CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./TXXXXNo. 615/91 Decided on: 6.6.96.

Satbir Singh ....Applicant(s)

(By Shri Shyam Babu Advocate)

Versus

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

(By Shri B.S. Gupta Advocate)

CORAM:

THE HON'BLE SHRI B.K. Singh, Member (A)

THE HON'BLE SXXXX Dr. A. Vedavalli, Member (J)

1. Whether to be referred to the Reporter or not? Yes

2. Whether to be circulated to the other Benches of the Tribunal? No

(B.K. Singh)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA No.615/91

New Delhi this the 6th day of June,1996.

Hon'ble Sh. B.K. Singh, Member (A)

Hon'ble Dr. A. Vedavalli, Member (J)

Satbir Singh (9330/DAP),
Son of Sh. Jage Ram,
Village & P.O. Malikpur,
Police Station Jaffar Kalan,
New Delhi. ...Applicant

(By Advocate Sh. Shyam Babu)

Versus

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

2. Principal,
Police Training School,
Jharoda Kalan,
New Delhi.

3. Additional Commissioner
of Police (Training),
Delhi Police Headquarters,
I.P. Estate,
New Delhi. ...Respondents

(By Advocate Sh. S.K. Gupta, proxy for Sh. B.S. Gupta, Counsel).

ORDER
(Hon'ble Dr. A. Vedavalli, Member (J))

The applicant before us, Satbir Singh, challenges the order dated 21.5.90 of the Additional Commissioner of Police (Training), respondent No.3 (Annexure J), inter alia, reducing the applicant's pay by five stages in the time scale of pay for a period of five years from the date of the order. The said order was passed in appeal modifying the order of the disciplinary authority dated 14.2.90 imposing on the applicant the penalty of dismissal from service (Annexure H).

2. The applicant at the material time was a Head Constable in the Delhi Police and was working in the Police Training School, Jharoda Kalan, New Delhi. A departmental enquiry was ordered against the applicant between 30.5.89 to 29.9.89 for failure to apply for leave on medical certificate. On 7.11.89 charges were framed (Annexure F) by the enquiry officer charging the applicant with unauthorised absence from duties in violation of statutory provisions tantamounting to an act of grave negligence and gross misconduct on his part for which he was liable to be punished under Section 21 of the Delhi Police Act, 1978.

3. Earlier, a summary of allegations was served on the applicant on 19.10.89 along with a list of witnesses and copies of the relevant documents. The summary of allegations was as follows:-

> "It is alleged that HC Satbir Singh No.9330/DAP, while attached to PTS, Jharoda Kalan, New Delhi for duty, on 30.5.89 at 12.30 P.M. got a report lodged in the PTS daily diary vide entry no.31 denoting his departure to PHC Najafgarh as an out-door patient. Whereas subsequently at 5.25 PM on that day he got a report inserted vide DDE No.53 indicating his arrival in PTS from M.C.D. Dispensary, Malik Pur, Delhi, and produced a medical slip wherein he was advised 5 days medical rest. Moreover, he was directed by the Duty Officer at the time of his arrival from hospital not to leave PTS premises without obtaining the permission of the senior officers but instead of seeking valid permission of the competent authority, he left the PTS at his own accord. According to SO No.111 and Rule 19 of the C.C.S. (Leave) Rules, 1972, he should have made an application for Leave on medical certificate therewith, to the authority competent to grant him leave but

he neither submitted any application for leave nor did he forward the medical certificate during his entire absence till 28.9.89. On 22.9.89, Inspector Amarjit Singh No.D/1407 alongwith SI Maha Singh No.1713/D visited the residence of the said Head Constable in his native village Malik Pur with a view to taking him to the medical authority for re-medical examination but he was not found present there.

The above mentioned irregularity and continuously unauthorised absence from duties in violation of the statutory provisions, tantamount to an act of grave negligence and gross misconduct on the part of HC Satbir Singh No.9330/DAP, for which he is liable to be dealt with departmentally under Section 21 of the Delhi Police Act, 1978."

4. The enquiry was purported to be conducted under the relevant provisions of the Delhi Police (Punishment and Appeal) Rules, 1980.

5. On 31.10.89 the applicant admitted the allegations mentioned in the summary of allegations aforesaid. Thereupon a charge similar to the summary of allegations and duly approved by the Principal of the Police Training School, who is the disciplinary authority was served on 16.11.89. At this stage, the applicant chose not to admit the charge and stated that he will produce a list of defence witnesses in three days on 19.11.89. The applicant produced his defence witnesses, four in number. No witnesses on behalf of the department were either produced or examined in support of the accusation and which were necessary to support the charge. The enquiry officer proceeded on the basis of the aforesaid material and after considering the evidence on record, the admission of the summary of allegations by the applicant, statments of the

defence witnesses produced by him and the written statement submitted by the sid applicant held that the charge against the applicant was proved and that the applicant remained unauthorisedly absent for 121 days, 11 hours and 2 minutes without the permission of the competent authority.

