

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.

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Date of Decision: 17.02.1993.

1. OA 2761/91

VED SINGH

... APPLICANT.

Vs.

DELHI ADMINISTRATION & ORS. ... RESPONDENTS.

2. OA 2751/91

SURESH KUMAR

... APPLICANT.

Vs.

DELHI ADMINISTRATION & ORS. ... RESPONDENTS.

CORAM:

HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN.

HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A).

For the applicant .. Sh. Shyam Babu, Counsel.  
For the respondents .. Ms. Ashoka Jain, Counsel.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporters or not ? *Yes*

J U D G E M E N T

(DELIVERED BY HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A).)

Both the applicants were working in Delhi Police as Assistant Sub Inspector and Constable respectively, and are aggrieved by the common enquiry proceedings leading to issue of impugned order dated 25.1.90, the enquiry report dated 29.5.90, the impugned order of punishment dated 19.9.90,

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the appellate order dated 20.12.90 and the revisional order dated 5.7.91. As both of them were subjected to a common enquiry and the grounds taken by them are also common, these cases are being disposed of by a common order.

2. Both the applicants were posted as ASI and Constable respectively at Police Station Rajouri Garden, New Delhi during 1989. On 21.3.89, they received an intimation that an enquiry under Rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980 had been ordered to be conducted against them and authorising DCP, (D.E. Cell), Delhi, to nominate as Enquiry Officer. By order dated 6.2.89 both of them were placed under suspension and both of them were reinstated by order dated 27.3.89.

3. The brief facts, as mentioned in the enquiry report are as under :

" While Smt. Asha Rani was engaged as maid servant in the quarter of Ex. Constable Suresh Kumar, situated at Police Station Moti Nagar, he came in contact with her and suggested that she and her husband Kashmiri Lal to get a job in Home Guard provided they could afford to spend some money for getting the required educational qualification certificate. Later, he introduced Smt. Asha Rani and her husband Kashmiri Lal to Ex. ASI Ved Singh for the job and extorted money and ornaments from Smt. Asha Rani. Ex. ASI Ved Singh and Ex. Constable Dharambir Singh with the

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connivance of Ex. Constable Suresh Kumar raped Smt. Asha Rani by calling her on one excuse or the other at different places. Ex. Constable Suresh Kumar had also been using Smt. Asha Rani for brothel with other police men known to him and threatening her of dire consequences if she reported against them." The D.E. was initially entrusted to Shri Suchindra Singh, Inspector of D.E. Cell, who submitted his findings holding the defaulters guilty of charge framed against them but DCP (West Distt.), the punishing authority, after going through the record of D.E. file found that the E.O. had not recorded the fresh statements of P.Ws including the main complainant during the departmental proceedings and had relied on their statements given during the preliminary enquiry. He, therefore, ordered *denovo* proceedings from the prosecution stage and entrusted enquiry to Shri M.S. Sapra, SHO, Anand Parvat. The Enquiry Officer submitted his findings holding all the three officials guilty of the charge and the punishing authority after agreeing with the E.O.'s findings and considering the explanations submitted by these officials, confirmed the proposed punishment of dismissal. Their appeals were rejected vide impugned order dated 20.12.90 and their revision petitions vide order <sup>dated 5.7.91.</sup> 1A

4. The applicants have challenged these orders on the grounds that once the report of the Enquiry Officer had been submitted, the Disciplinary Authority had no right to order a *denovo* enquiry, that the Enquiry Officer by extensively cross examining of prosecution witness has vitiated

the proceedings, that the allegation of rape was for a cognizable offence under Section 376 IPC and normally the respondents should have lodged prosecution in a court of law; that the summary of allegation was served much after the order of suspension, which was not justified; that though the preliminary enquiry was conducted by the ACP, the departmental enquiry was entrusted to his junior, an Inspector; that respondent No.4, Deputy Commissioner of Police had no authority to authorise DCP, D.E. Cell, to nominate as Enquiry Officer; that the documents required for defence, requested by Shri Suresh Kumar, were not supplied; that dismissal and treating the period of suspension as not spent on duty are two separate punishments and that corroboration of evidence was not sought through medical examination. They have also contended that the Enquiry Officer did not pay credence to the defence witnesses merely on the ground that they were colleagues of the applicant and though Asha Rani had not mentioned any payment of money in her original complaint, her later statement was accepted by the Enquiry Officer. The issues raised in their appeals were not dealt with by the Appellate Authority and similarly the revisional authority had also acted with total non-application of mind. The following reliefs have been requested for :-

- a) call for the records of the case and quash/  
set aside the order dated 25.1.90 (Annexure-L)  
the enquiry report dated 29.5.90 (Annexure-R), *BN*



the impugned order of punishment dated 19.9.90 (Annexure-U), the impugned appellate order dated 20.12.90 (Annexure-W) and the revisional order dated 5.7.91 (Annexure-Y).

