CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~T.A.~~No. No. 1824 of 1991 Decided on: 15.1.96.

Shri Kanwar Singh ....Applicant(s)

(By Shri Shyam Babu Advocate)

Versus

Delhi Administration & Others ....Respondent(s)

(By Shri Rajinder Pandita Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI P. SURYAPRAKASAM, MEMBER (J)

1. Whether to be referred to the Reporter or not? No

2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1824 of 1991

New Delhi this the 15th day of January, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE MR. P. SURYAPRAKASAM, MEMBER (J)

Shri Kanwar Singh
S/O Shri Phool Singh,
R/o Village Navata-Ki-Thani,
Post Office Papribadi,
Police Station Gohana,
District Jhunjhunu (Rajashthan) ....Applicant

By Advocate Shri Shyam Babu

VERSUS

1. Delhi Administration, Delhi
through its Chief Secretary,
5, Sham Nath Marg,
Delhi-110 054.

2. Deputy Commissioner of
Police (South District),
New Delhi.

3. Additional Commissioner of Police
(Southern Range),
Police Head Quarters,
I.P. Estate,
New Delhi. ...Respondents

By Advocate Shri Rajinder Pandita

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant, a Constable in Delhi Police is aggrieved by the order of the respondents imposing the penalty of dismissal from service. The appeal against this order has also been rejected by the appellate authority. Aggrieved by this, the applicant has approached this Tribunal with the prayer that the above orders be quashed and he may be reinstated in service with all consequential benefits.

2. The brief facts in the case are that a departmental enquiry was held against the applicant to enquire into the allegation that the applicant while on night duty on 1.11.1989 had overpowered a thief alongwith the stolen property and had kept the stolen property in the cutody of one Kabari and had let off the thief and also disposed of the stolen property with the connivance of the Kabari. For this act and dereliction of duty, he was charged and the enquiry officer returned the finding that the charge had been proved and the disciplinary authority imposed the punishment of dismissal from service and appeal against this order, was also rejected by the appellate authority. The applicant has challenged the above order of punishment on various grounds, which are as follows:-

(i) The Enquiry Officer had himself cross-examined the defence witnesses and has assumed the dual role of a Judge as well as a Prosecutor. No presenting officer was appointed in the present case. This amounted to violation of principles of natural justice and fair play and vitiates the enquiry as a whole.

(ii) The Enquiry Officer had not appraised the evidence but had simply returned the findings that the charge had been proved on the basis of the para-wise comments to the written statement of defence filed by the applicant and

the Enquiry Officer had not given any reasons for arriving at a conclusion that the charge against the applicant stood proved.

(iii) The impugned order of punishment is totally arbitrary and the applicant was not only dismissed from service but was also not paid any pay and allowances except the subsistence allowance, which had already been paid to him.

(iv) The order of punishment also did not specify as to how the suspension period of the applicant should be treated.

(v) The observation of the disciplinary authority that the Enquiry Officer has power to cross-examine any of the witnesses, is totally illegal and arbitrary.

(vi) The Enquiry Officer had only acted on the statements given by the interested witnesses, who were complainants against the applicant in this case and no reliance could be placed on such statements.

(vii) The appellate authority had also not given any reasons for rejecting his appeal and his appeal was rejected in an arbitrary and unjustified manner.

3. The respondents have strongly contested the claims and grounds alleged in the application. They have averred that the Enquiry Officer was appointed by the orders of the competent authority and on the basis of the preliminary enquiry, former charge was framed against the applicant. The Enquiry Officer had allowed full opportunity to the applicant to meet the charges and permitted him to produce as many as 5 witnesses in support of his defence. This by itself would go to prove that the enquiry was conducted in a fair manner conforming strictly to the provisions of the rules and regulations in this behalf and the report of the Enquiry Officer did not suffer from any infirmity as the Enquiry Officer had evaluated the testimony of the witnesses including the defence witnesses throughly. They also contend that in service jurisprudence that the standard of proof required to be ascertained in a departmental proceedings is confined to ascertaining the preponderance of probability, and not strict compliance of the law of evidence. A copy of the Enquiry Report was also given to the applicant calling upon him to make such representation as he would like to make and on the basis of the consideration of the representation , the disciplinary authority had imposed the penalty of removal after adhering to all the relevant rules and and regulations in this behalf. In view of this, the respondents contend that there had been no infirmity in the proceedings and the appeal preferred by the

applicant was considered by the appellate authority in all aspects and after due application of mind, the same was rejected. In the light of this, the respondents contend that the application is without merit and deserves to be rejected.

