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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1152/91

NEW DELHI THIS THE 3rd DAY OF July, 1995.

Hon'ble Mr. Justice S.C. Mathur, Chairman
Hon'ble Mr. P.T. Thiruvengadam, Member(A)

Rishi Pal (D/1930)
S/o Shri Onkar Singh
R/o Quarter No.B-1
Police Station Paharganj
New Delhi.

APPLICANT

(BY SENIOR ADVOCATE SHRI S.C. GUPTA
WITH SHRI SHYAM MOORJANI, ADVOCATE)

vs.

1. Delhi Administration, Delhi
through its Chief Secretary,
5 Sham Nath Marg
Delhi.
2. Dy. Commissioner of Police
Crime & Railways
Delhi.
3. Addl. Commissioner of Police, Delhi
C.I.D., Police Headquarter
I.P. Estate,
New Delhi.

RESPONDENTS

(BY ADVOCATE SHRI B.S. OBEROI)

ORDER

JUSTICE S.C. MATHUR:

Rishi Pal, who was Sub Inspector in the Delhi Police, has directed this OA against the order passed by the Deputy Commissioner of Police (D.C.P) Crime and Railways, Delhi (dismissing him from service). The order has been passed after holding disciplinary proceedings.

2. During November, 1989, the applicant was posted as Pairvi Officer in the office of the D.C.P. Crime & Railways. On 27.11.1989, a written complaint was submitted by Shri Kailash Prashad Lal to the Assistant Commissioner of Police (A.C.P) Old Railway Station, Delhi in which it was stated to the following effect:

He was doing business of changing the old currency notes at 867 Kucha Kabili Attar. On 20.11.1989

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at 11 a.m. Constable Sudhir who was earlier posted at Town Hall Police Station but was at that time posted at New Delhi Railway Station came to him and demanded currency notes of denomination of Rs.2 and Re.1. He gave currency notes of Rs.2 denomination to the said Sudhir. In view of the fact that he had not given Sudhir currency notes of Re.1, he threatened him. On 21.11.1989, at 10 a.m. one man with a lady who was being addressed as Renu came to him for exchanging notes and they told him that they had a number of notes for exchange and asked him to come and settle his commission. The lady told him that she was staying at Paharganj guest house and would meet him outside the New Delhi Raillway Station at 12 noon. The complainant reached New Delhi Railway Station at 12 noon and met the lady there. Just when he had started talking to the lady, a man came and showed his identity card from which it appeared that he belonged to the Crime Branch. He told his name as Rishi Pal. He made the complainant and the lady sit in a Maruti Van of red colour. At the same time one Mr. Tyagi came and he also took a seat in the Maruti Van. The Van was directed to be driven to the Police Headquarters and meanwhile the complainant was beaten up. The complainant enquired the reason for being beaten up. Tyagi told him that they were in search of the lady who was in his company. The complainant and the lady were taken in the Maruti Van to Nizamuddin Railway Police Post where the lady was taken away by the applicant in the same van saying that she was being taken to the Police Headquarters.

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Hari Singh ASI was also present at the Police Post. The complainant's name and address was noted and his finger prints were obtained and he was threatened with involvement in a smack case. Hari Singh and the applicant both abused the complainant. After some time Tyagi tied the hands and feet of the complainant and removed his clothes and he was tortured. The complainant was told by Tyagi to arrange for Rs.10,000/- to avoid torture and to obtain release. The complainant offered Rs.500/-. This amount was not accepted and the complainant was further beaten up. The demand of Rs.10,000/- was scaled down to Rs.5,000/- The complainant was forced to ring up at his shop to arrange for money. His brother offered to pay Rs.4,000/-. With great persuasion Rs.4,000/- were accepted. The applicant gave the complainant Rs.20 and let him to go. The complainant said that he suffered from pain in his legs.

3. The allegations made in the complaint were investigated by Shri Ganga Swaroop, Assistant Commissioner of Police. During the investigation, the A.C.P recorded the statements of certain witnesses including Mohd. Alim and Constable Sudhir Kumar. The A.C.P submitted his report to the D.C.P. Thereafter, a regular departmental enquiry was instituted against the applicant and his accomplice Lokesh Kumar, Constable. An inquiry officer was appointed and a chargememo dated 8.6.1990 was served upon the applicant along with the summary of allegations, list of witnesses and documents sought to be relied upon. The applicant was required to appear

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before the inquiry officer on 15.6.1990. The applicant appeared before the inquiry officer and denied the allegations made against him in the summary of allegations. The inquiry officer recorded the statements of witnesses and framed charge as follows:

"...in that while posted in Crime Branch as Pairvi Officer on 21.11.89 you SI Rishi Pal Rana alongwith Const.Lokesh Kumar took one Shri Kailash Parshad Lal from New Delhi Rly. Station to H.N.Din Station in a Maruti car, harassed, interrogated, beat him and detained him illegally for more than 2 hours with ulterior motives."

