

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.NO.995/90

Date of decision: 19.7.95

Shri Dharam Pal versus Commissioner of Police & Ors.

CORAM:


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

Hon. Dr. A. Vedavalli, Member(A)

Counsel for the applicant: Shri P.S.Sirohi.

Counsel for the respondents: Mrs.Avnish Ahlawat.

1. Whether to be referred to the Reporter? Yes.
2. Whether Reporters of local newspapers may be allowed to see the judgement? —
3. Whether their Lordships wish to see the fair copy of the judgement? —
4. Whether to be circulated to other Benches? —


(Dr. A. Vedavalli)
Member(J)

10

PRINCIPAL BENCH, NEW DELHI.

OA.No.995/90

Dated this the 19th day of July, 1995.

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

Dr. A. Vedavalli, Hon. Member(J)

Shri Dharam Pal,
S/o late Shri Bhag Mal,
Head Constable,
Traffic Police Lines,
New Delhi.
R/o House No.110, Gali No.3,
D Block, South Anarkali,
Delhi-51.

...Applicant

By Advocate: Shri J.P.S. Sirohi.

versus

1. The Commissioner of Police,
Delhi, M.S.O. Building,
I.P. Estate,
New Delhi.
2. The Additional Commissioner of Police,
New Delhi Range,
M.S.O. Building, I.P.Estate,
New Delhi.
3. Shri Qamar Ahmad,
Dy.Commissioner of Police,
East District,
Shahdara, Delhi-32.
4. Shri Surjit Singh,
Inspector Delhi Police,
S.H.O. P.S. Seelam Pur,
East District, Delhi.


...Respondents

By Advocate: Ms. Avnish Ahlawat.

O R D E R

(By Dr. A. Vedavalli)

The applicant Shri Dharam Pal was enlisted as Constable in Delhi Police on 30.10.62. He was promoted to the rank of Head Constable (Executive) on 3.12.81. When he became eligible for promotion to the rank of Assistant Inspector (Executive) in the year 1987, the result regarding his selection was placed in a sealed cover. A departmental enquiry was initiated against him, by an order of the then Deputy Commissioner of



Police, East District, Delhi dated 9.12.86 (vide Annexure A1). He was placed under suspension on 5.2.88 (vide order of the Deputy Commissioner of Police) at Annexure A8). A charge sheet dated 14.6.88 was issued by the enquiry officer (vide annexure A-13) which is as under:-

"You, HC. Dharam Pal No.179/E are hereby charged that while posted at PS. Seema Puri, you recorded DD.No.7-A dated 25/26.8.86 and DD.No.52-B dated 13/14-10-1986(1986) against DCP/East, that you remained unauthorisedly absent from 29.8.86 to 14.10.86 and that you approached the press to publicise the subject matter relating to above mentioned DD.No.7-A.

Your above acts amount to grave misconduct, dereliction of duty, unbecoming of a police officer in violation of Rule 3.I(ii)(iii) and 19(i) of CCS Conduct Rules, 64 and is punishable u/s 21 of Delhi Police Act, 1978."

2. The enquiry officer gave his report on 13.10.86 holding the applicant guilty of the charges levelled against him (copy of the report not on record). Thereafter, a show cause notice dated 22.11.88 was issued to the applicant (vide Annexure A14) by the Deputy Commissioner of Police, East District, Delhi stating inter alia thus:

"I have carefully examined the findings of the E.O. and other evidences on record in the light of facts and circumstances of the case. Tentatively agreeing with the findings of the E.O., I provisionally propose to forfeit 4(four) years approved service of H.C.Dharam Pal No.179/E permanently entailing proportionate reduction in his pay.

H.C.Dharam Pal No.179/E is, therefore, called upto to show as to why the proposed punishment should not be awarded to him. His reply, if any, should reach this office within 15 days from the date of receipt of this notice, failing which, it will be presumed that he has nothing to say in this regard and the orders will be passed ex-parte."

3. The applicant submitted his reply dated 26.12.88 (vide Annexure A15) to the aforesaid show cause notice stating, inter alia, that the enquiry officer did not give him an opportunity to defend himself in an appropriate manner and that there is violation of principles of natural justice and that the proposed punishment is harsh and also disproportionate. He prayed for the withdrawal of the said notice and for grant of personal hearing.