4. The learned counsel for the applicant while arguing on the pleadings pointed out that the Enquiry Officer was appointed by the Deputy Commissioner of Police (D.E. Cell) instead of the disciplinary authority in violation of the Rules 16(1) of the Delhi Police (Punishment and Appeal) Rules, 1980. The learned counsel argued that the power to appoint the Enquiry Officer is not a delagatory power and, therefore, the appointment of the Enquiry Officer itself has been vitiated. The learned counel further contended that the disciplinary authority, while ordering the dismissal had not specifically mentioned that there had been a grave misconduct and according to the aforesaid rules, the extreme penalty of dismissal could be imposed only in the event of grave misconduct rendering the officer unfit for retention in the police service and both these aspects had to be shown in a case before ordering the dismissal. He relies for this purpose on the wording of Rule 8 and Rule 10 of the aforesaid rule. The learned counsel also relies on the decision in Manihar Singh Vs. Superintendent of Police,United Khasi-Jaintia Hills, Shillong, AIR 1969 (Assam and Nagaland) page 1, to contend that the power to frame the charge cannot be delegated

by the disciplinary authority to any other authority and the disciplinary proceedings have to be initiated only by the disciplinary authority in accordance with Rule 16 of the Delhi Police Rules (Supra). In this particular case, the learned counsel contends that the enquiry was ordered by the Deputy Commissioner (in-charge of the DE Cell) whereas the disciplinary authority in this case was the Deputy Commissioner of Police (South District). The learned counsel fervently argued that the delegation of power to the DE(Cell) for appointing the Enquiry Officer, as has been done in this case is not permitted in quasi-judicial proceedings in terms of Rule 16(1) of the aforesaid rules. There has been no statutory delegation of such power by the disciplinary authority to any other authority. The learned counsel further argued that on this ground alone it can be held that the entire disciplinary proceedings have to be held as illegal.

5. The learned counsel for the respondents argued that in accordance with the practice in Delhi Police all the disciplinary matters are centralised in the DE (Cell) of the Delhi Police under the Deputy Commissioner of Police to whom cases are referred by different Police Districts and on the basis of such reference, the Deputy Commissioner of DE (Cell) nominates the Enquiry Officer and the disciplinary proceedings are initiated. The learned counsel argued that there is nothing wrong in this

procedure and cannot be objected on a technical ground that there is no delegation to the DE (Cell) to act on behalf of the disciplinary authority. He further argued that the enquiry was conducted completely in accordance with the rules and procedure in this behalf and also in accordance with the relevant provisions of the Delhi Police (Punishment & Appeal) Rules, 1980, and complete opportunity was given to the applicant to participate in the enquiry, produce his witnesses and also cross-examine other witnesses. The entire evidence was appraised by the Enquiry Officer and the copy of the enquiry report was also given to the Charged Officer. The Enquiry Officer had in fact recorded his detailed comments on the statements made by the witnesses and appraised that evidence before reaching his conclusions. In view of this, the learned counsel contested that there had been no violation of any procedure. He also pointed out that before the appellate order was passed, the applicant was given oral hearing in which the applicant had admitted the failure and guilt also. The learned counsel also relied on the decision in M.K. Kaul Vs. U.O.I., S.L.R. 1995 Vol. 2 page 317 and urged that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with the appellate jurisdiction. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice and there is appreciation of evidence by the competent

authority to arrive at the finding that the misconduct is proved, the Tribunal has no power to substitute its discretion for that of the disciplinary authority.

6. We have heard the learned counel for the parties and have perused the records.

7. It is first necessary to dispose of the contention raised by the learned counsel for the applicant that the disciplinary proceedings was ordered by an authority, who was not competent to do so thereby vitiating the disciplinary proceedings. Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 lays down the procedure to be observed for conducting the departmental enquiry. Under Rule 16(i) of the aforesaid rules, a police officer accused of misconduct shall be required to appear before the disciplinary authority, or such Enquiry Officer, as may be appointed by the disciplinary authority. The learned counsel stresses on the point that the Enquiry Officer is to be appointed by the disciplinary authority. In the aforesaid rules, disciplinary authority means that authority competent to award punishment as prescribed under the Delhi Police Act, 1978. Under Rule 21 of the Delhi Police Act, 1978, Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal of the Police Training College or of the Police Training School

