

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

D.A.No.213/1990

New Delhi, This the 20th Day of July 1994

Hon'ble Shri C.J. Roy, Member(J)

Hon'ble Shri P.T.Thriuvengadam, Member(A)

Shri Jaipal Singh,
Ex-Head Constable
(No.218/W), Delhi Police
S/o Shri Mehar Singh
R/o Vill and P.O. Gijhi
Dist.. Rohtak, P.S. Sampla,
Rohtak(Haryana)

...Applicant

By Shri S C Gupta, Senior Counsel with
Shri L R Goel.

Versus

1. Commissioner of Police
Police Headquarters
Indraprastha Estate
New Delhi.
2. Additional Commissioner of Police
Southern Range, Police Headquarters, Indraprastha
Estate, New Delhi.
3. Dy Commissioner of Police
West District, Rajouri Garden Police Station Bldg
New Delhi.

...Respondents

By Shri B R Prashar, Advocate

D R D E R(Draft)

Hon'ble Shri C.J. Roy, Member(J)

1. The applicant was working as a Headconstable in the Delhi Police. The applicant along with two others was chargesheeted on the ground that they accepted a sum of Rs.20/- from the cattle-traders sitting in three different trucks that came from Haryana to cross Delhi border, where these police personnel were posted on duty.. A chargesheet was issued to the applicant which is at Annexure A. Identical chargesheets were also issued to two other personnel who were with the applicant at that point of time. A Joint enquiry was held for Shri Rajendra Prasad, Shri Ram Niwas and

Shri Jaipal Singh, the applicant in this case.

On the basis of the findings a show case notice was issued to Shri Rajendra Prasad and Shri Jaipal Singh, the applicant. Finally they were dismissed from service by an order of Deputy Commissioner of Police(Annexure F dated 25.11.88). The applicant filed an appeal and the Appeal was rejected by the Additional Commissioner of Police Vide Annexure H dated 19.6.1989. Hence the applicant filed this DA on 6.2.1990 claiming the following reliefs:

- (i) quash the disciplinary action taken against the applicant, including the charge sheet the findings, the punishment order, and the rejection of the Applicant's appeal by the Appellate Authority.
- (ii) direct the respondents that the applicant be forthwith reinstated in his service, and, further, that he be deemed to have always continued in service, as though he was never terminated;
- (iii) direct the respondents to give the applicant all his due benefits, as per his service conditions, including arrears of pay and allowances, seniority, and, due promotions in his turn;
- (iv) direct the respondents to give the applicant any other reliefs that this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. Shri S C Gupta, Senior Counsel for the applicant mentioned that Shri Rajendra Prasad, the co-accused in this case filed a DA(DA No.591/1990) in this Bench and this DA was decided on 30.8.1993

by the Principal Bench reported in All India Service Law Journal 1993(3) CAT page 564. This OA was allowed and the respondents were directed to re-instate the applicant with immediate effect from the date of dismissal and pay all consequential benefits till he is re-instated. It is pertinent to mention here that in this case a Joint Enquiry was held and no preliminary enquiry was held and the applicant and Shri Rajendra Prasad (applicant in OA 591/1990) were dismissed as a result of the Joint Enquiry. Therefore it is relevant to quote paras 4, 10 and 11 of the Judgement of OA 591/90. They are reproduced below:

Para 4. Rule 15(1) of the Delhi Police(Punishment Appeal)Rules, 1980 envisages preliminary enquiry which reads as follows:

Preliminary enquiries -(1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulters, (ii) to collect prosecution evidence (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above mentioned points exists a preliminary enquiry need not be held and departmental enquiry may be ordered by the disciplinary authority straight away.

In all other cases a preliminary enquiry shall normally proceed a departmental enquiry.

Para 10. In this connection, the observation of the Hon'ble Supreme Court in Gujarat Electricity Board case 1982 is relevant. In that case the Court had held that the disciplinary enquiry ~~perforce~~ to consult himself for selecting the most appropriate penalty from out of the range of penalties available that can be imposed,

having regard to the nature, content and gravity of the default. If a lesser penalty can be imposed without severly jeopardising the interest the employer, the Disciplinary Enquiry cannot impose the maximum penalty of dismissal from service. In the instant case it is foregoing conclusion that the dismissal order passed by the appropriate authority were not passed on any evidence. As stated earlier, it is a case of no evidence and the dismissal order which is not only arbitrary, unreasonable, based on extraneous consideration, necessarily violates the provisions of Articles 14 and 16 of the Constitution.

The Supreme Court in Shanker Das V U O I A/R 1985 SC 772 set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his re-instatement in service with full back wages.

The facts of the case are similar to the case referred to above.

Para 11. In the facts and circumstances, the proceedings including the report of the Inquiry officer, Disciplinary Authority and the Appellate Authority are required to be quashed. In view of the aforesaid discussions, we are of the opinion, that the principle of natural justice having been violated in this case, the petitioner having not been given reasonable opportunity to defend himself and there being no evidence to substantiate the charge framed against the petitioner, the Disciplinary Enquiry proceedings require to be quashed. We accordingly set aside and quash the report of the Enquiry Officer, Disciplinary Enquiry Findings as well as the findings of the

Appellate Authorities. The respondents are hereby directed to reinstate the applicant with effect from the date of dismissal and pay all consequential benefits till he is re-instated. The DA is allowed with no order as to Costs."

3. In addition to the above points raised in that case Shri S C Gupta Senior Counsel for the applicant argued the following additional points:

- (a) There was not a single evidence or document produced to show about the demand or acceptance of the bribe.
- (b) The alleged tainted currency has not been produced during the enquiry whereas it was alleged to have been deposited somewhere.
- (c) Consequently there was no phenaphthaleine test conducted in this case.
- (d) It is also mentioned by him that the number of currency note was noted on a slip of paper as alleged in the prosecution case. But the slip was also not produced.
- (e) The persons whose statement have been recorded on the back of the charged officer was relied upon by the Enquiry Officer and they were not produced before the Enquiry officer for cross examination.

4. We agree that these infractions in the enquiry caused a serious prejudice to the applicant. and also resulted in violation of natural justice. So following these grounds and also the reasoning given by the Hon'ble Members in DA 591/1990 we also choose to give the same direction to the respondents. We accordingly set aside and quash the report of the Enquiry Officer, Disciplinary

Enquiry Findings as well as findings of the Appellate Authorities. The respondents are hereby directed to reinstate the applicant with effect from the date of dismissal and pay all consequential benefits till he is reinstated. The respondents are further directed to implement this order within three months of receipt of this Order. The O A is allowed with no order as to costs.

P. T. Thiru
vengadam

(P.T. THIRUVENGADAM)
Member (A)

J. Roy
(C.J. ROY)
Member (J)

LCP