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Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1913/2004

Date of Decision : 01.09.2005

Sh. Sugan Chand & Ors.

....

Applicants

(By Advocate Shri Anil Singal)

Versus

Govt. of NCT & Ors.

....

Respondents

(By Advocate Sh. Ram Kawar)

Coram:

The Hon'ble Sh. V.K. Majotra, Vice-Chairman(A)
The Hon'ble Sh. Shanker Raju, Member(J)

1. To be referred to the Reporter or Not? *Yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

S. Raju
(Shanker Raju)
Member(J)

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1913/2004

New Delhi this the 1st day of September, 2005.

Hon'ble Shri V.K. Majotra, Vice-Chairman(A)
Hon'ble Shri Shanker Raju, Member(J)

1. Sugan Chand,
Constable in Delhi Police
(PIS No. 28900786)
R/o 3/69, Vijay Enclave,
Nangloi, New Delhi.

2. N.B. Survase,
Constable in Delhi Police
(PIS No. 28893137)
R/o VPO: Kangana
Distt. Osmanabad,
Maharashtra.

.... Applicants

(through Sh. Anil Singal, Advocate)

Versus

1. Govt. of NCT of Delhi
through Commissioner of Police,
PHQ, I.P. Estate, New Delhi.

2. Joint Commissioner of Police,
Southern Range, PHQ,
I.P. Estate, New Delhi.

3. Addl. DCP (West Dist.),
PS Rajouri Garden,
New Delhi.

.... Respondents

(through Sh. Ram Kawar, Advocate)

Order (Oral)

Hon'ble Shri Shanker Raju, Member(J)

By virtue of this application, applicants, who are Constables in Delhi Police, assail respondents' order dated 16.1.1999 imposing upon them a major penalty of with-holding of next three increments for a period of three years with treatment of suspension period as 'not spent on duty'. Order passed in appeal dated 14.6.2004 affirming the punishment is also assailed.

2. On the complaint of Saranjit Singh that the applicants had extorted Rs. 6000/- from him, a preliminary enquiry was ordered and conducted by Inspector Sardara Singh of PG Cell. On the basis of preliminary enquiry, a departmental

enquiry under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as Rules) was ordered jointly. Applicants were served with the summary of allegations where neither the copy of the preliminary report nor the statements report therein were listed as documents nor the preliminary enquiry was cited as a witness. After examination of 5 PWs on framing of a charge, applicants produced three defence witnesses and the enquiry officer on the basis of record held the applicants guilty of the charge.

3. The appeals preferred by the applicants having been rejected, give rise to the present application.

4. Shri Anil Singal, learned counsel, assails the orders on several legal grounds but at the outset stated that when for want of either preliminary report and the statements recorded therein the applicants have been deprived of an opportunity to effectively defend in the enquiry causing prejudice, as such, the punishment order as well as order affirming the punishment in appeal are illegal.

5. Learned counsel, by referring to a Constitution Bench decision of Apex Court in **Olga Tellis and others Vs. Bombay Municipal Corporation and Others** (AIR 1980 SC 180) would contend that principle of natural justice does not advance the rule of exclusion and if the rules are not followed, it would not make any difference if principle of natural justice has been observed. The non-observance of principles of natural justice is itself prejudice to a person. In the above conspectus, what is applicable is the decision of the Apex Court in **State Bank of Patiala & Ors. Vs. S.K. Sharma** (JT 1996(3)SC 722) where principle of prejudice in the matter of principles of natural justice has been held that before violation of substantive provision is assailed any test of prejudice has to be established. It is contended that the aforesaid decision has not taken into consideration the decision of the Constitution Bench of 5 Judges which is per incuriam.

6. Repelling the doctrine of useless formality, it is stated that a recent decision of the Apex Court in **Divisional Manager, Plantation Division, Andaman & Nicobar Islands Vs. Munnu Barrick & Ors.** (2005(2)SLJ 99) non following of principles of natural justice though absence of prejudice is a good plea but the aforesaid law is oblivious and per incuriam to Olga's case.

7. Learned counsel stated that though Rule 15(1) of the Rules ibid provides for holding a preliminary enquiry and mandates the authorities to bring on record any document from DE file yet it has to be done after supplying copies to

the accused officer. In the above backdrop, it is stated that whether the preliminary enquiry report or PE statements are to be given to a police officer in the departmental enquiry were to be considered. There is no detailed procedure and the only procedure, which is supplemented by Standing Order No. 125 of Delhi Police issued by Joint Commission where Clause-2 deals with preliminary enquiry and it is mandated that previous statement of listed witnesses recorded during PE is to be given in advance for effective cross-examination.

8. Learned counsel to establish his plea relies upon a decision of the Delhi High Court in **Jug Raj Singh Vs. The Delhi Administration, Delhi and Others** (1970 SLR 400) and another decision of the High Court in **Ex. Constable Randhir Singh CRPF Vs. U.O.I. & Ors.** (1991(5)SLR 731) to buttress his plea.