4. The Deputy Commissioner of Police heard the applicant in person and examined his reply dated 26.12.88. He recorded his findings and imposed a penalty of forfeiture of 3 years approved service of the applicant and a proportionate recovery in his pay by his order dated 11.1.89 (vide Annexure A16) as extracted below:-

"I have carefully examined the reply dated 26.12.88 submitted by the defaulter Head Constable in the light of the facts and circumstances of the case. I have also heard the defaulter in person on.....(date not clear). He has not stated anything more what he had already explained in his written reply. I have also examined his main contentions raised in his reply, which are discussed as under:

1. That he has written DD.No.7-A dated 25/26.8.86 for the information to the Senior Officer and was not with any motive to malign the senior officer.
Senior

This contention of the defaulter HC has no force. According to Rule-11 of Delhi Police (General Condition of Service) Rules 1980 a Police Officer shall not complain orally or in writing on the remarks made by a superior officer. He may refer his grievances in writing in a temperate manner through proper channel.

2. That the E.O. wanted to frame the charge some how or the other, as he was doing so under the instructions of the Senior Officer.

This contention is totally incorrect as there is nothing on record to show and otherwise E.O. was under pressure of Senior Officer.

[Signature]

3. That the correspondents of the newspapers have not stated that the (defaulter) complained to them.

Shri Kant Sharma City correspondent, Nav Bharat Times, N. Delhi clearly stated that 2/3 persons came to his office and one of them told his name H.C. Dharam Pal and complained that Sh. V. Rajagopal had abused him. Therefore the plea taken in this para is false.

4. That he was not given opportunity to produce his defence and also to submit his final statement.

This plea of the defaulter is totally false. The defaulter was given adequate opportunity at every stage during the course of DE proceedings but he did not avail the same; rather he refused to receive the Parwanas vide he was asked to produce his defence witnesses/defence statement.

5. That the findings of the E.O. is one-sided and no punishment on such ex-parte finding is justified.

This contention of the defaulter has no force as the defaulter has given adequate opportunities to join the DE proceedings, ex-parte, which is according to rule and therefore punishment proposed in the show cause notice is justified.

6. That the punishment proposed in the show cause notice is in conflict with the statutory provision contained in Section 21 of Delhi Police Act, 1978.

This contention is not admitted. Only one punishment of forfeiture of service has been proposed in show cause notice and corresponding reduction in pay in the consequence thereof.

7. That the punishment proposed in the show cause notice is not proportionate.

This contention also does not help the defaulter. He levelled allegation against the senior officer and approached the press to publish the issue, which is a grave misconduct on his part. The punishment proposed in the show cause notice is commensurate with the gravity of the charges proved against him.

[Signature]

(M)

Keeping in view of the above discussion it is evident that the explanation of the defaulter is not at all satisfactory/convincing. During personal hearing he pleaded for mercy. Taking totality of the facts into account, I take a lenient view and order to forfeit three years approved service of H.C. Dharam Pal No.179/E, 60/T permanently entailing proportionate reduction in his pay from the date of issue of this order".

5. The applicant filed an appeal dated 10.3.89 before the Additional Commissioner of Police, ND-II range, Delhi (vide Annexure A-17). He submitted inter alia that the entire DE proceeding is illegal and violative of the principles of natural justice and fair play. He prayed for quashing of the same and for setting aside of the punishment awarded by the DPC East as being without jurisdiction since DCP/East North is the competent authority and he also asked for personal hearing.

6. He also filed an appeal/representation dated 12.9.89 (vide annexure A-20A) passed by the DCP East against the order dated 26.7.89 (vide Annexure A-20) treating his absence period from 29.8.86 to 14.2.86 as leave without pay.

7. The Additional Commissioner of Police, the appellate authority by its order dated 22.9.89 (vide Annexure A-18) held as follows:-

"I have gone through the appeal and other relevant records. I have also heard him on 15.9.89. His conduct was unbecoming of a member of a disciplined force, and I do not see any sufficient grounds to review of the order of punishment, as such his appeal is rejected. His suspension period from 29.8.86 to 14.10.86 be treated as leave without pay"

8. The applicant has filed the present OA under section 19 of the Administrative Tribunal's Act, 1985 against the following orders:-



(6)

(i) Order of forfeiture of three years service dated 11.1.89 passed by the respondent No.3(Annex-A16)

(ii) Order rejecting the appeal dated 22.9.89 filed by the applicant against the order of award of punishment by respondent No.2(Annex.A18);

(iii) Order dated 26.7.89 treating the absence period of illness as leave without pay(Annex.A20).

9. We have heard the learned counsel for both parties at length and have perused the pleadings and the documents placed on record.

