW12 who deposed in favour of the applicant. This is clear from the following passages from the report of the Enquiry Officer pertaining to the evidence of PW 12:-

"PW12

In reply to one of the questions of the E.O., the P.W. has said that he has no evidence to support that he has given his complaint Ex.PW3/8 to the S.H.O.". (Vide page 46 of the paperback).

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12. The fact that the Enquiry Officer cross-examined the defence witnesses, is clear from the following passages occurring in the enquiry report:-

"DW1

In reply to the question of the E.O., the DW has said that he along with the defaulter S.I. had gone to the shop of Shri Om Prakash on 21.10.1986 at about 5.30 p.m. and returned to the Police Station at about 6.30 p.m....."

(Vide page 50 of the paper-book).

"DW2

In reply to the question of the E.O., the DW has confirmed that the S.I. did not make any entry in the Daily Diary regarding his alleged arrival and departure". (Vide page 51 of the paper-book).

"DW3

In reply to the questions of the E.O., the DW has said that no written complaint against Om Prakash and Hawa Singh was given to the Duty Officer, P.S. Janak Puri, or the A.C.P., Kanchi Singh....." (Vide page 53 of the paperbook).

"DW4

In reply to the question of the E.O., the DW has said that he was never connected with the sale/purchase of this alleged plot or he had any

dealings with S/Shri Om Prakash or Kuldeep Sugand."

(Vide page 54 of the paper-book).

13. The learned counsel for the applicant submitted that the aforesaid passages clearly indicate that the Enquiry Officer performed the role of the presenting officer as well. He also acted not only as a Judge but also as the Prosecutor. There is ample authority for the proposition that the enquiry officer should not cross-examine the delinquent. In Abdul Wajeed Vs. State of Karnataka & Ors., 1981 (1) SLR 454 at page 458, the Karnataka High Court observed that the cross-examination of defence witnesses by the enquiry officer was in plain violation of the principles of natural justice and consequently, the enquiry proceedings were vitiated.

14. In Balu Singh Vs. Union of India & Ors., ATR 1986(1) CAT 195, the Principal Bench of the Tribunal held that where the enquiry officer had subjected the delinquent employee to cross-examination and had thus assumed the role of both the Judges as well as prosecutor, then the factum of enquiry officer assuming the role of the prosecutor vitiates the entire proceedings.

15. In Prem Baboo Vs. Union of India & Ors., 1987(4) ATC 727, the Principal Bench of the Tribunal followed the aforesaid decision in Balu Singh's case and quashed the impugned disciplinary proceedings.

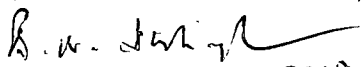
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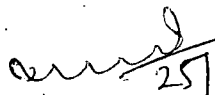
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16. In the light of the foregoing discussion, we are of the opinion that the departmental enquiry initiated against the applicant and the punishment imposed on him, are not legally sustainable. As we have reached this conclusion, we do not consider it necessary to go into the other contentions raised by the applicant that the genuine efforts to get the matter settled through a compromise do not amount to misconduct and that the departmental enquiry was initiated by the Additional Commissioner of Police, but the impugned order of punishment was passed by the Deputy Commissioner of Police.

17. We, therefore, set aside and quash the impugned order dated 30.1.1989, the appellate order dated 20.6.89 and the revisional order dated 29.3.1990. The applicant shall be reinstated in service as Sub-Inspector and paid the pay and allowances from the date of dismissal to the date of reinstatement. These directions shall be complied with expeditiously and preferably within a period of three months from the date of receipt of this order. There will be no order as to costs.

The interim order passed on 5.9.90 is hereby made absolute.


(B.N. Dhoundiyal) 25/9/92
Administrative Member


25/9/92
(P.K. Kartha)
Vice-Chairman(Judl.)