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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2316/2004

New Delhi this the 24th day of March, 2005.

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Inspector Maharaj Singh D-I/758,
S/o late Sh. Jihan Singh,
R/o BN-3/185, Yamuna Vihar,
Delhi-110053.

-Applicant

(By Advocate Shri Shyam Babu)

-Versus-

1. Govt. of NCT of Delhi,
through its Chief Secretary,
Players Building, I.P. Estate,
New Delhi.
2. Joint Commissioner of Police,
New Delhi Range,
Police Headquarters,
I.P. Estate,
New Delhi.
3. The Dy. Commissioner of Police,
East District,
Shalimar Park,
Bholanath Nagar,
PS Farsh Bazar,
Delhi.

-Respondents

(By Advocate Mrs. Avnish Ahlawat)

ORDER

Applicant, an Inspector in the Delhi Police has assailed respondents' order dated 24.10.2003, whereby a minor penalty of censure has been confirmed as well as order dated 25.6.2004, whereby the appellate authority upheld the punishment imposed.

2. Applicant, while working as Station House Officer, PS Gita Colony of East District, on an inquiry on the complaint of one Sh. Gopal Vashisth conducted by the Vigilance revealing encroachment on the public place/service road by shopkeepers, having been substantiated, was issued a show cause notice for a minor penalty of censure, on the ground

that he failed to take appropriate legal action against the encroachers. Applicant preferred a reply, which resulted in confirmation of the order on the ground that allegations of encroachment were substantiated against him in the Vigilance Inquiry. The appeal preferred has also met the same fate, giving rise to the present OA.

3. Learned counsel for applicant Sh. Shyam Babu contended that once a preliminary enquiry (PE) is conducted behind the back of applicant where not only statements of witnesses were recorded but certain documents were taken on record and the report of the inquiry has been made the basis of the show cause notice and had weighed in the mind of the disciplinary authority (DA) while imposing the punishment of censure. Once the documents are relied upon, under Article 311 of the Constitution of India and in the wake of principles of natural justice, which are to be read in a provision unless specifically excluded, applicant has been deprived of a reasonable opportunity by not furnishing the report of the Vigilance Inquiry, which vitiates not only the show cause notice but also the consequent orders.

4. On the other hand, learned counsel for respondents Mrs. Avnish Ahlawat by referring to Rule 6 of the Delhi Police (Punishment & Appeal) Rules, 1980 contended that the procedure laid down under Rule 6 (ii) of the Rules ibid obligates a show cause notice and a personal hearing which had already been given to applicant, as applicant despite opportunity has neither demanded the documents in his reply to the show cause notice has not whispered about it in his appeal he is estopped from raising such a plea and this is hit by the doctrine of waiver and acquiescence. As applicant has not requested for the documents it is his deemed admission to the effect that either the documents are within his knowledge or he did not require the same at the appropriate time. Learned

counsel further stated that principles of natural justice cannot be complied with as a straight jacket formula and they depend on fact situation.

5. I have carefully considered the rival contentions of the parties and perused the material on record.

6. The Apex Court in **Delhi Transport Corporation v. D.T.C. Mazdoor Congress**, 1991 SCC (L&S) 1213, as regards principles of natural justice held that under the doctrine of audi alteram partem ruled that the equality clause in Article 14 of the Constitution of India is not only applicable to a quasi judicial order but to an administrative order as well. These rules, if not expressly excluded by the Act or the Rules, are implicit and are to be read in the Rules as principles of natural justice do not supplant the rules but supplement them.

7. In **State of U.P. v. Shatrughan Lal**, JT 1998 (6) SC 55 on the question of denial of PE report and statements the following observations have been made:

"6. Preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in *Kashinath Dikshita v. Union of India & Ors.* (1986) 3 SCC 229 (supra), wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence."

8. If one has regard to the above, though Rule 6 of the Delhi Police (Punishment and Appeal) Rules, 1980 as a procedure provides show cause notice in the case of a minor penalty and an opportunity for reply does not specifically exclude within its operation principles of natural justice, one of which is an effective hearing and furnishing of material relied upon to hold the charge proved.

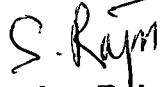
9. Sine qua non of an administrative action is fairness in the procedure. Though the principles of natural justice depend on fact situation, yet before a minor penalty of censure, which has a far reaching effect on future prospects of an officer, one has to be afforded a reasonable opportunity to show cause and this should be an effective one. If the respondents have relied upon a Vigilance Inquiry conducted behind the back of applicant and has substantiated the charged by confirming the minor penalty on the basis of such Vigilance Inquiry even if it is not demanded by applicant it has to be furnished to him prior to imposition of punishment. This gives an opportunity to the concerned to effectively defend his case which would be a full compliance of the principles of natural justice and this opportunity of furnishing documents relied upon is supplementary.

10. From the perusal of the record I find that in the show cause notice there has been a reference to substantiate all charges on which applicant is alleged to have committed a misconduct is a Vigilance Inquiry and in the final order also this Vigilance Inquiry has been relied upon to confirm the punishment. In these circumstances principles of natural justice warranted accord of a reasonable opportunity to applicant and supply of the PE report. Merely because the same has not been demanded by him would not be construed as his waiver and acquiescence, as once a duty is caste on respondents as an obligation to act in consonance with the principles of natural justice doctrine of waiver would not come in its way as against the fundamental duty one has a corresponding legal right.

11. In the result, for the foregoing reasons, as the orders passed are not in consonance with the principles of natural justice and has greatly prejudiced applicant in the matter of effective hearing, impugned orders are quashed and set aside. However, this shall not preclude respondents from proceeding further against applicant in the matter of minor penalty by

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furnishing him the requisite documents, if so advised. The OA is allowed in the aforesaid terms. No costs.


(Shanker Raju)
Member (J)

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