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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 111/91

New Delhi this the 24th day of February, 1995.

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

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

Naresh Singh (964/T),
Ex. Constable,
S/o Shri Khushi Ram,
Vill & PO - Harchana,
PS: Gulawali,
Distt-Bulandshahr (UP).

...Petitioner.

By Advocate Shri Shanker Raju.

Versus

1. Delhi Administration, Delhi
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Additional Commissioner of Police,
(Security and Traffic),
Police Headquarter,
I.P. Estate,
New Delhi-110 002.
3. Deputy Commissioner of Police, Traffic,
Police Headquarter,
I.P. Estate,
New Delhi-110 002.

... Respondents.

By Advocate Shri S.K. Sinha proxy for Shri Jog Singh,
Counsel.

ORDER (ORAL)

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

The applicant, who was a Constable in the Delhi Police, was dismissed from service by the orders of the disciplinary authority, namely, Deputy Commissioner of Police, Traffic, Delhi, dated 21.9.1990 (Annexure-J). The appeal filed against that order has also been dismissed by the Annexure-L order dated 12.12.1990.

2. The brief facts of the case are that a preliminary inquiry was conducted into allegations against the applicant that on 20.7.1988 while on duty at in-gate of PHQ the applicant stopped a Three Wheeler on the ground that it was proceeded from the wrong side. The allegation is that the Three Wheeler was

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let off by taking a bribe of Rs.15/- which was paid to an intermediary. Thereupon, the applicant was suspended. The disciplinary proceedings were conducted and ultimately the impugned orders mentioned above were passed.

3. The only ground that has been pressed before us by the learned counsel for the applicant to impugn these orders is that the order of the disciplinary authority is totally illegal inasmuch as while differing from the conclusion reached by the Inquiry officer that the charge against the applicant has not been proved and finding the applicant guilty, the disciplinary authority has relied upon the statements of witnesses recorded in a preliminary inquiry behind the back of the applicant. Admittedly, the preliminary inquiry was held and certain witnesses were examined in that preliminary inquiry. The only persons who could not be examined in the preliminary inquiry are the driver of the three wheeler who is alleged to have taken his vehicle wrongly through the in-gate & the intermediary through whom the bribe money was paid. However, all persons examined at the preliminary inquiry as well as the driver of the three wheeler Arjun and intermediary Umesh were examined by the Inquiry Officer in the disciplinary proceedings. The report of the Inquiry Officer reveals that they did not make any statement incriminating the applicant as a result of which the Inquiry Officer found that the charge against the applicant was not true.

4. When the matter went to the disciplinary authority, the disciplinary authority issued a show cause notice on 18.7.1990 (Annexure 'H'). Para 2 of the show cause notice reads as follows:

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"A regular departmental enquiry was ordered vide this office order No. 14418-38/HRB(T)(D.II) dated 11.4.89 and entrusted to Inspr. Pran Nath Malhotra who completed the same and submitted his findings exonerating the delinquent. I have also gone through the findings as well as the other record of the departmental enquiry file. Taking into consideration, the statements recorded during the preliminary enquiry, it appears that the witnesses have been won-over at the D.E. stage and it is difficult to disbelieve the version of the prosecution witnesses recorded previously. Therefore, disagreeing with the findings of enquiry officer, I propose to dismiss the delinquent from the service".

5. A reply was submitted by the applicant. After considering the reply, the disciplinary authority found him guilty by the Annexure 'J' order. He came to the conclusion that taking into consideration the statements recorded previously during the preliminary enquiry, it appeared that the witnesses have been won over at the D.E stage. He further finds that the mere fact that during the departmental enquiry the concerned public witnesses have not deposed against Constable i.e. the applicant, is not sufficient to ignore the substantial evidence that weighs heavily against him. Obviously, that evidence is found only in the statements recorded in the preliminary inquiry. The learned counsel submits that the reliance of such statements recorded during the preliminary inquiry is entirely contrary to the provisions of law and the principles of natural justice. The learned counsel for the applicant states that the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980 - Rules for short - envisage under Rule 15 the conduct of the preliminary enquiries, the purpose of which is to establish the nature of the default and identify the defaulter, to collect prosecution evidence, to judge

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quantum of default and to bring relevant documents on record. The suspected police official may or may not be present at a preliminary inquiry but when present he shall not cross-examine the witnesses. It is stated that in the present case the applicant was not present during the preliminary inquiry. Rule 15(3) states that the file of preliminary inquiry 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 Inquiry Officer bringing on record any other document from the file of the preliminary enquiry, if he considers it necessary, after supplying copies to the accused officer. He, therefore, contends that the only circumstance, when the statement of witness/^{recorded}during the preliminary enquiry can be brought on record in the disciplinary proceedings, is when that witness is no more available for examination. He further states that the provision enabling the Inquiry Officer to take on record other documents has been judicially interpreted in O.A. 981/92, Ramesh Chand Vs. The Deputy Commissioner of Police, decided at the Principal Bench, in which it is held that the statement of witness cannot be considered to be the other document referred to in Rule 15(3) of the Rules.

