CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(7)

OA No.1125/2004

New Delhi this the 15th day of October, 2004.

HON'BLE MR. V.K. Majotra, Vice-Chairman (A)
HON'BLE MR. Shanker Raju, Member (J)

Ravinder Singh

-Applicants,

(By Advocate Shri Anil Singhal)

-VERSUS-

Union of India & Others -Respondents

(By Advocate Mrs. Rashmi Chopra)

1. To be referred to the Reporters or not? Yes.

2. To be circulated to other Benches of the Tribunal or not? Yes.

S. Raju
(Shanker Raju)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A. NO. 1125 OF 2004

New Delhi, this the 15th day of October, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Ravinder Singh,
Ex Constable of Delhi Police,
(PIS No.28801224)
R/o Qr. No.2/3 Ist Floor,
O-Block, Police Colony,
Model Town, N.Delhi-09. ...Applicant.

(By Advocate : Shri Anil Singal)

-versus-

1. Govt. of NCT of Delhi.
Through Commissioner of Police,
Police Head Quarters,
IP Estate, New Delhi.

2. Addl. Comm. of Police (Security)
Security Main Lines,
Vinay Marg, New Delhi.

3. Dy. Commissioner of Police,
10th Bn. DAP, Pritam Pura,
Police Lines, New Delhi.

4. DCP (Head Quarters)
PHQ, IP Estate, New Delhi ....Respondents.

(By Advocate : Mrs. Rashmi Chopra)

ORDER

By Shri Shanker Raju, Member (J):

Through this O.A. the applicant assails respondents' order dated 19.1.2004 imposing upon him a penalty of dismissal from service as well as appellate order dated 20.4.2004 upholding the punishment.

2. In order to better understand, the brief factual matrix is relevant. Applicant, working as a Constable in Delhi Police, has

(9)

earlier been dismissed resorting to Article 311(2)(b) of the Constitution of India. The order was challenged in OA No. 157/2002 inter alia holding that Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as 'Rules') should have been complied with. The dismissal order was set aside, with liberty to the respondents to hold the departmental proceedings against the applicant and reinstatement was ordered with all consequential benefits. Applicant was reinstated on 27.5.2002, subject to pending CWP before the High Court of Delhi, and was proceeded against for a major penalty under Rule 16 of the Rules ibid.

3. Before the applicant was dismissed under Article 311 (2)(b), Anti Extortion Cell of the Crime Branch entrusted the enquiry to Inspector Rakesh Kumar and on its report further action was taken.

4. Applicant was charged with the following charges:

> "It is alleged against you Ct. Ravinder Singh No. 847/ND that on 23.11.2000, Anti Extortion Cell, Crime Branch had arrested one Narinder Kumar s/o Kiran Pal resident of village Kinnoni, Mujaffar Nagar, U.P. in case FIR No. 597/2000 dated 23.11.2000 U/S 25 Arms Act RW 468/471 IPC PS Hazrat Nizamuddin. One other accused, namely, Karamveer Singh son of Laxmi Chand resident of Shahajanur UP was also with him. He was also arrested vide case FIR No. 597/2000 dated 23.11.2000 U/S 25 Arms Act PS Hazarat Nizamuddin.
>
> On the interrogation of accused Narinder Kumar, it also emerged that you Ct. Ravinder Singh no. 847/ND had given him details of some businessmen of Greater Kailash, Panchsheel, Preet Vihar and Peetampura. These details were passed on by him to Fazlu-ur-Rehman, an underworld

(10)

criminal, based in Dubai through accused Karamveer Singh to extort money from these businessmen. In return, an amount of Rs. 1.5 lakhs was also received by them through Hawala. It is further disclosed by accused Narinder Singh that he had delivered Rs. 25,000/- to you Ct. Ravinder Singh No. 847/ND at your home for the tips given to him. It was also claimed by accused Narinder Kumar that Ct. Upinder Singh No. 472/ND was also in know of all these activities.