or any other officer of the equivalent rank may award to any police officer of subordinate any of the punishments which include dismissal from service (emphasis added). In the present case, therefore, the disciplinary authority could be any Deputy Commissioner of Police. In this particular case, the Deputy Commissioner of Police (in-charge of the DE (Cell)) had appointed the Enquiry Officer and the Deputy Commissioner of Police (South District) had imposed the punishment. Both the officers are of equivalent rank and, therefore, the appointment of an Enquiry Officer under the present procedure in the Delhi Police by the Deputy Commissioner of Police (DE Cell) cannot be held to be wrong as the Deputy Commissioner of Police (DE Cell) is also an officer of an equivalent rank of any other Deputy Commissioner of Police of a district and can also be construed to be disciplinary authority. In view of this, the contention of the learned counsel for the applicant is not tenable.

8. The learned counsel for the applicant contended that the enquiry had not been conducted in a proper manner inasmuch as that the Enquiry Officer had not given reasons in support of the findings nor had he appraised the evidence properly. We have carefully gone through the Enquiry Officer's report. The Enquiry Officer had considered the depositions of the prosecution witnesses and the defence witnesses. The prosecution witnesses were also cross-examined by

the applicant. After taking evidence of the defence witnesses and after examining them, the written defence statement was considerd by the Enquiry Officer, who had given his comments with reference to the evidence adduced during the enquiry by the various witnesses and on the basis of these statements of prosecution witnesses and defence witnesses and other documentary evidence on file, held that the charge against the applicant was proved beyond any doubt. The disciplinary authority had also carefully considered the entire proceedings in the departmental enquiry and had fairly given a detailed order. After examining the deposition of the witnesses in the enquiry and the findings of the Enquiry Officer that the disciplinary authority had come to the conclusion that there had been no tangible evidence produced by the applicant to refute the charge against him and had, therefore, come to the conclusion that the applicant had acted in a manner unbecoming of a police officer. In the light of this, the punishment order of dismissal from service was imposed. The appellate order also shows that the pleas raised by the applicant in his appeal had been carefully considered by the appellate authority and the appellate authority had also given a personsal hearing. The appellate authority had also recorded that during the personal hearing the applicant had admitted that on patrolling duty on night of 1.11.1989, he has overpowered a thief alongwith the stolen property

and he was let off by another constable and could not give any satisfactory reply as to why he did not record the facts in the Daily Diary on his return to the Police Station. The appellate authority had found that the pleas raised by the applicant had no force and, therefore, had rejected the appeal. The learned counsel for the applicant strongly argued that the applicant had been dismissed by the disciplinary authority although there was no evidence of grave misconduct rendering him (the applicant) unfit for police service. The learned counsel stressed that the complete unfitness for the police service should be the main criterion for the punishment of dismissal from service and this had not been established. We have carefully considered this contention. The disciplinary authority had clearly recorded that the applicant was an undesirable element in the police force and in the present case, he had acted in a mannerunbecoming of a police officer. The applicant's involvement in the present case showed that he can do anything immoral or noxious whatsoever in his personal interst and, therefore, had come to the conclusion that no less punishment than dismissal would meet the ends of justice. In our considered view, such observation of the disciplinary authority would suffice for considering the misconduct to be grave rendering the applicant unfit for retention in police service. In disciplinary matters, the Courts or Tribunals do not sit as courts of appeal and cannot reappraise the evidence in disciplinary

proceedings. We are fortified in our view by the decision of the Apex Court in Union of India Vs. Upendra Singh, JT 1994(1) SC 658. Their Lordships observed therein that the Tribunals have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or appellate authority, as the case may be. Their Lordships further held that the function of the Tribunal is one of judicial review which is not an appeal from a decision but a review of the manner in which decision is made and so long as there is nothing to vitiate decision making process involved in the disciplinary proceedings, the courts are not to go into the correctness of the decison.

9. In the present case, there is nothing to suggest that the decision making process has been vitiated in any manner and, therefore, theres is no ground for interfering with the decision of the disciplinary authority and appellate authority in this case.

10. In the light of the above discussion, we find no merit in the application and the same is accordingly rejected. There shall be no order as to costs.

(P.SUYAPRAKASAM)
MEMBER (J)

(K. MUTHUKUMAR)
MEMBER (A)

RKS