

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1710/91

New Delhi this the 9th day of November, 1995.

Hon'ble Shri N.V. Krishnan, Acting Chairman.

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

Shri Yogender Nath,
S/o Shri Mohan Lal Sharma,
R/o H.No. 2094/1, Prem Nagar,
New Delhi. ..Applicant.

By Advocate Shri Shyam Babu, Counsel.

Versus

1. Delhi Administration, Delhi through
its Chief Secretary,
5, Sham Nath Marg,
New Delhi.

2. Deputy Commissioner of Police,
(Provisioning and Lines),
Old Police Lines,
Delhi.

3. Addl. Commissioner of Police,
(Operations),
Police Headquarters,
I.P. Estate,
New Delhi. ..Respondents.

By Advocate Shri Rajesh Luthra, proxy counsel
of Ms Jyotsna Kaushik, Counsel.

ORDER (ORAL)

Hon'ble Shri N.V. Krishnan, Acting Chairman.

The applicant was a Sub Inspector in the Delhi Police who has been removed from service by the order of the disciplinary authority dated 6.6.1990 (Annexure-I) thereby concluding the disciplinary proceedings initiated against him. The appeal filed against this order has been

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dismissed on 21.11.1990 'Annexure-'K'. Hence, this O.A. has been filed to quash these impugned orders.

2. The respondents have filed a reply contesting the claims made in the O.A.

3. The matter was heard today. The learned counsel for the applicant has raised two issues going to the root of the matter. He contends that the four prosecution witnesses were examined but as may be seen from the copies of the statements filed with the O.A. they were not required to set out the facts of the case as a witness. Instead, they were referred to the earlier statement which they had given during the preliminary inquiry. Each one of these witnesses admitted that the statement shown to them was, in fact, given by them during the preliminary inquiry and had been signed by them. Barring this, these witnesses have made some statements which are of not much consequence.

4. It is the contention of the learned counsel for the applicant that this entire procedure is contrary to Rule-15 (3) of the Delhi Police (Punishment and Appeal) Rules, 1980. That sub-rule reads as under:

"15(3) 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. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer".

5. It is further pointed out that the same procedure is contained in Rule 16(3) relating to the procedure in departmental enquiries. In the face of such prohibition, it was illegal on the part of the Inquiry Officer to examine witnesses who are available for such examination/to yet permit them to merely refer to the earlier recorded statement without compelling them to give evidence as to what is within their knowledge in the presence of delinquent employee.

6. The learned counsel for the applicant submitted that this was further compounded by the fact that even copies of these statements were not provided to the applicant as a result of which the applicant could not exercise his valuable right of cross-examination. He draws our attention to the decision of the Supreme Court in AIR 1974 SC 2335 and AIR 1986 SC 2118 in this connection.

7. In short, the Inquiry Officer has entirely relied upon the evidence which ought not to have formed part of this record in terms of Rule 15(3) and Rule 16(3). Therefore, strictly speaking this is a case where there is no evidence against

the applicant. The inquiry is further vitiated by the denial of proper opportunity of cross-examination by withholding from the applicant copies of the statements which are ultimately relied upon to hold him guilty.

8. The learned counsel submits that in so far as Rule 15(3) is concerned, a finding as above has been given in O.A. No. 1152/91 disposed of on 3.7.1995 by a Bench consisting of the Hon'ble Chairman. It is held that in the light of the provision of Rule 15(3), the statement recorded therein could be relied upon in an enquiry case only when the witness is not available for examination and not in any other circumstances. That stand is followed in the other decision rendered by the Tribunal in O.A. No. 1788/91.

9. The learned counsel for the respondents submits that, in any case, no prejudice has been caused to the applicant. It would be seen that despite this handicap, he did cross examine the witnesses. He, therefore, contends that Rule 15(3) is only directory in nature and its violation cannot vitiate the inquiry proceedings.

10. We have carefully considered the matter. We are of the view that Rule 15(3) which is peculiar to the discipline and appeal rules applicable to the Delhi Police imposes a bar on relying upon the statements made during the preliminary inquiry except in one circumstance, namely, when the witness so examined during the preliminary enquiry is not subsequently available for examination. It,

however, provides that other documents collected during the preliminary enquiry can be relied upon but this can be done only after supplying copies to the delinquent.

11. In our view, Rule 15 (3) cannot be considered to be directory in nature. The purpose seems to be that a witness who is called for enquiry should be able to recollect the facts of the case in regard to which he has deposed as a witness so that on the basis of such deposition the delinquent Government servant could cross examine him. It would appear that though Rule 15 (3) is silent on this aspect, the previous statement could, perhaps, be used only to confirm or contradict what the witness deposes independently before the Enquiry Officer. Though we do not wish to make any pronouncement in this regard, it is our view that if such a provision for confirmation and contradiction based on earlier statement is not made, there could be witnesses who may make any kind of deposition during the preliminary enquiry, fully aware of the fact that they are not accountable for the correctness of that version. However, in so far as the mandatory character of the rule is concerned, we have no doubt. In the circumstance, we are of the view that the reliance on statements made in the preliminary enquiry was illegal. The mere fact that the applicant did cross examine these witnesses will not alter that provision. In fact, in so far as that aspect is concerned, we are fully satisfied that by not giving him copies of such previous statement well in time, he has been denied proper examination of such witnesses.

12. In the circumstance, the applicant is entitled to relief. The impugned order is set aside.

13. The further question is whether it is open to the respondents, if they so choose, to proceed with the inquiry. The learned counsel for the applicant submits that no permission should be given. He relies on the finding in the earlier decision in OA-1152/91.

14. We have considered the matter. What is really illegal is that evidence which ought not to have been taken into account had been taken into account. This is a procedural error which can certainly be rectified. In our view, we cannot deny the respondents a right to further continue with the departmental proceedings, if they so choose, in accordance with the provisions of rule. We order accordingly.

15. With these orders, we allow this OA and direct the respondents to reinstate the applicant in service and also pass suitable orders, in accordance with law, to regulate the period of absence from the date of his removal till the date of his reinstatement. Reinstatement shall be made within one month from the date of receipt of this order. The other orders shall be passed within three months from the date of receipt of this order.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

'SRD'

(N.V. Krishnan)
9/11/81

(N.V. Krishnan)
Acting Chairman