It is also alleged against you Ct. Ravinder Singh 847/ND that at the time of arrest accused Narinder Kumar was found to be in possession of a Delhi Police Identity Card No. 076000 issued in the name of Ct. Ravinder Singh 1244/ND PIS No. 28911291 dated 6.1.1998 issued from the office of ACP/HQ NDD with a photo of accused Narinder Kumar in Police Uniform affixed on the recovered identity card. According to accused Narinder Kumar this identity card was made available to him by you Ct. Ravinder Singh 847/ND and the uniform was provided by Ct. Upender Singh No. 472/ND.

It is also alleged against you Ct. Ravinder Singh No. 847/ND that accused Narinder Kumar was introduced to you by Ct. Upender Singh, No. 472/ND being his cousin and accused Narinder Kumar was a frequent visitor to District Lines, New Delhi and there he used to meet you Ct. Ravinder Singh 847/ND and Ct. Upender Singh 472/ND to carry out unlawful activities.

The above act on the part of you Ct. Ravinder Singh 847/ND amounts to grave misconduct and unbecoming of a member of a disciplined force which renders you liable to be dealt with departmentally under the provisions of Delhi Police (Punishment and Appeals) Rules, 1980."

5. During the course of enquiry 14 prosecution witnesses were examined, which included one Narinder Kumar, who was an accused in the criminal case. As he has not supported the charges

(11)

and defence statement, with the following discussion, the enquiry officer had held the applicant guilty of the charges in his report:

> **"Discussion on Evidence**: FIR No. 597/2000 dt. 23.11.2000, P.S. H.N. Din. While being investigated threw light upon a serious fact that the accused was in link with Dubai based under world criminals and was masquerading as a member of the police force by being in possession of an I.D. card recovered by PW-12. The accused has accepted knowing the defaulter through his cousin Upender. It is true that while an accused is subjected to interrogation the I.O. can record disclosures as and when the accused discloses. Although the I. Card recovered did not belong to the defaulter but to another Ct. Ravinder Singh No. 1244/ND, who admitted having lost a photocopy of the same, the accused had not disclosed about the owner of the said I. Card but about the defaulter. It is true that PW-14 Narinder Kumar has not supported the charge which of course cannot be taken into account keeping in mind the dubious character and criminal contacts and involvement of PW-14. No logical reason comes to mind as to why Inspr. Rajinder Bhatia and his team would be interested in falsely implicating the defaulter alone. The contentions put forward by the defaulter cannot clearly absolve him of the charge. The A.E. Cell team on the basis of the disclosure and the entry in the I.D. Card issue register and evidence regarding the visits of the accused to the defaulter, should have taken legal action against the defaulter which they did not, due to reasons best known to them. It is quiet obvious that the other Ravinder (owner of the I.D. Card) was not known to the accused and no body would be foolish enough to give his own I.D. Cards belong to another Ravinder was very conveniently given to the criminal by the defaulter, which has been supported by the accuseds disclosure statement and while the interrogation of defaulter (Ex.PW-13/A) was conducted. The interrogation report was prepared by the A.E. Cell team, where accused Narinder Kumar was present in custody and confronted with the defaulter."

(12)

6. On representation against the enquiry report, disciplinary authority imposed a major penalty of dismissal upon the applicant treating the period from the date of earlier dismissal i.e. 15.1.2001 to 26.5.2002 as 'dies non'.

7. The aforesaid punishment was challenged by way of an appeal and the appellate authority upheld the said punishment, hence the present O.A.

8. As the applicant is in possession of the official accommodation, the Tribunal, vide its orders dated 6.5.2004, directed the respondents not to dispossess him and by virtue of which he is still continuing in the said official accommodation.

