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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

D.A.No.2964/91

New Delhi: this the 24th day of January, 1997.

HON'BLE MR.S.R.ADIGE MEMBER(A).

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J).

Shri Azad Singh Kadian,
S/o Late Sh. Surat Singh Kadian,
R/o Flat No.18, Sunrise Group Housing Society,
Block-D, Vikaspuri,
New Delhi. Applicant.

(By Advocate: Shri Shyam Babu)

Versus

1. The Commissioner of Police,
Delhi Police,
Police Head Quarters,
I.P.Estate,
New Delhi.
2. The Addl. Commissioner of Police,
Delhi Police Southern Range,
Police Head Quarters,
I.P.Estate,
New Delhi.
3. The Deputy Commissioner of Police,
West Distt. Delhi Police,
Rajouri Garden,
Delhi.

4. Shri Harbans Lal,
Asstt. Commissioner of Police,
D.F.Cell,
Vigilance Branch,
Police Station Defence Colony,
New Delhi.

..... Respondents.

(By Advocate: Shri B.S.Oberoi).

JUDGMENT

BY HON'BLE MR.S.R.ADIGE MEMBER(A).

The applicant has impugned the Disciplinary Authority's order dated 10.8.90 (Annexure-P7) dismissing him from service, which has been upheld vide impugned appellate order dated 6.12.90 (Annexure-P8).

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2. One Shri Pratap Chand complained that the applicant had misbehaved with his family members and also forced him to make donations for a school under construction in the applicant's village. A vigilance inquiry was conducted in which the facts brought out disclosed a cognizable offence, but as the material was found not to be sufficient to establish the applicant's guilty beyond reasonable doubt, by order dated 29.12.88 (Annexure-P2) it was decided not to institute a criminal case, but to proceed against the applicant departmentally.

3. In the DE the charges (Annexure-P 4) were

- i) While posted as I/C P.P. Utam Nagar on 22.3.88 by misusing his official position, he compelled Shri Pratap Chand to donate Rs.3100/- for construction of the Girls' School in the applicant's village.
- ii) On the night of 12/13.8.88 he misbehaved with the family of Shri Pratap Chand and harassed them also.

4. The Enquiry Officer in his findings dated 15.2.90 (Annexure-P5) held the second charge proved.

5. Tentatively agreeing with the Enquiry Officer's findings, the Disciplinary Authority forwarded a copy of the E.O's report to the applicant and asked him to show cause why he should not be dismissed from service. After perusing the applicant's reply, giving the applicant a personal hearing and perusing the D.E. record, the Disciplinary Authority issued impugned penalty order dated 10.8.90 (Annexure-P7) dismissing the applicant from service, which was upheld in appeal vide impugned appellate order dated 6.12.90 (Annexure-P8) against which this GA has been filed.

6. The first ground pressed was that there had been a violation of Rule 15 (2) Delhi Police (P & A) Rules in as much as the preliminary inquiry disclosed the commission of a cognizable offence, but the prior

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approval of the Addl. Commissioner of Police was not taken whether a criminal case should be registered or a DE should be held. However, on production of respondents' order dated 22.12.88 a copy of which was taken on record, showing that the Addl. Commissioner of Police had given his approval to the holding of a DE., this ground was not pressed further by applicant's counsel Shri Shyam Babu.

7. The second ground taken is that the Disciplinary Authority was the Deputy Commissioner of Police (West) but the Enquiry Officer was the ACP (DE Cell) which was violative of Rule 16(1) Delhi Police (P & A) Rules. We note that by order dated 22.12.88 (Annexure-P2) the Addl. Commissioner of Police who is admittedly superior in status and rank to the DCP (West) directed that the applicant be dealt with departmentally by an officer to be nominated by the DCP (DE Cell). The DCP (DE Cell) nominated the ACP (DE Cell) to conduct the inquiry. The Enquiry Officer submitted his findings to the Disciplinary Authority namely the DCP (West). For administrative purposes, departmental inquiries in the Delhi Police are processed in the DE Cell, and if the Enquiry Officer appointed was the ACP (DE Cell), it cannot be said that there was so grave a violation of Rule 16(1) Delhi Police (P & A) Rules so as to vitiate the entire proceedings.