6. It is further pointed out that the similar distinction has been maintained in Rule 16(3) of the Rules.

7. He contends that when the report of the Inquiry Officer is received by the disciplinary authority, he could take action under Rule 16(x) which provides that if some important evidence having a bearing on the charge has not been considered is brought on file, the disciplinary authority may himself record the evidence or send back the inquiry to the same or some other Inquiry

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Officer for having such evidence recorded. It was not open to the disciplinary authority to look into the statements of the witnesses recorded during the preliminary inquiry behind the back of the delinquent employee and relying upon those incriminating statements to find the applicant guilty of the charge. He relies on the judgement of the Supreme Court in 1986(3)SCC 229 Kashi Nath Dixit Vs. Union of India in which the need for supplying copies of the documents relied upon by the delinquent to enable a proper cross-examination by the delinquent has been high-lighted. He also relies on the judgement of the Tribunal in Jaswant Singh and Ors. Vs. Delhi Administration, 1994(2) ATJ 136(CAT) where in a similar circumstance, the orders of disciplinary authority relying on the statement of the preliminary inquiry have been quashed.

8. The learned counsel for the respondents was unable to show any provision either of law or any decision that the disciplinary authority could rely upon the statements recorded in the preliminary inquiry for holding the delinquent guilty of the charge without giving him the reasonable opportunity of cross-examining the witnesses on the basis of such statements. Indeed, we are of the view that there is no scope for argument in this regard.

9. It is certainly open to the disciplinary authority to find out whether a proper enquiry has been held. The fact^{is} that the statements given by the witnesses during the inquiry which are contrary to the statements made by them during the preliminary inquiry have either been not noticed by the Inquiry Officer and even if noticed by him, he had not taken any action in this regard. We are of the view that there is no prohibition in the rule as such to use the earlier statements recorded in the preliminary

inquiry for the purpose of confronting witnesses, who may change their stand and give a totally different statement during the inquiry proceedings. In our view, it is extremely necessary to have this power as a check on the conduct of witnesses. Otherwise, it may happen that the witnesses would feel completely free to give whatever statements they like during the preliminary inquiry, feeling fully assured with impunity that, during the inquiry, they could very well change the stand, without being subject to any other cross-examination on the basis of the earlier statement. When the disciplinary authority found that such was the case in the instant proceedings, he could not have straightaway jumped to the conclusion based on the preliminary statements that the delinquent was guilty. Those statements have been recorded behind the back of the applicant and the applicant never had an opportunity of cross-examining those witnesses based on these statements. Therefore, it was entirely wrong on the part of the disciplinary authority to give a finding of guilt on the basis of those statements. In our view, the proper course of action was to remand the case to the Inquiry Officer for re-examining the witnesses.

10. We have put the question to the learned counsel whether in the circumstance of the case, it would not be proper to give a direction to the disciplinary authority to remit the matter to the Inquiry Officer with a direction that he should, in the first instance, supply copies of the statements of the witnesses recorded in the preliminary enquiry to the delinquent and thereafter, re-examine the witnesses who have testified before him contrary to what they have stated earlier and, give an opportunity to the applicant also to cross-examine those witnesses and then record his finding. The learned counsel for the applicant was fair enough to admit that this would be the proper course in the interest of

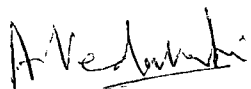
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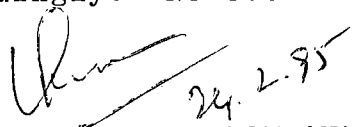
11. In the circumstance, we are of the view that the impugned orders cannot be sustained as they are totally illegal and accordingly they are quashed. In case the disciplinary authority, i.e. Respondent No. 3, wishes to proceed further in the disciplinary proceedings, it is open to him to remit the inquiry proceedings to the same Inquiry Officer if he is still available or to any other Inquiry Officer with a direction, as indicated above in the preceding para, namely, that copies of the statements recorded in the preliminary inquiry should be given to the delinquent and the witnesses concerned should be called for re-examination with a full opportunity being given to the delinquent to cross-examine them and thereafter only, the Inquiry Officer may submit a fresh report. In case the third respondent intends to proceed further in the matter, he should take a decision within three months from the date of receipt of a copy of the order. The inquiry proceedings shall be completed in accordance with the procedure laid down by law.

12. The applicant shall be reinstated within one month from the date of receipt of a copy of the order. In so far as his period of absence from the date of his dismissal is concerned, the disciplinary authority shall pass orders in this regard in accordance with the provisions of law.

13. O.A. is disposed of accordingly. No costs.



(DR. A. VEDAVALLI)
MEMBER(J)

 24.2.95

(N.V. KRISHNAN)
VICE CHAIRMAN(A)

'SRD'