9. Learned counsel of the applicant has taken the following legal submissions to assail the orders. Firstly, Rule 15(2) of the Rules ibid is violated as despite cognizable offence, no prior permission of the Additional Commissioner of Police was sought. Secondly Narinder Kumar, who is stated to have made confessional statement during the investigation of criminal case registered against him, has denied the same in the departmental enquiry. Accordingly, the said statement is not admissible in evidence as per provisions of Rules 15(3) and 16(3) of the Rules ibid.

10. Cross-examination of prosecution witnesses shows bias of the enquiry officer and his act as a Prosecutor. Moreover, the conclusion of the enquiry officer is based on suspicious and surmises.

11. On the other hand, learned counsel of the respondents vehemently opposed the aforesaid contentions. It is contended that as the applicant has not produced any defence, his pleas are

13

afterthought. It is stated that no preliminary enquiry was held and the enquiry officer, on the basis of evidence, held the applicant guilty of the charges. The enquiry report is reasoned and based on evidence.

12. It is also stated that clarificatory questions have been asked from the prosecution witnesses. The confessional statement was taken on record in accordance with law and rules. It is further contended that the orders passed are reasoned and it is not permissible for the Tribunal to either substitute its own views or re-appreciate the evidence. Lastly, it is contended that keeping in view the gravity of misconduct, punishment is proportionate and strict rules of evidence are not applicable in a disciplinary proceeding.

13. We have carefully considered the rival contentions of the parties and perused the material on record apart from the department records produced by the learned counsel of the respondents.

14. It is trite law that a disciplinary proceeding is unlike a criminal proceeding where strict rules of evidence are not applicable. The rule is preponderance of probability. It is also settled that while in a judicial review, this Tribunal cannot re-appreciate the evidence or substitute its views, interference in the matter of evidence is permissibly only when the findings are perverse, based on inadmissible evidence and does not pass the test of a common reasonable prudent man. Enquiry can also be vitiated for violation of principles of natural justice and contravention of procedural rules of sensitive nature causing

(14)

prejudice. Plethora of decisions fortify the above view of ours, one of which is rendered by the Apex Court in ***Kuldeep Singh vs. Commissioner of Police & Ors***, JT 1998 (8) SC 603.

15. In the light of the above, Rule 15(2) of the Rules ibid provides as under:

> "15(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.

16. It is trite law that when quantum of default, evidence and documents are available on record and there is specific information that the respondents, necessity of holding a preliminary enquiry obviates, but in a situation when these materials are not available to facilitate a regular departmental enquiry, a preliminary enquiry is held. As held by the Apex Court in **B.P.S. Bishop vs. D.D.D. Ebeneser,** 1996(4) SCC 406, a preliminary enquiry is an enquiry to prima facie find the ingredients and to arrive at the finality of default before ordering a departmental enquiry. In **N.D. Ramteerath Akhor vs. State of Maharashtra**, 1997(1) SCC 299, the Apex Court has ruled that the preliminary enquiry is nothing to do with the enquiry conducted after issuance of the charge sheet and its purpose is to find whether disciplinary enquiry should be initiated against the delinquent.

17. In the above view of the matter, we have no hesitation to hold that a preliminary enquiry is a process by which the

15

ingredients and material for holding a regular departmental enquiry are processed, procured and given shape for finality. It can be by an enquiry ordered by the competent authority or this can be arrived at in an investigation carried out in a criminal case. It is not necessary that the aforesaid enquiry is conducted within the purview of the disciplinary authority rather the outside agencies would also be permissible to assess the collection of these material and to forward it to the concerned disciplinary authority to facilitate the departmental proceedings. If our conclusion is not to be accepted then Rule 16(3) would be redundant as it allows that in absence of examination of a witness, his earlier statement recorded in trial or even in investigation, can be brought on record.

