

14

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A.No.1796 of 1991

New Delhi, this the 2nd day of November, 1995

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN(J.)  
HON'BLE MR R.K.AHOOJA, MEMBER(A).

Shri Rakesh Kumar Tyagi,  
Son of Shri Daya Ram Tyagi,  
R/O House No.D-13, Gali No.2,  
Khajoori Khas, Delhi-94. .. .. Applicant.  
( through Mr R.K.Singh, Advocate)

Versus

1. Commissioner of Police(Delhi Police),  
Police Headquarters, I.P.Estate,  
M.S.O.Building New Delhi;
2. Smt.Yamin Hazarika,  
Dy.Commissioner of Police,  
6th Battallion DAP, Delhi.
3. Shri Hari Bhushan Sharma,  
Enquiry Officer, Inspector,  
6th Battallion DAP, Delhi. .. .. Respondents.  
( through Mr Girish Kapthalia, Advocate)

O R D E R(oral)

PER A.V.HARIDASAN, V.C.(J.)

Shri Rakesh Kumar Tyagi, an Ex-Constable under the Delhi Police, had initially filed this Application praying that the order dated 26.2.1991, by which a departmental enquiry against him had been initiated, may be quashed. Though the application was admitted, ~~yet~~ as there was no stay of further proceedings, the departmental

✓

15

proceedings were continued to be held and ultimately an order, removing the applicant from service was passed on 15.5.1992. Though the applicant filed an appeal against this order of removal from service, the appellate authority rejected the appeal by its order dated 25.11.1992. The applicant, thereafter amended the O.A. with the leave of the Tribunal, seeking to quash the order of the disciplinary authority removing him from service as also the appellate order.

2. The departmental proceedings were initiated on a Summary of Allegations alleging that the applicant remained absent from duty unauthorisedly. After a departmental enquiry, on receipt of the report of the Inquiry Officer, the disciplinary authority has eventually passed the order removing the applicant from service. This order is assailed on various grounds. The main grievance of the applicant is that the Inquiry Officer as also the disciplinary authority were biased against him and that the inquiry was not held in accordance with rules and observing the principles of natural justice. It has been alleged that the applicant had not been afforded adequate opportunity to defend himself.

3. The respondents seek to justify the impugned orders on the ground that the penalty of removal from service was imposed on the applicant, as the guilt of unauthorised absence was established in an inquiry held in conformity with the rules as also in full compliance <sup>with</sup> of the

principles of natural justice.

4. We have carefully gone through the pleadings and have also heard Mr R.K.Singh for the applicant and Mr Girish Kapthalia for the respondents. We find from the proceedings of the enquiry that the applicant was given a notice to submit his defence statement on 10.6.1991 at 10.45 AM Sharp. This notice dated 6.6.1991 (Annexure XXXVI), issued by the Inquiry Officer was served on the applicant at 3.00 P.M. on 10.6.1991. The fact, that this notice was served on the applicant only at 3.00 P.M. on 10.6.1991 is not in dispute. From the report of the Inquiry Officer, it will be seen that the applicant did not appear and file his defence statement on 10.6.1991 and it was held that sufficient opportunity had already been given to him to enter on his defence. The Inquiry Officer concluded the inquiry proceedings to finalise the same by submitting his report on the basis of the material available on record. Since the applicant had been given a last opportunity to enter on his defence by filing his defence statement <sup>as 10.45 AM on 10/6/91</sup> by the notice dated 6.6.1991, whatever his lapses to respond to earlier notices were condoned by the Inquiry Officer. The opportunity proposed to be given to him, to <sup>Participate in</sup> set his defence on 10.6.1991 at 10.45 A.M. could not be availed of by the applicant, not on account of any fault on his part <sup>but</sup> for the reason that the notice was served on him only at 3.00 P.M. on 10.6.1991, i.e., long after the time fixed for submitting his

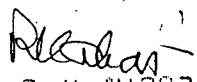
defence statement, therefore there is no doubt to the fact that the applicant did not get a reasonable opportunity to defend him. The denial of reasonable opportunity to defend amounts to violation of not only the principles of natural justice but also the guarantee under Article 311(2) of the Constitution. On that score alone, we are of the considered view that the impugned order of removal from service has to be set aside. The appellate order has also to be toppled on the same score.

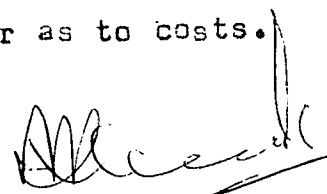
5. In the result, without going into the various other contentions of the parties, we dispose of this application setting aside the impugned orders dated 15.5.1992 of the disciplinary authority removing the applicant from service as also the appellate order dated 25.11.1992. However, it is made clear that the respondents will be at liberty to resume the disciplinary proceedings and complete the same from the stage of giving to the applicant, an opportunity to file his defence <sup>statement</sup> and to adduce evidence <sup>in defence</sup>. For the purpose of <sup>completion of</sup> the disciplinary proceedings, the applicant shall be deemed to have been placed under suspension from the date of removal from service by the impugned order dated 15.5.1992. If the respondents decide to resume the departmental proceedings and complete the same, the said exercise should be completed within a period of three months from the date of receipt of

~

18  
:-5-1

a copy of this order and the applicant is also directed to cooperate with the respondents for completion of the departmental proceedings. The arrears of subsistence allowance so far due shall also be paid to the applicant within a period of three months. There is no order as to costs.

  
( R.K.AHOOJA )  
MEMBER (A)

  
( A.V.HARIDASAN )  
MEMBER (J)

2nd Nov., 1995  
"SDS"