9. On the other hand, respondents' counsel opposed the contentions and stated that when the statements are not relied upon, same are not to be served upon the applicant. It is stated that mistake of the applicant has been amply proved. Accordingly, for want of procedural infirmity, punishment imposed is commensurate with the allegations which are held to be proved.

10. On careful consideration of the rival contentions of the learned counsel for parties, at the outset it has to be borne in mind that principles of natural justice cannot be put in a straight jacket formula. As per Apex Court decision in **Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant & Ors.** (2005(1)SLJ SC 219) even if the principles of natural justice are not interpreted in any rule, it has to be read as part and parcel of rule being implicit in it.

11. In Delhi Police (Punishment & Appeal) Rules, 1980 though the rules are silent on the aspect of providing copies of PE statements to the delinquent official yet the Standing Order which is in no manner supplant the statutory rules under Rule 16 of the Rules ibid are supplemented mandates and ensures that previously recorded statements of witnesses in PE are made available in time for a government servant for cross examination. Right to effectively cross examination is a right to effectively defend and would be an accord of reasonable opportunity to the concerned.

12. Hon'ble High Court in **Jug Raj Singh's** case while dealing with the option issued held as follows:-

"5. The defence to this writ petition in its essence is (if I may put it my words) that the principles of natural justice prescribed the minimum of fair procedure which must be followed in such a departmental enquiry. Artificial rules of evidence are not included in this minimum. The minimum requirements of natural

justice are not to be extended by analogy either of the Evidence Act or of the Criminal Procedure Code, and, therefore, the departmental enquiry against the petitioner should be held to be in order inasmuch as on the whole a fair opportunity to defend himself was given to the petitioner. Reliance was placed on Suresh Koshy George v. University of Kerala, AIR 1969 SC 198, State of Mysore v. S.S. Makapur, AIR 1963 SC 375. The New Prakash Transport Co. Ltd. v. The New Suvarna Transport Co. Ltd., AIR 1957 SC 232, Nagendra Nath Bose v. Commissioner of Hills Division, AIR 1958 SC 398, and the oft quoted summing up of the rules of natural justice by the Supreme Court in Union of India v. T.R. Verma, AIR 1957 SC 882. The above decisions emphasize the fact that the rules of natural justice are not a rigid code and that they embody the minimum of the opportunity to defend himself which must be afforded to a person against whom punitive action is intended to be taken. Such rules naturally vary with the circumstances of each case and according to the statutory law and the rules applicable to it. It is to be noted, however, that the right to cross-examine the witnesses deposing against him is given to the person facing an inquiry even by the minimum of natural justice as laid down by the Supreme Court in T.R. Verma's case. In none of the above decisions a specific request for the supply of documents for the purpose of effective cross-examination had been made as was made in the present case - a fact which distinguishes them from the present one.

6. In dealing with the various decisions relating to the fair opportunity given to a person to defend himself before he is visited with an order having civil consequences, it has to be remembered that the scope of such opportunity would differ in different types of cases. On a review of these, it may be said that in India the scope of such opportunity is perhaps the widest when the conduct of a civil servant is examined with a view to punish him for misconduct. In Kishan Lal v. Collector of Land Customs, AIR 1967 Calcutta 80, a Division Bench of the Calcutta High Court sounded a salutary note of caution that natural justice was fast becoming an unnatural and artificial justice by which non-compliance with technicalities was being exploited to defeat the real justice. It was doubted in that case whether the formal cross-examination was an essential part of natural justice. That decision was not, however, concerned with a disciplinary inquiry against civil servants were distinguished therein on that ground. It would, therefore, be a fair statement of law to say that in a disciplinary inquiry against a civil servant, the right of effective cross-examination including the contradiction of witnesses examined in support of the charges is an essential part of the rules of natural justice. It would follow, therefore, that the petitioner was denied the right to defend himself in the present case firstly because the right of effective cross-examination by using the previous statements of Shri S.K. Sharma was denied to him contrary to the relevant Police Rules and secondly, because even apart from relevant Police Rules such a right is included in the minimum content of the rules of natural justice applicable to a disciplinary inquiry like the present one. The first contention of the petitioner,

therefore, succeeds and this finding is sufficient for the success of the writ petition.

(2) There is nothing to show on the record that the allegations against the petitioner amounted to the commission of a criminal offence by him. Therefore, compliance with the Police rule 16.38 was not necessary. I, therefore, negative his contention of the petitioner.

(3) The Inquiry Officer had the discretion under the relevant Police Rule mentioned above to refuse to examine any witnesses whose evidence be considered irrelevant or unnecessary. It is true that he simply refused to entertain the application of the petitioner for the examination of two defence witnesses. He did not specifically give reasons in terms of the rule for refusing to examine those witnesses. It is not shown, however, that he was bound to give such reasons. He was presumed to be aware of the discretion vested in him and his refusal to examine these two defence witnesses was, therefore, capable of being justified thereunder. I find, therefore, that this action of the Inquiry Officer did not vitiate the inquiry.