18. As regards Rule 15(2), the sina quo non is holding of a preliminary enquiry and disclosure of commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public then, as a salutary provision, the Additional Commissioner of Police concerned has to form an opinion as to whether to go for registration of a case and investigation thereof or in the alternative hold a departmental enquiry. In the present case the applicant, being a Police Officer, has a right to protect the public while acting as a police officer and deemed to be on duty for 24 hours under section 24 of the Delhi Police Act, 1978. The allegations of abatement, assisting and being associate of Shri Narinder Kumar in commission of an offence relating to extortion is certainly a cognizable offence either under section 34 IPC or 120(b) of IPC connected with the main offence of extortion. Accordingly, on the basis of the report submitted by the

(16)

Anti Extortion Cell of the Crime Branch, not only the applicant but other material has been collected which had disclosed the identity of defaulter. Prosecution evidence had been collected, the quantum of default was judged and the documents like seizure memo etc. have been made part is nothing but a preliminary enquiry conducted within the Delhi Police by one of its branches. As such condition precedent of obtaining prior permission of the Additional Commissioner of Police was sina quo non and for want of it, the enquiry ordered is without jurisdiction. Though the Tribunal has, while reinstating the applicant in the earlier O.A., given liberty to the respondents to hold regular departmental proceedings but this cannot be read in isolation and moreover holding of regular departmental proceedings are always in accordance with rules.

19. Moreover, we find that in the earlier O.A. where the dismissal was challenged under Article 311(2)(b), the issue regarding Rule 15(2) Rules and non-permission to hold enquiry by the Additional Commissioner of Police has been set at rest and is no more res intergra. Moreover, the Principal Bench of this Tribunal in **Ex. Constable Narender Singh vs. Govt. of NCT of Delhi** (OA 169/99 decided on 1.11.2000) has clearly ruled that in case of a cognizable offence made out against the police officer in relations with the public, sanction of Additional Commissioner of Police is a must. We respectfully follow the same. In the result, we have no hesitation to hold that for want of compliance under Rule 15(2) of the Rules ibid the order initiating the enquiry and consequent proceedings are set at naught.

(17)

20. Another contentions raised pertained to the evidence in the form of confessional statement made by Narender Kumar and its admissibility. Rules 15(3) and 16(3) of the Rules are re-produced below:-

> "15(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. 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 not 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.
>
> 16(3) 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 and 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 expenses 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

(18)

brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused 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 of documents thus brought on record."

21. As regards statements of witnesses recorded in the preliminary enquiry/investigation under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, DOP&T vide OM No. 134/7/75-AVD.I dated 11.6.1976 laid as under:

> "**(27) Statement of witness recorded at the preliminary enquiry/investigation to be read out to him and got admitted as evidence.**- The present procedure followed in departmental inquiries held under the CS(CCA) Rules, 1965, and other corresponding Disciplinary Rules is to disregard statements made by witnesses during the preliminary inquiry/investigation except for the purpose of contradicting the witnesses and to record the evidence of the witnesses de novo as examination-in-chief by the Inquiry Authority. The question whether statements made by the witnesses during the preliminary inquiry/ investigation can be straightaway taken on record as evidence in examination-in-chief at oral inquiries has been examined in consultation with the Department of Legal Affairs, the Central Vigilance Commission and the Central Bureau of Investigation.
>
> 2. On considering the observations made by the Supreme Court in certain, cases it may be legally permissible and in accord with the principles of natural justice to take on record the statements made by witnesses during the preliminary inquiry/investigation at oral inquiries, if the statement is admitted by the witness on its being read out to him. It is felt that by adopting this procedure it should be possible to reduce the time taken in conducting departmental inquiries. It has,

(19)

> therefore, been decided that in future, instead of recording the evidence of the prosecution witnesses de novo, wherever it is possible, the statement of a witness already recorded at the preliminary inquiry/investigation may be read out to him at the oral inquiry and if it is admitted by him, the cross-examination of the witness may commence thereafter straightaway. A copy of the said statement should, however, be made available to the delinquent officer sufficiently in advance, i.e., at least three days before the date on which it is to come up at the inquiry.
>
> 3. As regards the statements recorded by the Investigating Officer of the Central Bureau of Investigation which are not signed, it has been decided that the statement of the witness recorded by the investigating officer will be read out to him and a certificate will be recorded thereunder that it had been read out to the person concerned and has been accepted by him.