These facts were alleged to constitute gross misconduct, dereliction in the discharge of official duties rendering the applicant liable under Section 21 of the Delhi Police Act, 1978 (for short, the Act). After framing the charge, the inquiry officer examined 5 witnesses. The applicant submitted his statement of defence on 8.12.1990. The inquiry officer made his report on 25.2.1991. He referred to the statements made by various persons and then summed up his conclusions thus:

"According to the statements of PWs and DWs and the documents placed on the DE file, the charge against the defaulters SI Rishi Pal Rana No.D/1930 and Const.Lokesh Kumar No.100/DRP that they took Sh.Kailash Parshad Lal from New Delhi Railway Station to H.N.Din.Station, harassed, interrogated and detained him illegally is stands proved beyond doubt."

Earlier, the inquiry officer observed:

"In the facts of this case the PE report is not made used or considered in the enquiry as the contents in it are not exhibited by the E.O. nor are in the statement of allegations. Further nothing has been taken from this P.E. report to substantiate the charge against the defaulters."

(As in the annexure filed)

Copy of the inquiry report was supplied to the applicant and he preferred representations against the same.

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The applicant was given personal hearing by the disciplinary authority who on 3.5.1991 passed the impugned order of dismissal with immediate effect. After narrating the events, the D.C.P has observed thus:

"I have gone through the finding, representations submitted by SI Rishi Pal No.D/1930 and Constable Lokesh Kumar No.100/DRP and other relevant record on file. They were also heard in O.R. on 19.4.91 but they had nothing to add to their written statement during personal hearing. It has been established beyond doubt that they had taken Kailash Prashad Lal from New Delhi Rly.Stn.to H.N.Din Station, harassed him and interrogated him and had illegally detained him. SI Rishi Pal was not even posted at Rly.Station but was working as Pairvi Officer in Crime Branch and thus indulged in blatant irregularity. The charges which have been established are of very serious nature and the conduct of both the police officers has been unbecoming of a member of a disciplined force. Hence SI Rishi Pal No.D/1390 and Const. Lokesh Kumar,100/DRP are, hereby, dismissed from the force with immediate effect."

Without preferring an appeal to the next higher authority, the applicant filed the present OA explaining the reason for not availing/ alternative remedy by stating that the inquiry was a mere farce and the applicant was seeking an order of stay. The OA was admitted on 14.5.1991 without notice to the respondents. Limited interim order was granted; service was not protected; only possession of official accommodation was protected.

4. The applicant has challenged the disciplinary proceedings and the order of punishment on the following grounds:

Finding of guilt is not based on any evidence; even the complainant did not support the charge. Statements recorded during preliminary enquiry at which the applicant had no opportunity to cross examine the witnesses, were relied upon for recording the finding of guilt without supplying copies of these statements to the applicant

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and without bringing these statements on record. Only the witnesses examined during preliminary enquiry had supported the charge; no witness examined during the disciplinary enquiry had supported the charge. Accordingly, if the former statements are excluded from consideration, there is no admissible evidence on the basis of which finding of guilt may be recorded. The inquiry officer cross examined the prosecution witnesses as also the defence witnesses and went to the extent of suggesting to the witnesses who did not support the prosecution case that they were deposing falsely under pressure. The inquiry officer thus became prosecutor which rendered his report as a biased one and unworthy of reliance. By relying upon the statements recorded during preliminary enquiry without bringing them on the record of the disciplinary proceedings, the inquiry officer has committed breach of Rules 15(3) and 16(iii) of the Delhi Police(Punishment & Appeal) Rules, 1980(for short, the Rules) framed in exercise of the power conferred by Section 147(1) &(2) of the Act.

5. The application has been contested on behalf of the respondents. Written statement signed by D.C.P. Crime and Railways has been filed. The defence runs as follows:

Statements of the witnesses mentioned in the list of witnesses supplied to the applicant were recorded by the inquiry officer in the presence of the applicant who was given full opportunity to cross examine them. The inquiry officer has not based his finding on the statements recorded during preliminary

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enquiry. In any case, the applicant never demanded copies of the said statements. The applicant was given opportunity to peruse these statements. Witnesses were not cross examined by the inquiry officer. In any case, the inquiry officer was entitled to put questions to the witnesses to elucidate facts. No illegality has been committed in holding trial and in awarding the punishment. The application is liable to be dismissed on the ground of failure to avail the alternative remedy of appeal.

6. In support of the application, we have heard Shri S.C.Gupta, Senior Advocate assisted by Shri Shyam Baboo and on behalf of the respondents, we have heard Shri B.S.Oberoi, Advocate.

7. Rule 15 of the Rules deals with preliminary enquiries. Sub-rule(1) states that the purpose of preliminary enquiry is(i) to establish the nature of default and identity of defaulter, (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. Sub-rule(2) deals with initiation of departmental enquiry. Sub-rule(3) reads as follows:

"The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witnesses. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer...."