6. By order dated 14.2.90 the disciplinary authority (respondent No.2 herein) passed a speaking order holding the charge proved, imposed on the applicant a penalty of dismissal from service with immediate effect.

6-A. An appeal was taken to the appellate authority (Additional Commissioner of Police) (Training) - (Respondent No.3). By order dated 21.5.90 the appellate authority agreed with the disciplinary authority that the charges were proved against the applicant and he was rightly 'punished' by the disciplinary authority but in so far as the penalty was concerned, the appellate authority modified the order of dismissal into one of reduction of pay by five stages from Rs.1150/- to Rs.1025/- in the time scale for a period of five years with effect from the date of issue of the order. Certain other ancillary orders were also passed in regard to the non-earning of the increments during the period from dismissal to the date of reinstatement and from reinstatement to joining his duties and in regard to the period of his absence.

7. Aggrieved by the aforesaid order, the applicant has approached this Tribunal for relief.

8. The respondents have filed their reply, inter alia, defending the disciplinary authority's action taken against the applicant.

9. We have heard the learned counsel for the parties and have perused the material papers and documents placed on record. Although several grounds have been urged in the Original Application, the main ground which was pressed before us and which is decisive of the matter is that although at one stage the applicant admitted the summary of allegations, thereafter when the chargesheet was framed he denied his guilt and did not admit the charge and, therefore, it was incumbent on the enquiry officer consistent with the rules and principles of natural justice that a full-fledged enquiry including production and examination of the witnesses to support the charge should have been held and in its absence the entire enquiry was vitiated in law.

10. To consider the contentions raised by the applicant, it is necessary to set out in extenso the relevant said rules of Rule 16 of the Delhi Police (Punishment and Appeal) Rules, 1980.

Sub Rule (ii) of Rule 16 reads as under:-

"(ii) If the accused police officer after receiving the summary of allegations, admits the misconduct alleged against him, the enquiry officer may proceed forthwith to frame charge, record the accused officer's pleas and any statement he may wish to make and then pass a final order after observing the procedure laid down in Rule 16 (xii) below if it is within his power to do so. Alternatively the finding in duplicate shall be forwarded to the officer empowered to decide the case."

Sub Rule (iii) of Rule 16 reads as under:-

"(iii) If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accusted shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements or documents thus brought on record."

Sub Rule (xii) of Rule 16 reads as under:-

> "(xii) If the disciplinary authority, having regard to his findings on the charges, is of the opinion that a major punishment is to be awarded, he shall:-
>
> (a) furnish to the accused officer free of charge a copy of the report of the Enquiry Officer, together with brief reasons for disagreement, if any, with the finding of the Enquiry Officer.
>
> (b) Where the disciplinary authority is himself the Enquiry Officer, a statement of his own findings, and
>
> (c) If the disciplinary authority, having regards to its findings on all or any of the charges and on the basis of the evidence adduced during the enquiry is of the opinion that any of the penalties specified in rule 5(1 to vii) should be imposed on the police officer, it shall make an order imposing such penalty and it shall not be necessary to give the police officer any opportunity of making representation on the penalty proposed to be imposed."

11. In this case the enquiry officer proceeded on the basis of the applicant's admission of the summary of allegations and notwithstanding the applicant's retracting his admission and making a specific denial of the charge, as framed, proceeded under sub rule (ii) of Rule 16, extracted above. The effect of this was that no witness on behalf of department who could support the accusation and were necessary to support the charge as contemplated in sub rule (iii) were examined. The enquiry officer after recording the plea of not guilty by the applicant proceeded straightaway to examine the defence witnesses and thereafter gave his findings.

12. In our view, the statutory position is very clear. Under sub rule (ii) aforesaid, the position is that in case the accused police officer admits the misconduct after receiving the summary of allegations the enquiry officer could proceed forthwith to frame the charge and after recording the accused officers plea and any statement he may wish to make, pass a final order, after observing the procedure laid down in sub rule (xii).

13. However, if the accused police officer does not admit the misconduct, the enquiry officer 'shall' proceed to record evidence in support of the accusation as is avilable and necessary to support the charge. It is also mandated that as far as possible the witnesses shall be examined direct and in the presence of the accused who shall be given an opportinity to take notice of their statement and cross examine them.