22. If one has regard to the above, unless the earlier statement made by the witness during the preliminary enquiry/investigation is admitted by the maker, it cannot be read in evidence nor it is admissible.

23. In **Kuldeep Singh's case** (supra) while dealing with Rules 15(3) and 16(3) of the Rules ibid and admissibility of earlier statement made when the witnesses are not available, the Apex Court, while reproducing the provisions of rules 16(3), observed as under:-

> "26. Non-production of the complainants is sought to be justified with reference to Rule 16(3) of the Delhi Police (F&A) Rules, 1980. Rule 16(3) is as under:-
>
> "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

2c

support the charge. As far as possible the witnesses shall be examined and 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 expenses 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 accused 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 of documents thus brought on record."

Further observing, the Apex Court has held as under:-

"32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "Hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on

(21)

> record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross-examine that witness."

24. As regards applicability of rules 16(3), the following observations have been made:-

> 27. This Rule, which lays down the procedure to be followed in the departmental enquiry, itself postulates examination of all the witnesses in the presence of the accused who is also to be given an opportunity to cross-examine them. In case, the presence of any witness cannot be procured without undue delay, inconvenience or expenses, his previous statement could be brought on record subject to the condition that the previous statement was recorded and attested by a police officer superior in rank than the delinquent. If such statement was recorded by the Magistrate and attested by him then also it could be brought on record. The further requirement is that the statement either should have been signed by the person concerned, namely, the person, who has made that statement, or it was recorded during an investigation or a judicial enquiry or trial. The Rule further provides that unsigned statement shall be brought on record only through the process of examining the Officer or the Magistrate who had earlier recorded the statement of the witness whose presence could not be procured.
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> 28. Rule 16(3) is almost akin to Sections 32 and 33 of the Evidence Act. Before the Rule can be invoked, the factors enumerated therein, namely, that the presence of the witness cannot be procured without undue delay, inconvenience or expenses, have to be found to be existing as they constitute the "condition-precedent" for the exercise of jurisdiction for this purpose. In the absence of these factors, the

(22)

jurisdiction under Rule 16(3) cannot be exercised."

25. In **State of Mysore vs Shiv Basappa,** AIIR 1963 SC 375, it was held by the Apex Court that unless the preliminary enquiry statement is put to the witness and he acknowledges the same to have been made by him, the same cannot be treated as an admissible evidence. The aforesaid corollary was also reiterated in **State of UP vs. Om Prakash Gupta**, AIR 1970 SC 679.

26. If one has regard to the law laid down and further having regard to Rules 15(3) and 16(3) of the Rules ibid, in a preliminary enquiry the statement made by the witness cannot be brought on record unless the condition precedent of non-availability of the witness is satisfied. In the nutshell, if the witness is available in the enquiry then his earlier statement cannot be brought on record either to impeach his credibility or to confront him. The statement recorded in the departmental proceedings is to form basis and would be the admissible evidence. The only exception would be that when the witness is not available, his statement made even during the investigation of a criminal case can be brought on record. Rule 15(3) also provides bringing of other documents from the preliminary enquiry record except the statement.

27. The confession of Shri Narender Kumar is not a document but it is a statement made by him during the investigation. Accordingly, for want of condition precedent and once this witness has recorded his statement before the enquiry officer, bringing his confession statement on record to hold the applicant guilty of the

23

charge is holding him guilty on the basis of an evidence, which is not admissible under the rules.

