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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1013/90. Date of decision. 21-9-94
Hon'ble Shri S.R. Adige, Member (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Mahabir Singh (Const.No.801/N),
son of Late Const. Sh. Danpat Singh,
resident of Village Chatana,
P.O. Mahra, Distt. Sonapat,
Haryana. ... Applicant.

(Advocate by Shri N. Safaya)

versus:

1. Union of India,
Through Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.
3. Addl. Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
4. Addl. Dy. Commissioner of Police,
North Distt. (Civil Line),
Delhi.
5. Shri Surjeet Singh, Inspector,
Enquiry Officer (D.E. Cell),
PHQ, I.P. Estate,
New Delhi.

(Advocate by Shri Jog Singh)

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[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

The applicant has filed this application under
Section 19 of the Administrative Tribunals Act, 1985, praying
that the Tribunal may quash and set aside (i) the findings
of the Departmental Enquiry conducted by respondent No.5
(Ann.5), (ii) the order of dismissal dated 15.5.39 (Ann.3),
and the Appellate and Revision Orders dated 15.11.39 and

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26.3.90, respectively (Ann.P.82 and K) upholding the dismissal order and (iii) that the applicant should be deemed to be in service without any break with all consequential benefits i.e. pay salary and continuity of service.

2. The applicant was appointed as a Constable in Delhi Police on 2.2.1982. A departmental enquiry was instituted against him in which he was charged -

"That while posted at P.S. Samai Pur Badli, North District took Rs 500/- from one Sabeer S/o Rozak R/o Teachers Colony near S.B.I. Samai Pur Badli, Delhi, who allegedly raped a woman, for not taking any legal action against him and that you failed to inform your Senior Officers about the said incident. Subsequently A.C.F.I.R. No.92 dated 24.4.1988 U/s 376 IPC Police Station, Samai Pur Badli was registered on the statement of the prosecution named Sunita."

It was alleged that these acts amount to grave misconduct ^{him} unbecoming of a Police Officer which rendered ^{him} liable for punishment under section 21 of the Delhi Police Act, 1978. The list of witnesses by which the allegations were sought to be proved were (1) Mohd. Gulzar (2) Sh. Sabeer (3) Smt. Sunita (4) Inspector Rati Ram and (5) Posting clerk of ASIP Branch/ North. The list of documents enclosed with the charge contained the copy of the statement of (1) Mohd. Gulzar (2) Shri Sabeer (3) Smt. Sunita and (4) Copy of F.I.R.

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3. The Enquiry Officer, Respondent No.5 found that on the basis of the evidence before him, the charge framed against the defaulter was proved. Subsequently, the Disciplinary Authority passed the impugned order dismissing him from service which was confirmed by the Appellate and Revision authorities.

4. The main ground taken by the learned counsel for the applicant, Shri N.Safaya, is that the Departmental Enquiry proceedings has been held in total violation of the principles of natural justice. His contention is that the applicant was not afforded any opportunity to cross examine the prosecution witnesses and in the Departmental Enquiry reliance had been placed upon the statements of witnesses taken at the preliminary enquiry (P.E.). Shri Safaya submits that Rules 15(iii) and 16(iii) of the Delhi Police (Punishment and Appeal) Rules, 1980 which allow the statements recorded in the preliminary enquiry to be introduced in the departmental enquiry but on which the applicant could not avail his right of cross examining the witnesses are violative of the principles of natural justice, and Articles 14, 16 and 311 of the Constitution. Relying on the judgments of the Supreme Court in State of Mysore V/s Shivabasappa [AIR 1963 SC 375], Jairam Naidu V/s University of Mysore and Ors [5LJ (1979) Kar.High Court page 699],

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Shri Jagdish Ram Kataria V/s U.O.I. & Ors [CAT in TA No. 404/86

decided on 2.1.1987], counsel submits that the reliance of statements of witnesses recorded in the absence of the party him charged and not affording an opportunity for cross examination vitiates the enquiry. According to him, the principles of natural justice have to be read into Rule 16(iii) and if at all, only the Disciplinary Authority can be permitted to bring on record any statement of witnesses of persons who cannot be procured without undue delay in the Departmental Enquiry ; in any case, the Enquiry Officer cannot be empowered to dispense with the production of the witnesses in the Departmental enquiry. The learned counsel for the applicant also relies on a recent decision of the Tribunal in Rajindra Prasad V/s U.O.I. and others (1994) ATC Vol.26 page 698.

5. The second ground taken by the applicant is that the Appellate Authority did not give him a personal hearing, while disposing of his appeal (See Ram Chander V/s UOI & Ors(1986) ATR (Vol.2) page 252]

6. The third ground on which the applicant relies is that he had applied to the Enquiry Officer to produce certain defence witnesses and documents including the application listed in para 8 of Ann.2 (page 99 of the paper book) which was the complaint made against Smt. Sunita, which were not summoned during the Departmental enquiry, causing him prejudice.