8. Thirdly, it has been urged that the copies of statements of witnesses in the preliminary enquiry was brought on the DE record despite those witnesses being available, which violated Rule 15(3) Delhi Police (Punishment & Appeal) Rules, 1980. Although this ground has not specifically been urged in the OA, the applicant pressed the same during hearing. Rule 15(3) Delhi Police (P & A) Rules reads as follows:-

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"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."

In other words, the file of the preliminary enquiry is not to form part of the formal departmental enquiry but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. The Enquiry Officer is also empowered to bring the other documents also from the file of the preliminary enquiry, if he considered it necessary but only after supplying the copies of the same to the delinquent officer. To the same effect is Rule 16(iii) Delhi Police (P & A) Rules which provides that as far as possible the witnesses shall be examined direct and in the presence of the delinquent officer who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is, however, empowered to bring on record the earlier statements of any witness whose presence cannot in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considered such statements necessary. Thus, the statements of the witnesses recorded

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in the preliminary enquiry can be brought in the departmental proceedings only if the witnesses are not available, their statements can be recorded directly by the Enquiry Officer.

9. In the present case, we ^{note} ~~find~~ from the findings of the Enquiry Officer, a copy of which is on record (Annexure-P5) that the earlier statement dated 26.8.88 (PW2/C) of PW2 Shri Pratap Chand who was one of the PWs in the DE was brought on to the record, despite his being available and being examined and cross-examined in the DE. Similarly, the earlier statement dated 26.8.88 (PW3/A) made by PW3 Madan Lal was also brought on record in the DE. In the case of PW4 Km. Parveen Bhalla also, her earlier statement dated 31.8.88 (PW4/E) was brought on record in the DE despite her being available and being examined and cross-examined in the D.E.

10. Under the circumstance, it must be held that there has been violation of the statutory provisions contained in Rule 15(3) Delhi Police (P & A) Rules.

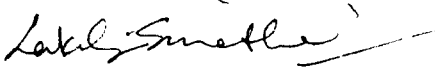
10. In O.A.No.1152/91 Rishipal Vs. Delhi Administration, Delhi, the CAT PB in the judgment dated 3.7.95, on an identical issue, namely; bringing on record in the DE the statements of the witnesses recorded in the P.E. although they were available, was held to be violative of the statutory provisions contained in Rules 15 and 16 Delhi Police (P & A) Rules.

11. The applicant has also contended that there is no evidence to bring home the charge against him, but as the serious procedural infirmities noticed above, are in our opinion sufficient to warrant our judicial

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intervention, we do not consider it necessary to discuss that ground. In State of Punjab Vs. Dr. Harbhajan Singh^{+ Ghasi} JT 1996 (5) SC 403, the Hon'ble Supreme Court has held that where during course of disciplinary enquiry the procedure adopted was found to have been faulty, the matter has to be remitted to the Disciplinary Authority to follow the procedure from the stage at which the fault was pointed out and to take action in accordance with law and pending the enquiry the delinquent must be deemed to be under suspension. Applying that ruling to the facts and circumstances of the present case, this Oa is allowed. In the result, the impugned dismissal order dated 10.8.90 and the impugned appellate order dated 6.12.90 are quashed and set aside and the applicant will be deemed to be under suspension w.e.f. 10.8.90. The case is remitted back to the Disciplinary Authority to proceed in accordance with law in the background of the infirmities pointed out in the body of this judgment. At the conclusion of the DE, the respondents will determine the manner in which the suspension period is to be treated in accordance with the rules and the consequential benefits would depend upon the result of the enquiry and the order passed thereon. No costs.


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J).


(S. R. ADIGE)
MEMBER (A).

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