28. We would be failing in our duty if we do not refer to the decision of the Apex Court in **State of T.N. vs. M.A. Waheed Khan,** 1998(8)SCC 723, where on acquittal in a criminal case, the witnesses who had contradicted during regular enquiry, their previous statement had been taken into consideration, the aforesaid decision would not apply in the wake of Rules 15(3) and 16(3) of the Rules ibid, which clearly bars the admissibility of such statements. It is trite law that a decision of the Apex Court and the ratio deci dendi is to be derived from reading the entire judgment and more particularly the facts constituting the res. Before the Apex Court, the aforesaid provisions were not dealt with. Accordingly, the binding authority of those prepositions is the decision in **Kuldeep Singh's case** (supra), which fortifies our view.

29. Assuming the statement of Shri Narender Kumar is to be taken on record, the condition precedent, as per Govt. instructions, its admissibility is that the above witness acknowledges his confessional statement. We find that the aforesaid witness has categorically stated in the enquiry that he has not made such a statement and while in police custody he was made to sign on plain papers. He denied to have any links with the applicant and also vehemently denied that he had paid anything to the applicant. In nutshell, the witness has not supported the allegations and rather given a clean chit to the applicant. In this view of the matter, his earlier statement cannot be brought on record.

24

30. From the discussion of the enquiry officer, we find that the only evidence, which had found support to the issue by the enquiry officer, is the disclosure statement of Narender Kumar, which is not admissible under the rules and, therefore, the finding of the enquiry officer holding the applicant guilty is based on an inadmissible evidence against the rules and the same cannot sustain.

31. The ground raised by the applicant's counsel that the prosecution had conducted in a biased manner and the enquiry officer, by cross-examining the prosecution witnesses, assumed the role of a Prosecutor.

32. Principles of natural justice are inbuilt in any of the procedural Rules to be followed by a quasi-judicial authority. These are the basic principles, one of which is conduction of an enquiry in an impartial and fair manner. The enquiry officer is bound by the Rules of procedure. Though, we find a particular Rule 16(3) of the Rules ibid that after examination of prosecution witnesses, enquiry officer has no authority or jurisdiction to cross-examine them. However, this right has been conferred on him while the defence witnesses, on behalf of the delinquent Police official, are examined. Moreover, what is permissible is that during cross-examination, the defence witness is to either put clarificatory questions or to clear the doubts.

33. We do not advert to enquiry officer's act of putting leading questions to the witnesses suggesting them that they are deposing falsely and putting such questions, the answer of which would have an effect of filling up the gaps and lacunae in the evidence,

25

the enquiry officer is precluded from bringing in the evidence through his cross-examination against the delinquent when the aforesaid evidence has not come forth through the testimony of prosecution witness. The enquiry officer has to be an impartial authority. He has to weigh the material produced for the prosecution and for defence. He would not act in such a manner, which shows his partisan and favour extended to one of the sides. He has to act independently. If it is not so, the enquiry would be farce and would lead to deprivation of reasonable opportunity and this would be a gross violation of fairness in procedure and principles of natural justice as Article 311 of the Constitution of India protects the Government servants from their ouster from service and sina quo non is reasonable opportunity to defend.

34. From the cross-examination done by the enquiry officer to prosecution witness no. 14, namely, Narender Kumar, we find that whereas no imputation or incriminating evidence has come forth in his evidence against the applicant, enquiry officer, by cross-examining the witness, has tried to fill up the gaps and lacunae through his leading questions. The evidence against the applicant is of incriminating nature, which is not permissible under the rules and the role of enquiry officer in such an event has neither been impartial nor fair rather he has acted as a Prosecutor as the questions are neither clarificatory nor tend to clear the ambiguity. A Bench of this Tribunal in **ASI Sher Singh s. Govt. of NCTD** (OA No. 2827/2003 decided on 7.7.2004) reiterated the aforesaid view, which we respectfully follow.