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7. The Respondents, in their reply, have stated that despite the best efforts made by the Enquiry Officer to summon Sh. Gulzar and Smt. Sunita, they could not be produced or ^{their evidence} recorded during the Departmental enquiry proceeding as they were not traceable. Their earlier statements recorded by Inspector Rati Ram, SHO, Samaipur Badli during the preliminary enquiry were brought on record of Departmental enquiry by the Enquiry Officer as per the provisions of Rule 16(iii) of the Delhi Police (Punishment and Appeal) Rules, 1980. According to Mr. Jog Singh, learned counsel, their statements had been duly attested by Rati Ram, Inspector which statements proved the misconduct of the applicant. They have submitted that based on these statements which were before the Enquiry Officer, he had found the charges framed against the applicant were fully proved. Respondents submit that the procedure followed in the Departmental Enquiry was in accordance with Rules 15(iii) and 16(iii) of the Delhi Police (Punishment and Appeal) Rules, 1980 and the principle of natural justice have been complied with inasmuch as the applicant was afforded ^{the} an opportunity to cross examine / prosecution witnesses produced in the Departmental Enquiry. Hence they have submitted that the application deserves to be dismissed.

8. We have heard the learned counsel for both the parties and perused the records and pleadings. In the Departmental Enquiry proceeding, three prosecution witnesses and 9 defence witnesses had been examined by the Enquiry Officer (P.W. 9 appearing below D.W. 8 on page 52 appears to be a mistake for DW 9).

9. The statements of Shri Gulzar and Sh. Sabar recorded on 25.4.1988 and of Smt. Sunita on 8.5.1988 have been recorded by

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PW-2 Shri Rati Ram, Inspector, in the absence of the applicant. On cross examination these witnesses had stated that the name of the defaulter did not appear in the FIR 92/1988 recorded on the statement of Smt. Sunita on 23.4.1988. Smt. Sunita had mentioned the defaulter's name in statement of 8.5.1988, although she recognised Mahabir Singh on 23.4.1988 and told him he had gone to the spot. This witness however, says that he could not say whether he recorded any report in the daily diary on 23.4.1988.

According to the statement of Smt. Sunita the applicant took Rs 500/- from the attachee of Sabeer and Rs 10/- from her purse. Since PW 2 Sabeer was reported to be in Tihar Jail, his statement was recorded after obtaining necessary orders from the Addl. Session Judge, Delhi and given as P.W. 3.

P.W. 3 states that the applicant has taken Rs 500/- from his attachee in his room but he had not told anything about extorting of money to Gulzar. In the statement there is also no mention that the applicant took money from the purse of any woman in his presence. From perusal of the **De-report**

partmental Enquiry it is seen that three of the defence witnesses, namely DWs 3, 4 and 7 who were all police officials have stated that there was no complaint of extortion of money **therefore,** by any police officer. To sum up, we find that Enquiry

Officer himself states that the statement of PW 2, Sabeer, does not inspire confidence, Smt. Sunita and Gulzar were not produced

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as witnesses in the Departmental Enquiry and only their statements recorded earlier in the P.F. were produced on Departmental Enquiry file on which the defaulter could not cross examine these PWs, and he had tried to explain the statements of official PWs regarding no complaint of extortion of money by applicant.

10. In the above circumstances, we find that the findings of the enquiry officer and disciplinary authority are perverse and the enquiry has been held in violation of the principles of natural justice [See UOI. v.V.Parma Nanda (AIR 1989 SC 1185)]

In this case, apart from the statements of the PWs recorded behind the back of the defaulter, there was no other evidence on record that the applicant had taken Rs 500/- from Sabeer which was the allegation made against him. We are of the view, that such statements may be brought on record in the Departmental file under rule 15(iii) of the Delhi Police(Punishment and Appeal) Rules and relied upon provided the conditions mentioned therein are fulfilled and also when there is some other evidence to substantiate the charges. We have no doubt that in the circumstances of the case, the denial of reasonable opportunity has caused to cross examine the PWs [prejudice to the charged official.

We are aware of the judgment in U.O.I. V.Parma Nanda [AIR 1989 SC 1185] in which the Supreme Court has unequivocally stated that "the jurisdiction of the Tribunal to interfere with the Disciplinary matter or punishment cannot be equated with an appellate jurisdiction." However, since we find that the conclusions of the Enquiry Officer and the Disciplinary Authority are not based on any evidence, they are perverse ..

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and arbitrary, and the enquiry has not been held in accordance with the principles of natural justice, it is violative of the provisions of Articles 14, 16 and 311 of the Constitution. The punishment order dated 15.6.1989, therefore, deserves to be quashed and set aside.

11. The appellate order dated 16.11.1989, after narrating the facts in para 1 and 2, is issued in cryptic language without giving any reasons whatsoever for dismissing the appeal, as required under Rule 25(2) of the Delhi Police (Punishment and Appeal) Rules. The Supreme Court in Ram Chander v. UOI and Ors. [ATR 1982 (2) SC 252] has held -

" that reasoned decisions by Tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed. In his appeal consideration of fair play and justice also require that such a personal hearing should be given."

Therefore, since the Appellate Order has neither given any reasons which indicate application of mind by the competent authority, nor is it in accordance with the Rules, this order is also liable to be quashed and set aside. In the circumstances, the revision order dated 26.3.1990 cannot also stand.

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12. For the reasons given above, we quash and set aside the punishment, appellate and revision orders passed by respondents dated 15.6.1989, 16.11.1989 and 26.3.1990 , respectively. Respondents are directed to reinstate the applicant within three months from the date of receipt of a copy of this judgment with all consequential benefits. There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

S. R. Adige
(S. R. Adige)
Member (A)