

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1943/90

New Delhi this the 2nd Day of December, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Smt. Lakshmi Swaminathan, Member (J)

Nidan Singh s/o Sh. Kattar Singh,
R/o Village Ladraon, P.O. Ladraon
P.S. Bahadurgarh, District Rohtak,
Haryana.

...Applicant

(By Advocate Sh. Shyam Babu)

Versus

1. Lt. Governor of Delhi through
Chief Secretary, Delhi Administration,
Delhi.
2. Commissioner of Police, Delhi,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate
New Delhi.
3. Additional Commissioner of Police (A.P.)
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate
New Delhi.
4. Deputy Commissioner of Police,
10th Bn. D.A.P. Pitampura Lines,
Delhi. ...Respondents

(By Advocate Sh. Amresh Mathur)

ORDER(ORAL)

Mr. N.V. Krishnan:-

The applicant, a former Constable under the Delhi Police was dismissed from service by the impugned Annexure 'C' order dated 2.6.89 of the Deputy Commissioner of Police, 10th Bn. - the fourth respondent. The appeal and revision filed by him were also dismissed on 23.11.89 and 23.3.1990 respectively (Annexures D and E respectively).

2: The brief facts of the case are that the following summary of allegation was made against the applicant:-

"It is alleged against Const. (Driver) Nidan Singh No.11193/DAP that on 27.1.89 he refused to perform the official duties duly assigned to him and he further gave fist blows to Const. Radha Krishan No.11533/DAP M.T. Munshi who had gone to call him for duty.

The allegations against the Constable are of serious nature and unbecoming a member of a Police-officers which make him liable to be dealt with departmentally u/s 2 of Delhi Police Act, 1978."

2.1 An enquiry officer was appointed who examined witnesses and submitted his report. A copy has been submitted alongwith the additional documents filed by the applicant. On considering the Enquiry Officer's report, the disciplinary authority came to the conclusion that the charge stands proved. He thereafter recorded as follows and imposed the punishment of dismissal from service:-

"In view of the nature, content and magnitude of the fault committed with the defaulter (Const. Nidan Singh) I have found that he excelled himself over all other norms of discipline in a callous exhibition of his indecent behaviour in the disciplined force which is inconsistent with his further discharge of duty in the service. Punishment short of dismissal will jeopardise the interest of disciplined force."

2.2 This punishment was maintained in appeal and revision.

2.3 These orders have been challenged in the OA on a number of grounds. During the hearing the learned counsel for the applicant contended that the disciplinary authority has not complied with the requirements of Rule 8 (a) of the Delhi Police (Punishment and Appeal) Rules, 1980 inasmuch as he did not record a finding that the misconduct proved against the applicant was a grave one, rendering him unfit for Police service. In this connection, he relied upon the unreported judgements of this Tribunal in OA-1219/93 and OA-802/90. He also relied upon the judgement of the Full Bench in Hari Ram vs. Delhi Administration (OA-1344/90

decided on 4.8.93). He also referred to the subsequent judgements of the Tribunal in Krishan Kumar vs. Delhi Administration and Others (1994 (28) ATC 16) contending that this judgement was distinguishable. In the circumstances, the non-compliance of Rule 8 (a) vitiates the entire disciplinary proceedings.

3. The learned counsel has also a case that the enquiry officer had examined Shyam Lal, Inspector who had conducted a preliminary enquiry and had found that the charge was established but yet, a copy of the preliminary enquiry report was not given to him.

4. We have made a mention of these facts for the sake of record for, in the view that we are taking, we do not find it necessary to go into the merits of these grounds.

5. The learned counsel for the applicant has taken us through the Enquiry Officer's report to contend that the Enquiry Officer has not discharged his duties as a quasi-judicial officer. He has merely narrated the circumstances in which the enquiry proceedings came to be initiated, which is followed by short summaries of the statements of the six PWs and the two defence witnesses. The Enquiry Officer has not cared to evaluate and appraise the evidence tendered by various witnesses to examine as to how and in what manner this evidence proves or disproves the charges. Instead, after such narration he has blandly concluded his report as follows:-

(6)

"I have gone through the statements of prosecution witnesses as well as of defence-witnesses and the material on record. I am of the opinion that charge against the defaulter is proved. However considering his age-factor and a new comer in the deptt. a lenient view may be taken."

6. The Learned counsel for the applicant submits that on this very ground the entire proceedings deserve to be struck down. He relies for this proposition on the judgement of the Supreme Court in AIR 1985 SC 1121 - Anil Kumar vs. Presiding Officer. The following observations have been made in that judgement:-

"5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason by the evidence produced by the appellant did not appeal to him or was consider not credit-worthy. He did not permit peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial inquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In Madhya Pradesh Industries Ltd. vs. Union of India (1966) 1 SCR 466: (AIR 1966 SC 671), this Court observed that a speaking order will at best be a reasonable and at its worst at least a plausible one. The public should not be deprived of this only safeguard. Similarly in Mahabir Prasad vs. State of Uttar Pradesh (1971) 1 SCR 201: (AIR 1970 SC 1302), this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order-sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non application of mind and it is this report on which the General Manager acted in terminating the service or the appellants. There could not have been a gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court's and the High Court." (emphasis supplied)

7. We requested the learned counsel for the respondents as to why the proceedings should not be quashed on this single ground. The learned counsel could not satisfy us on this score.

8. After having perused the report of the Enquiry Officer, we are of the view that this functionary has not discharged his quasi-judicial duties. The Enquiry Officer being a mere delegatee of the disciplinary authority, it would have been in order if the disciplinary authority had reconsidered the evidence on merits and come to a proper conclusion about the guilt of the applicant. That has also not been done by the disciplinary authority. In the circumstances, we quash the report of the Enquiry Officer dated 26.5.1989, as distinct from the proceedings which proceeded it. Automatically, the order of the disciplinary, appellate and revisionary authorities have necessarily to be quashed, as they are without any foundation. We do so.

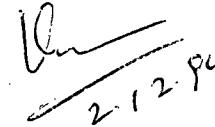
9. In the circumstances, this OA is allowed. The respondents are directed to reinstate the applicant within one month from the date of receipt of this order. We make it clear that this order will not stand in the way of the respondents, if they so choose, from conducting a proper enquiry in accordance with law. However, in case such an enquiry is to be conducted, it shall be initiated within a period of three months from the date of receipt of this order by the appointment of an enquiry officer. That officer shall resume the enquiry from the stage the defence of the applicant was concluded by the examination of defence witness. He shall hear the applicant in the first instance, before proceeding in the matter. In so far as the period

during which the applicant has been out of service, the competent authority shall pass appropriate orders, in accordance with law, as to how this period should be treated and what pay and allowances should be paid to the applicant.

10. The O.A. is disposed of as above, with no order as to costs.



(Smt. Lakshmi Swaminathan)
Member(J)
'Sanju'


2-12-84

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