(26)

35. As regards the conclusion drawn by the enquiry officer, we find that in a departmental enquiry, as held by the Apex Court in **Union of India vs. H.C. Goel,** AIR 1964(SC) 364 as well as in **Nand Kishore vs. State of Bihar,** AIR 1978(SC) 1277 and also in **Kuldeep Singh's (supra)** if the conclusion arrived at is based on suspicion and conjectures, the finding is perverse and does not pass the test of a common reasonable prudent man and the same cannot sustain in law and is open to be challenged and set aside in a judicial review. In this manner, this Tribunal is neither re-appreciating the evidence nor substituting its own views but even applying the standard of preponderance of probabilities the conclusion, based of suspicion and `no evidence', cannot sustain in law. We cannot adjudicate on the quality and quantity of evidence but it is to be established that the evidence adduced in the enquiry must link officer with alleged misconduct and mere statement that an evidence adduced is proof of the charge will not be sufficient as held by the Apex Court in **Sher Bahadur vs. Union of India**, 2002 SCC (L&S) 1028.

36. We find that the Identity Card recovered from the accused does not belong to the applicant and rather belongs to another Ravinder Singh who had lost it but he has not lodged any report in this regard. Moreover, no evidence has come forth in the enquiry that the applicant had taken any amount from the accused or had passed on any information of the businessmen from whom an extortion bid has been made. Rather the Finger Print Expert, while deposing in the enquiry as PW6, clearly ruled that his report is with regard to another Constable.

(27)

37. The enquiry officer, while coming to the conclusion holding the applicant guilty, clearly observed that though the I. Card did not belong to the applicant and PW14 had not supported the charge, the only reason to hold the applicant guilty is that the Anti Extortion Team would not depose against the applicant and falsely implicate him. On the likelihood that the I. Card of another Ravinder could have been procured by the applicant and handed over to the accused, the applicant was held guilty on the basis of the confessional statement of accused. The aforesaid conclusion is far away from being definite and rather vague, in-conclusive rested on suspicion and conjectures and without any evidence in support. This does not even pass the test of a common reasonable prudent man. In this view of the matter, the finding arrived at by the enquiry officer is perverse and based on `no evidence'.

38. The other statement of the Anti Extortion Team only confirms the confessional statement, which is not admissible and is denied even by its maker as well. The disciplinary authority, while agreeing with the findings of the enquiry officer, has not at all taken into consideration the above aspects of violation of procedural rules and admissibility of evidence on morality to keep the image of the Delhi Police intact the aforesaid extreme punishment has been imposed.

39. We find that whereas in the earlier order the intervening period was directed to be decided on re-instatement with all consequential benefits. The aforesaid period has been treated as `dies non'. We find from the decision of the Apex Court in **Union of India vs.** Madhu Sudan Pd. 2004(1) SCC 43 that when the dismissal

(28)

is set aside on the ground of violation of principles of natural justice, one is entitled to the pay and allowances. Here we find that not only the directions of the Court but as the applicant was dismissed without following due process of law depriving him a reasonable opportunity, the aforesaid period cannot be treated as 'dies non'. The appellate authority has also not taken into consideration the above infirmities.

40. The illegalities cropped up in the enquiry when the applicant was held guilty on the basis of a statement recorded in the P.E. The Apex Court in a recent decision rendered in **Union of India & Ors. vs. Mohd. Ibrahim,** 2004 SCC (L&S) 863 held the action of the respondents as illegal, not sustainable. We follow, as a precedent, the aforesaid dicta.

41. In the result, leaving open other contentions raised, we allow this O.A. Impugned orders are quashed and set aside. Respondents are directed to forthwith reinstate the applicant in service with all consequential benefits. For the period between 15.01.2001 to 26.05.2002 the applicant shall be accorded full back wages. The intervening period from the date of dismissal i.e. 19.01.2004 till reinstatement shall be treated as spent on duty for all purposes except back wages. No costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

V.K. Majotra

(V.K. MAJOTRA)
VICE CHAIRMAN (A)

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