14. In this case what appears to have happened is that notwithstanding the applicant's retraction at the time of framing of charges of his earlier admission of misconduct made at the time when the summary of allegation was served on him, the enquiry officer proceeded under sub rule (ii). In our view, once the accused police officer did not admit the misconduct, sub rule (iii) will come into play and the enquiry officer is bound to follow the procedure prescribed therein. In this

case such a procedure not having been followed, enquiry, we are constrained to hold, was not held in accordance with the rules.

15. This leads us to the question whether and to what extent such infraction of the procedure invalidates the disciplinary action against the applicant.

16. In this connection it will be relevant to notice the pronouncement of the Supreme Court in the recent case of State Bank of Patiala vs. S.K. Sharma (JT 1996 (3) SC 722). It has been laid down, inter alia, thus:-

> "(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
>
> (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.
>
> (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any or every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and

effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgement, take a case where there is a provision expressly providing that after the evidence of the employere/Government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory or mandatory provisions, if one is so inclined. The principles stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of procedural provision which is not a mandatory character the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of person proceeded against or in public interest. If it is found to be former, then it must be seen whether the delinquent officer has waived the said requirement either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of the punishment),

keeping in mind the approach adopted by the Constitution Bench in B.Karunakar. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called."

17. In the present case, Rule 16 in its opening para specifically provides thus:-

"16. Procedure in departmental enquiries.-The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where prima facie the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer:-"

18. The various other parts of the aforesaid rules also make it clear that the said rule is procedural in character. On the very terms of the said rule it would appear that the said provisions particularly in sub rules (ii) and (iii) are fundamental in nature in the light of the test propounded by thier Lordships in the aforesaid decision. The various sub rules provide for different procedures in different circumstances. The manner of conducting of enquiry and the requirements to be applied with in sub rule (ii) and (iii) are different. We, therefore, hold that in the light of the above decision of the Suprme Court the provisions of Rule 16 and especially sub rules (ii), (iii) and (xii) are procedural and also fundamental in character. Strict compliance thereof would, therefore be a sine qua non of the departmental enquiry.

19. In this connection, reference may be made to an earlier decision of this Tribunal in Jagdish Ram Kataria vs. Union of India (1987 (3)

ATC 468). This Tribunal held "once the charge is served on the petitioner and the petitioner pleads not guilty, the enquiry officer is bound by the provisions of sub rule (iii) of rule 16 of the aforesaid rules." Moreover, in another recent decision of the Supreme Court in B.C. Chaturvedi vs. Union of India and Others (JT 1995 (8) SC 65) it was held, inter alia, thus:-

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findigns on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

20. Even assuming for the sake of argument that the aforesaid rules are non-fundamental in character, the question would arise whether any prejudice or failure of justice has been caused to the applicant. It is clear in this case that (a) notwithstanding the retraction of the previous admission and substitution by a plea of not guilty, no prosecution witnesses were examined; (b) the inquiry proceeded under sub rule (ii) in contrast to sub rule (iii) was summary in nature; (c) the enquiry ought to have been conducted under sub rule (iii), it was incumbent on the department to examine the concerned witnesses who were necessary to support the charge. In case such witnesses are examined under sub rule (iii) the applicant is given the right, inter alia, to cross examine them, which of course is absent in this case.

21. Even the summary of allegations in the instant case would reveal that the charges could be proved only by adducing evidence of the concerned witnesses and the conclusion of guilt in the absence of examination of such witnnesses " to support the accusation" would be a case of finding on 'no evidence'.

22. The above circumstances, in our opinion are enough to hold that the applicant was gravely prejudiced by the correct procedure not having been followed during the departmental enquiry.

23. We are, therefore, constrained to come to the conclusion that the enquiry held against the applicant was not in accordance with the rules, which are to be strictly complied with. The enquiry proceedings, the original order of the disciplinary authority dated 14.2.90 and the appellate order dated 21.5.90 are hereby quashed and set aside.

24. The respondents shall conduct a fresh de novo enquiry against the applicant in accordance with law and pass a final order within a period of four months from the date of receipt of a copy of this order. The applicant should give his full cooperation during the said enquiry. The question of consequential benefits naturally will depend upon the ultimate outcome of the said enquiry proceedings and is to be considered by the respondents in the light of the relevant rules and instructions at the appropriate time.

25. The applicant, if aggrieved by the final order passed by the competent authority after the aforesaid de novo enquiry is given the liberty to challenge the same before this Tribunal, if so advised, in accordance with law.

26. The O.A. is allowed as above.

27. There will be no order as to costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member(J)

(B.K. Singh)
Member(A)

'Sanju'