- b) reinstate the applicants into the service w.e.f. 19.9.90 with all consequential benefits admissible to the applicant including seniority, promotion and monetary.
- c) pass such other and further orders as deemed fit and proper by this Hon'ble Tribunal in the circumstances of the case to meet the ends of justice.
- d) Award cost of the application."

5. The respondents have contended that the order for denovo enquiry was passed with the approval of ACP and that the punishing authority has full power to order denovo departmental enquiry. The Enquiry Officer had put only clarificatory questions to clear the ambiguity; that the punishing authority has full power to suspend any police officer pending an enquiry in accordance with the Rule 21(4) of Delhi Police (Punishment & Appeal) Rules, 1980; that there is no rule providing that the Enquiry Officer must be equal or senior to the officer who conducting preliminary enquiry; that all relevant documents were *hN*

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provided to the defaulting officer, that during the departmental enquiry it was established that they committed rape and collected money on the pretext of getting a job in Home Guard for Smt. Asha Rani; that the orders of Appellate Authority and the revisional authority are self speaking and quite elaborate.

6. We have gone through the records of the case and have heard the learned counsel for the parties. The learned counsel for the applicant has placed reliance on the judgement of the Principal Bench of this Tribunal in case of Shri Jaipal Singh Vs. Delhi Adm. & Ors. (ATR 1988 (2) CAT 506). It was held therein that Rule 16(x) does not empower the Disciplinary Authority to order *denovo* enquiry on the ground that the report of the Enquiry Officer does not appeal to him. In such a case nothing prevented the Disciplinary Authority from reconsidering the evidence and passing appropriate orders. The Disciplinary Authority can only order a supplementary enquiry being made through the same Enquiry Officer or by appointing another Enquiry Officer. He has also supported his contention by citing the judgement of Jabalpur Bench of this Tribunal in case of M.S. Halwe Vs. UOI & Ors. (1987 (3) CAT 687), wherein it has been held that once the Enquiry Officer has submitted his report ordering *denovo* enquiry or appointing another Enquiry Officer at that stage is bad in law. The Disciplinary Authority is empowered to order only a limited further enquiry after

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recording in writing self <sup>reasons in</sup> -explanatory / himself but not a denovo enquiry.

7. The order dated 25.1.90 (Annexure-L) has to be examined in the light of the above judgement. It reads as under :-

"Whereas a departmental enquiry was ordered against ASI Vedi Singh No.769/C, Constable Dharambir Singh No.1384/W and Suresh Kumar No.1456/W under Rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980 vide their office order No.1595-1612/P(W) dt. 21.3.89 on a complaint of Smt. Asha Rani w/o Sh.Kashmiri Lal r/o D-230 Karampura, Delhi.

2. The under-signed has carefully gone through the finding submitted by Ins pr. Suchendra Singh, E.O./D.E. Cell/Vigilance, Delhi. The perusal of the finding and other record available on D.E. file reveals that the E.O. has not recorded a fresh statements of the P.Ws including the main complainant and placed the earlier statements recorded during the course of P.E. proceedings.

3. In view of the above, I, Ajay Chadha, Dy.Commissioner of Police, West Distt., New Delhi hereby order that denovo D.E. proceedings against ASI Vedi Singh No.769/C, Constables Dharmbir Singh No.1384/W and Suresh Kumar No.1456/W be conducted from the prosecution stage by Inspector M.S. Sapra, SHO/Anand Parbat on day to day basis and submit his finding to the under-signed expeditiously."

From the language of the above order it is clear <sup>in</sup> that the DCP ordered a denovo enquiry and not a supplementary enquiry for securing additional evidence. We are in respectful agreement with the aforementioned judgements of this Tribunal that Rule 16(x) does not empower the Disciplinary Authority to order a denovo enquiry. In view of this finding, we do not think it relevant to consider the other contentions raised by the parties. The impugned orders dated 25.1.90, 29.5.90,

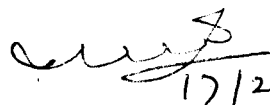
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the order of punishment dated 19.9.90, the appellate order dated 20.12.90 and the revisional order dated 5.7.91 are hereby set aside and quashed. The applicants shall be reinstated in service w.e.f. 19.9.90 with all consequential benefits. While doing so, we are conscious of the fact that in this case the de novo enquiry was ordered not because the Disciplinary Authority differed with the departmental enquiry report but because the Enquiry Officer had not examined the prosecution witnesses afresh and taken the statements given by them during the preliminary enquiry on record. We, therefore, leave it open to the Deputy Commissioner of Police (the Disciplinary Authority) to apply his mind once again to the report of the enquiry and take appropriate action in accordance with law.

8. The O.As are disposed of on the above lines with no order as to costs.

9. Let a copy of this order be placed in both the files.

K.N. Dheundiyal  
(B.N. Dheundiyal) 17/2/93.  
Member(A)

  
(P.K. Kartha) 17/2/93  
Vice Chairman (J)