10. The main grounds raised by the applicant in the OA are as under:

(i) The respondent No.3 (DCP East Shadhara Delhi) was not the disciplinary authority of the applicant even during the course of enquiry and at the time of awarding the punishment by the impugned orders. He acted illegally, arbitrarily, unconstitutionally and without jurisdiction. The applicant was working under disciplinary control of DCP/Traffic, New Delhi. The impugned orders are in violation of Rule-14(4) of the Delhi Police (Punishment & Appeal) Rules, 1968.



(7)

(16)

(ii) The enquiry officer is biased against the applicant as he was a party to the case, being a complainant against the applicant and that he was not changed inspite of his request and hence he would not participate in the enquiry.

(iii) The enquiry officer called the then DCP East Shri Rajagopal as a court witness which is violative of Rule 16.8 of the Delhi Police (Punishment & Appeal) Rules, 1980.

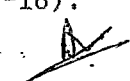
(iv) Respondent No.2, the appellate authority, acted illegally by passing a non-speaking and unreasonable order.

(v) The documents demanded by the applicant were not supplied and as such, there is a violation of the principles of natural justice.

(vi) The allegation against the applicant are not justified.

11. The applicant prayed for the following reliefs:

(a) To quash the impugned order of DCP/East Delhi dated 11.1.89 (Annexure A-16), another order of the said DCP dated 26.7.89 (vide Annexure A-20) and order of the Additional Commissioner of Police, New Delhi range dated 22.9.89 (vide Annexure A-18).



(8)

(b) To direct the respondents to restore the original pay scale and other benefits to which he would have been entitled to, but for the passing of the impugned order of forfeiture of service.

(c) To direct the respondents to pay the applicant the pay and allowances for the period of his illness from 29.9.86 to 13.10.86 by treating the period of allowance as period on duty.

12. The respondents in their reply have submitted that the applicant was dealt with departmentally under section 21 of the Delhi Police Act, 1978 for his grave misconduct, dereliction of duty, unbecoming of the Police Officer in violation of Rule 3.1(ii)(iii) and 19(i) of CCS Conduct Rules, 1964, for recording the concerned DDs against the then DCP, for remaining absent unauthorisedly w.e.f. 29.8.86 to 14.10.86 and for approaching the Press on a subject matter relating to DD.No.7-A dated 25/26.8.86.

13. The respondents have contended inter alia that the order of the then DCP/East Shri Rajagopal regarding initiation of DP proceedings against the applicant, was not malafide and illegal as alleged by the applicant. They have refuted the allegation of bias on the part of the Enquiry Officer as absolutely false.

(A)

14. The respondents have contended that in view of the submission made in the reply, the applicant is not entitled for any relief and prayed that the application should be dismissed with costs.

15. The applicant in his rejoinder briefly denied the averments and submissions made by the respondents in their reply and reiterated the submissions made in the OA.

16. Re: ground No.1 raised by the applicant, the respondents submitted that there is no violation of Rule 14(4) of the Delhi Police (Punishment & Appeal) Rules, 1980, as alleged by him, since the DCP East District is the disciplinary authority as envisaged by the said Rule. He had rightly awarded the instant punishment to the applicant.

Re: the above ground raised by the applicant as to the incompetency of the disciplinary authority, we find that the disciplinary enquiry was initiated by the Annexure A-1 order dated 2.12.86 by the Deputy Commissioner of Police East District under whom the applicant was then posted. There is thus no violation of rule 14(4) which reads as under:-

"The disciplinary action shall be initiated by the competent authority under whose disciplinary control the police officer concerned is working at the time it is decided to initiate disciplinary action."

Therefore, there is no violation of this rule. No doubt, thereafter, he was transferred to the Traffic side where he was suspended by the Annexure A-8 order. This does not mean that the enquiry initiated by the Annexure A-1 order should also be

17

(10)

transferred to the D.C.P. Traffic. There is no such mandatory requirement. Therefore the final order could be passed by the D.C.P. East. We, therefore, find that the above ground regarding incompetency of the disciplinary authority in question, is devoid of any merit.

17. Re. the allegation contained in ground No.2 raised in the OA, it was submitted by the respondents that the enquiry was got conducted by the DE, Vig, Delhi and it is incorrect to say that it was conducted by the same EO who was a party against the applicant. There was no request by the applicant to change the EO.