This sub-rule specifically provides that the file of preliminary enquiry shall not form part of the

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formal disciplinary enquiry but statements therefrom may be brought on the record of the disciplinary proceedings when the witnesses are no longer available. From this, it would appear that the statements of witnesses recorded during preliminary enquiry may be brought on the record of the disciplinary proceedings only when the said witnesses are no longer available. The inquiry officer is empowered to bring on record other documents also from the file of preliminary enquiry if he considers it necessary. However, these documents can be brought on record of the disciplinary proceedings only after supplying copies to the delinquent officer. To the same effect is the provision in Rule 16(iii). In this clause, it is provided that as far as possible the witnesses shall be examined direct and in the presence of the accused who shall be given opportunity to take notes of their statements and cross examine them. It is also stated in the clause:

" The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary."

Therefore, statement of a witness recorded during preliminary enquiry can be brought on the record of disciplinary proceeding only when the witness is not available. If the witness is available, his statement has to be recorded direct by the enquiry officer. The respondents do not admit that the statement of any witness recorded in preliminary enquiry has been relied upon in the disciplinary proceeding.

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8. In view of the position of Rules, it becomes necessary to examine whether the statements recorded during preliminary enquiry have been relied upon or not. The list of witnesses given to the applicant is on record. It contains the names of Kailash Parshad Lal, Surender Kumar, Mohd. Alim Barber, Sudhir Kumar, Clerk of HAE/C&R Branch Delhi and Shri Ganga Swarup, A.C.P. Crime and Railways. The nature of evidence which will be given by each witness is also mentioned. In the list of documents supplied to the applicant are the copies of the statements of Mohd. Alim, Surender Kumar, applicant Rishi Pal, Constable Sudhir Kumar and Constable Lokesh Kumar. Surender Kumar, whose name finds place in the list of witnesses appeared before the inquiry officer. He has proved the statement recorded by Shri Ganga Swarup on 1.12.1989 during preliminary enquiry. He has not made detailed statement of facts before the inquiry officer. Witness Sudhir Kumar has also proved his statement dated 23.12.1989 recorded during preliminary enquiry. He has also not made detailed statement of facts constituting the alleged misconduct. From this, it is apparent that the inquiry officer brought on/record of the disciplinary proceeding the statements of two persons who were cited as witnesses in the list of witnesses. From the fact that the witnesses whose statements were brought on record were produced before the inquiry officer, it is apparent that they were available. Accordingly, there was no occasion for the inquiry officer to bring their previous statements on record. As already noticed, these statements could be brought on record only when the witnesses were no longer available. The learned counsel

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for the applicant is, therefore, justified in submitting that there has been violation of the statutory provisions contained in Rules 15 & 16.

9. The submission of the learned counsel for the applicant that the finding of guilt is based on no evidence also stands substantiated. In his cross examination, Shri Surender Kumar stated that no money was demanded from him by anybody on telephone. In fact, the complainant himself has not supported his allegations. His deposition before the inquiry officer is on record. In cross examination by the applicant he stated that no money was demanded from him and he was neither beaten up nor harassed by the applicant. Regarding visit to the Nizamuddin Railway Police Post, the complainant has stated that he was not forcibly taken ^{there} but he had gone there on his own. The inquiry officer [✓] also cross examined the complainant when he did not depose in favour of the prosecution. He suggested to the witness whether it was correct that he had given the statement under pressure or duress from the applicant to which he replied in the negative. In respect of the complaint submitted by him, he explained that he had made it at the instance of someone else who misguided him at that time. Same is the fate of the other prosecution witnesses who are alleged to be directly connected with the transaction including Mohd. Alim, Barber. Mohd. Alim, Barber denied that he had taken Rs.4000/- from Surender Kumar for obtaining the release of the complainant.

10. In view of the above discrepancies, we are of the opinion that there was no occasion for the inquiry officer to record the finding of guilt. Shri Ganga Swarup who held preliminary enquiry had also come to the same conclusion.

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11. The applicant's allegation that the inquiry officer converted himself into prosecutor is also substantiated from the record. The inquiry officer cannot be the judge and the prosecutor simultaneously.

12. So far as the question of exhaustion of alternative remedy is concerned, Section 20 of the Administrative Tribunals Act, 1985 provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules. The applicant did not conceal the fact that remedy of appeal was available to him but he had not availed of the same. Despite this disclosure, the application was admitted by a Division Bench as far back as 14.5.1991. Obviously, the Division Bench was satisfied that this was not a case in which the bar of alternative remedy was required to be imposed.

13. In view of the above, the application is allowed and the order of punishment dated 3.5.1991 passed by the D.C.P.Crime and Railways, Delhi, Annexure I is hereby quashed. Since we have come to the conclusion that there is no evidence in support of the charge, there is no question of fresh departmental proceedings being held. There shall be no order as to costs.

P. J. Thiruvengadam

(P.T.THIRUVENGADAM)
MEMBER(A)

S. C. Mathur
(S.C.MATHUR)
CHAIRMAN

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