

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2260/90
T.A. No.

199

DATE OF DECISION 28.1.1992

Shri Noor Mohd.	Petitioner Applicant
Shri Shanker Raju	Advocate for the Petitioner(s) Applicant
Versus	
Commissioner of Police & Ors.	Respondent
Mrs. Geeta Luthra	Advocate for the Respondent(s)

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

The Hon'ble Mr. B.N. Dhoundiyal, 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? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The question whether the disciplinary authority can order a de novo inquiry when he disagrees with the findings of the Inquiry Officer without giving reasons for such disagreement and appoint a new Inquiry Officer, arises for consideration in this case.

2. The applicant is a Head Constable serving in the Delhi Police. While posted at P.S. Town Hall, he arrested one, Shri Harkesh in a case under the Excise Act with a view to helping the accused in a murder case registered at P.S. Nanglei. An Inquiry Officer was appointed and

on examination of the prosecution witnesses, he gave his findings in favour of the applicant. The applicant has stated that a copy of the findings has not been supplied to him. The disciplinary authority, on receipt of the findings from the Inquiry Officer, disagreed with it and ordered a de novo inquiry against the applicant vide his order dated 15.5.1990 on the ground that "there is sufficient evidence to substantiate the allegations". The matter was entrusted to another Inquiry Officer for further inquiry. The new Inquiry Officer framed a charge against the applicant which is as under:-

"I, Inspector Rajeshwar Prasad S.H.O. P.S. Roop Nagar, Enquiry Officer, charge you Head Constable Neer Mohd No.103N for the allegation that while posted to P.S. Town Hall you accepted Rs.2,000/- from one Harkesh s/o Madan Singh r/o 2892, Gali Peepal Wali Old Subzi Mandi, Delhi through Khalil Ahmed s/o Mohd. Subrati r/o 2214 Gali Hinga Beg, Lahori Gate, Delhi for helping Harkesh in a murder plan by Tyagi Gang at Village Nanglei. Accordingly you arrested Harkesh in case F.I.R.No.66 dated 28.3.88 under Sec. 61-1-14 Excise Act P.S. Town Hall.

The above act on your part constitutes gross misconduct of corrupt attitude rendering you unbecoming of a Government Servant in violation of Rule 3(1)(iii) of C.C.C.(Conduct) Rules, 1964. You are thus liable for punishment under Sec.21 of Delhi Police (Punishment & Appeal) Rules, 1980."

3. The applicant has challenged the holding of de-novo inquiry against him on several grounds. He has contended

that the proposed departmental inquiry is in violation of the principles of natural justice, and that it is not in conformity with the provisions of Rule 16(x) of the Delhi Police (Punishment & Appeal) Rules, 1980.

4. The applicant has stated that the case against the accused, Shri Harkesh under Section 61 of the Excise Act registered by him has been duly challaned by the S.H.O., P.S. Town Hall, and was cleared by the A.C.P., Kotwali for submission in the Court and the same is pending trial. The applicant being a crucial prosecution witness in the case, in the event of any decision of the disciplinary authority or the Inquiry Officer casting any shadow of doubt on his action by the Police Department itself will devalue his testimony in the Court, thereby benefiting the accused. This would interfere with the administration of justice.

5. In the above background, the applicant has prayed that the inquiry initiated by order dated 15.5.1990, be set aside and quashed.

6. The respondents have contended in their counter-affidavit that the departmental inquiry is proposed to be conducted in accordance with law in compliance with the provisions of natural justice. They have, however,

admitted that the criminal case against Shri Harkesh is still pending though they have denied that there is any direct interference in the judicial process. According to them, the matter of departmental enquiry is a different one as it is on the allegation that the applicant received illegal gratification from Harkesh for arresting him in a lighter case to avoid suspicion of murder case at Nangloi falling on him.

7. On 19.11.1990, the application was admitted and an interim order was passed to the effect that the respondents shall not pass final orders in the departmental inquiry pending against the applicant. The interim order already passed was continued thereafter till the case was finally heard on 13.9.1991 and orders reserved thereon.

8. We have carefully gone through the records of the case and have considered the rival contentions. The disciplinary authority appears to have ordered de novo inquiry in purported exercise of the powers conferred on him by Rule 16 (x) of the Delhi Police (Punishment & Appeal) Rules, 1980, which reads as follows:-

"On receipt of the Enquiry Officer's report the disciplinary authority shall consider the record of the enquiry and pass his orders on the enquiry on each charge. If in the opinion of the disciplinary authority,

some important evidence having a bearing on the charge has not been recorded or brought on the file he may record the evidence himself or send back the enquiry to the same or some other Enquiry Officer, according to the circumstances of the case, for such evidence to be duly recorded. In such an event, at the end of such supplementary enquiry, the accused officer shall again be given an opportunity to lead further defence, if he so desires, and to submit a supplementary statement, which he may wish to make.

(emphasis added)"

9. The contention of the applicant is that the order of the disciplinary authority ordering de novo inquiry is clearly violative of the aforesaid provision. This has been denied by the respondents.

10. In our view, on a plain reading of the provision of Rule 16 (x), it would appear that on the receipt of the Enquiry Officer's report, the Disciplinary Authority may adopt one of the following course of action, namely,

- (a) he may pass his order on the enquiry on each charge,
- (b) if he is of the opinion that some important evidence having a bearing on the charge has not been recorded or brought on the file, he may record the evidence himself,
- or (c) if he is of the opinion that some important evidence having a bearing on the charge has not been recorded or brought on the file, he may send back the enquiry to the same or some other Enquiry Officer for such evidence to be duly recorded.

11. Rule 16(x) in terms refers to the further enquiry

as "supplementary enquiry."

12. It will be noted that Rule 16(x) does not empower the Disciplinary Authority to order a de novo enquiry on the ground that the report of the Enquiry Officer does not appeal to him. In such a case, nothing prevented the Disciplinary Authority from reconsidering the evidence and passing appropriate orders. The Disciplinary Authority can only order a supplementary enquiry being made through the same Enquiry Officer or by appointing another Enquiry Officer.

13. In Jai Pal Singh Vs. Delhi Administration & Others, A.T.R. 1988 (2) CAT 506, to which one of us (P.K. Kartha) was a party, the Tribunal had come to the same conclusion and we reiterate the same view.

14. In a case where the Disciplinary Authority disagrees with the findings of the Inquiry Officer, we are of the view that he should record the reasons for such disagreement on the basis of the evidence produced. In the instant case, the Inquiry Officer did not frame formal charge for the reason that no ground existed for the same. In such a case, the Disciplinary Authority can order a further inquiry only if some important evidence having a bearing on the charge, had not been recorded or brought on the file.

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The Disciplinary Authority has not referred to any such important evidence justifying a further inquiry.

15. Apart from the above legal infirmity, the Disciplinary Authority has not given any reasons why he has chosen to hold the further inquiry through another Inquiry Officer when the Inquiry Officer appointed by him in the first instance was still available.

16. In the facts and circumstances of the case, we are of the opinion that the inquiry initiated by the Disciplinary Authority by the impugned order dated 15.5.1990, is not legally sustainable and the same is, therefore, set aside and quashed.

17. There will be no order as to costs.

B. N. Dhoundiyal
(B.N. Dhoundiyal) 28/11/92
Administrative Member

P.K. Kartha
28/11/92
(P.K. Kartha)
Vice-Chairman (Judl.)