(4) The revisional powers of the Deputy Inspector General of Police supported the order passed by him remanding the case to the Superintendent of Police and directing him to correct his previous order in accordance with the relevant Police Rule. This did not amount to any dictation by him to the Superintendent of Police at all. This contention has, therefore, no force and is rejected.

(5) A perusal of the summary of the evidence on which the findings of the Inquiry Officer are based is sufficient to show that the findings are supported by evidence. The reduction in rank of the petitioner was not, therefore, unsupported by evidence."

13. Similarly, in Ex. Constable Randhir Singh's case, Hon'ble High Court observed as under:-

"3. On the other hand, it was submitted by the learned counsel for the respondent that adequate opportunity was given to the petitioner, inasmuch as witnesses were examined in his presence and their statements were recorded and read out to the petitioner and the petitioner had signed those

statements. Thus, it was not necessary to furnish copies of the statements of witnesses. Learned counsel submitted that it is not necessary to furnish the inquiry report because the rule which provided for furnishing the inquiry report has since been deleted from the Central Reserve Police Rules, 1955. It is, however, not disputed by the respondents that the respondents neither furnished the preliminary inquiry report nor the report given by the Inquiry Officer after the inquiry was concluded."

14. As regards statement of preliminary enquiry, though Delhi Police adopts the Government orders passed from time to time O.M. No. 134/7/75-AVD.I dated 11.7.1976 provides as under:-

"(27) Statement of witness recorded at the preliminary inquiry/investigation to be read out to him and got admitted as evidence – The present procedure followed in departmental inquiries held under the CCS(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 straightway taken on record as 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, 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 straightway. 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."

15. If one has regard to the above, the test of prejudice would not come into play, ^h or useless formality in a Constitution Bench in Olga's case observed as under:-

"Any discussion of this topic would be incomplete without reference to an important decision of this Court in S.L. Kapoor v. Jagmohan, (1981) 1 SCR 746, 766: (AIR 1981 SC 136 at p. 147). In that case, the supersession of the New Delhi Municipal Committee was challenged on the ground that it was in violation of the principles of natural justice since, no show cause notice was issued before the order of supersession was passed. Linked with that question was the question whether the failure to observe the principles of natural justice matters at all, if such observance would have made no difference, the admitted or indisputable facts speaking for themselves. After referring to the decisions in Ridge v. Baldwin, 1964 AC 40 at p. 69; John v. Rees, (1970) 1 Ch 345 at p. 402; Annamunthodo v. Oilfield Workers' Trade Union, (1961) 3 ALL ER 621 at p. 625(HL); Margarita Fuentes et al v. Robert L. Shevin, (1972) 22 Law ED 2d 556 at p. 574; Chintepalli Agency Taluk Arrack Sales Co-op. Society Ltd. vs. Secy. (Food & Agriculture) Govt. of A.P., (1978) 1 SCR 563 at 567, 569-70: (AIR 1977 SC 2312 at pp. 2316 and 2318 and to an interesting discussion of the subject in Jackson's Natural Justice (1980 Edn.), the Court, speaking through one of us, Chinnappa Reddy, J. said:

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of denial of natural justice is necessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced."

These observations sum up the true legal position regarding the purport and implications of the right of hearing."

16. If one has regard to the above, what is discerned is a binding precedent that no observation of natural justice i.e. deprivation of right of cross examination of one preliminary enquiry statements to the applicants when these witnesses had deprived them an effective opportunity not only to rebut the witnesses but to impeach his demeanor by way of confrontation with the earlier statements.

17. Accordingly, it is to be deemed that applicants have been denied an opportunity of effective cross examination which is an anti-thesis to the

principle of audi alteram partem and is in violation of principles of natural justice.

18. The Apex Court while dealing with the aforesaid issue in **State of U.P. Vs. Shatrughan Lal & Anr.** (JT 1998(6)SC 55) held as follows:—

"6. Preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the chargesheet. Before a person is, therefore, called upon to submit his reply to the chargesheet, 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.

10. It has also been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge sheet was drawn up. The copies of those statements, though asked for by the respondent, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice to the respondent in defending himself."

19. In the light of the above, non-supply of PE statements of witnesses to the applicants which were examined is a deprivation of applicants' right to effective cross examination which in the wake of natural justice is rather in breach of it and vitiates the enquiry as well as the punishment.

20. In the result, for the forgoing reasons, O.A. is partly allowed. Impugned orders are set aside. Applicants are entitled to all consequential benefits. However, if so advised, respondents are at liberty to proceed further in the enquiry against the applicants from the stage of furnishing them a copy of PE report as well as PE statements. No costs.

S. Raju
(Shanker Raju)
Member(J)

/vv/

V.K. Majotra
(V.K. Majotra)
Vice-Chairman(A)

1.9.08