Re. the above ground relating to the bias of the enquiry officer and the refusal of the respondents not to change him despite the applicant's request, we find that the Enquiry Officer is not an officer subordinate to the D.C.P. East who initiated the disciplinary enquiry proceedings. As seen from the Annexure A-13 charge, the Enquiry Officer was an Inspector of the Disciplinary Enquiry Cell^(Vig) which is not under the Deputy Commissioner of Police East. That apart, there is nothing to show that the applicant moved the disciplinary authority for a transfer of the Enquiry Officer on these grounds. What is more, when the disciplinary authority gave him a show cause notice along with the Enquiry Officer's report, the applicant gave a reply Annexure A-15. Therein, he has not made any of the allegations now made in this ground. Therefore, this ground is not maintainable.

18. Re. the allegation contained in ground No. 3 raised by the applicant, the respondents submitted that the then DCP Shri Rajagopal was not included in the list of PWs and there was no violation of rule 16(VIII) of the Delhi Police (Punishment & Appeal) Rules, 1980. The enquiry officer is empowered to call the court witness if he considers it as necessary.

Re. the above ground as to the calling of Shri Rajagopal, the then DCP East as a court witness being violative of rule 16(8) of the aforesaid rules, the said rule runs thus:-

"After the defence evidence has been recorded and after the accused officer has submitted his final statement, the Enquiry Officer may examine any other witness to be called 'court witness' whose testimony he considers necessary for clarifying certain facts not already covered by the evidence brought on record in the presence of the accused officer who shall be permitted to cross-examine all such witnesses and then to make supplementary final defence statement, if any, in case he so desires."

On a perusal of the provisions of the said rule and the submissions made in the reply above by the respondents, we find that there is nothing on record to indicate that there is any violation of the said rule by the respondents in the instant case and the aforesaid ground raised by the applicant is not justified.

19. Re. ground No. 4, the respondents have contended that the appellate authority's order was passed after careful consideration of all the facts and circumstances of the case.

Re. the above ground alleging illegality committed by the appellate authority in passing a non-speaking and unreasonable order, we have carefully considered the impugned order of the appellate authority dated 22.9.89 (vide Annexure A-18). Though the said order is not very elaborate, it indicates that the appellate authority has carefully considered the facts of the case, the charges against the applicant, the penalty imposed upon him etc. and after hearing the applicant on 15.9.1989 and on going through the appeal and the relevant records thereto, has come to the conclusion that the conduct of the applicant was unbecoming of the member of the disciplined force. He stated that he did not see any sufficient grounds to review the order of punishment and hence rejected the appeal with a direction that the suspension period from 29.8.1986 to 14.10.1986 be treated as leave without pay. We, therefore, find that there is no substance in the aforesaid ground No.4 raised by the applicant.

20. Re. ground No.5, it was submitted by the respondents, that the documents in Hindi were given to the applicant, and he was also given an opportunity to seek clarification about any document on any working day.

Re. the above ground as to the non-supply of documents, we have seen the reply given by the respondents above, and the applicant has not been able to establish that the documents were not supplied to him. Moreover, the note by the Enquiry Officer dated 28.1.88 (vide Annexure A-6 - English version), makes it clear that he was given Hindi translation of all

the documents and was also given opportunity to ask for more. We, therefore, find that the ground of non-supply of documents is not supported by any evidence and is hence unsustainable.

21. Re. ground No.6, the respondents have submitted that the enquiry proceedings were conducted as per the rules by the Enquiry Officer and the charges against the applicant were proved on the basis of the evidence recorded during the course of the enquiry.

Re. the above ground the allegations against the applicant are not justified, we have carefully considered the matter. The charges are essentially to be proved by documents i.e. by the daily diaries and record of attendance. We have seen translation of these documents. We find that a prima facie case was made out to justify the initiation of disciplinary enquiry. The Enquiry Officer has appreciated the evidence and found the charges proved. This is not a case of no evidence.

The main argument was that as in the Daily Diaries, the applicant has made a complaint against the Deputy Commissioner, the enquiry itself should be conducted by one who is superior in rank to the Deputy Commissioner. There is no merit in this contention. The disciplinary authority is the Deputy Commissioner. Therefore, the enquiry, has necessarily to be conducted by one lower in the rank.

by

22. It has been held by the Supreme Court in a catena of cases including the recent judgement in the case of Government of Tamilnadu versus A. Rajapandiyam (AIR 1995 SC 561), that the Administrative Tribunal cannot sit as a Court of Appeal over the decision based on the findings of the enquiry authority in disciplinary proceedings where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different findings than that of the disciplinary authority. Therefore, we do not see any justification to interfere with the impugned order.

23. In view of the foregoing discussion, we are of the opinion that the presnet OA is devoid of any merit. Hence the OA is dismissed. No order as to costs.

A. Vedavalli
19/7/95
(Dr. A. Vedavalli)
Member(J)

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

/kam/