

Central Administrative Tribunal, Principal Bench

O.A. No. 884/2004

New Delhi this the 17th day of November, 2004

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. Sarweshwar Jha, Member (A)

Head Constable Krishan Pal Rana
S/o Late Shri Ajab Singh
R/o C-1/64, Gali No.19,
Kajuri Khas, Shahdara,
Delhi-110 094.

.Applicant

By Advocate: Shri Rajeswar Singh.

Versus

1. Union of India
Through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Commissioner of Police,
Delhi Police Headquarters,
M.S.O. Building,, I.P. Estate,
New Delhi.
3. Joint Commissioner of Police
(New Delhi Range)
Delhi Police, Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
4. Deputy Commissioner of Police
(East),
Shalimar Park,
Delhi.

...Respondents

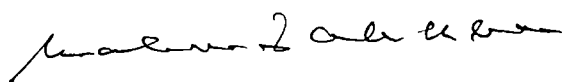
By Advocate: Shri George Paracken.

Shri George Paracken

ORDER (ORAL)**By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**

The applicant has filed this OA for setting aside of the order dated 9.4.2003 passed by the Joint Commissioner of Police, respondent No.3, by which the appeal filed by the applicant and one SI Ashok Kumar was dismissed. He is also assailing the order of the disciplinary authority, the Deputy Commissioner of Police, East District, Delhi, dated 31.1.2003 whereby the punishment of withholding of 2 increments for a period of 2 years with cumulative effect of postponing future increments was awarded to the applicant in a disciplinary proceeding conducted against the applicant in accordance with Rule 15 of Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Rules'). He further sought a direction that his name be removed from the Secret List of 'doubtful integrity' w.e.f. 31.1.2003 in the service record and other consequential relief.

2. Briefly the facts are, that the applicant, Head Constable Krishan Pal Rana, along with SI Ashok Kumar was posted at P.P. Old Seelampur within the area of P.S. Krishna Nagar, Delhi when on 7.11.2001 one Nizamuddin lodged a report about missing of his son Mobin aged about 7 years. It was alleged that applicant and SI Ashok Kumar did not take prompt action in the matter which resulted into the recovery of the dead body of Mobin. Disciplinary proceedings were initiated against the applicant, Krishan Pal Rana and his senior SI Ashok Kumar under Delhi Police (Punishment and Appeal) Rules. The imputation of charge served on the applicant was that the applicant and SI Krishan Pal Rana did not deal with the missing report with promptness which was needed and the applicant with mala fide intention to cover up his lapses continued to manipulate the record even after the dead body of the missing boy was recovered, by recording the DD

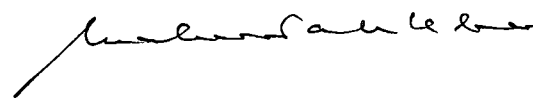


entry No.24 on 10.11.2001. The FIR No. 270 of 2001 under Section 363 IPC was registered at PS Krishna Nagar only on 10.11.2001 at 11.00 P.M. although the report of kidnapping was made on 06.11.2001. The delinquent official was accused of committing grave misconduct, omission and commission while performing his official duty which was unbecoming of a police officer and which was liable to be punished under the Rules.

3. The departmental enquiry was conducted by Mr. M.R. Ghosal, ACP against the applicant as well as SI Ashok Kumar. The Inquiry Officer exonerated the applicant as well as the co-delinquent SI Ashok Kumar of the charges. The disciplinary authority, the Deputy Commissioner of Police, East District, however, was in disagreement with the report of the Inquiry Officer, as a result he served a disagreement note (Annexure A-2) on the applicant on 11.12.2002 requiring him to submit his reply. The applicant submitted the reply on 21.12.2002 (Annexure A-3) and also requested the disciplinary authority to provide him a copy of the report of the Inquiry Officer in accordance with Rule 16 of the aforesaid Rules. Without supplying the report of the Inquiry Officer, the disciplinary authority rejected the representation of the applicant and held the Article of Charge proved against the applicant (as well as SI Ashok Kumar) and awarded the punishment of withholding of two increments for a period of 2 years with cumulative effect postponing the future increments by his order dated 31.1.2003 (part of Annexure A-1).

4. Feeling aggrieved, the applicant filed an appeal (Annexure A-4) assailing the order of the disciplinary authority which was dismissed by the Joint Commissioner of Police by order dated 16.4.2003 (Annexure A-1).

5. The applicant has challenged the order of the disciplinary authority and the appellate authority, aforesaid, mainly on the ground that there was no evidence or



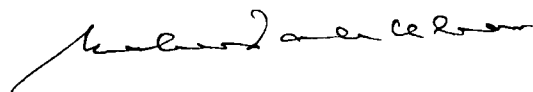
material for substantiating the allegations made against him. The copy of the enquiry report was not supplied by the disciplinary authority in spite of the applicant's making a specific request for it as such Rule 16(xii) of the Rules has not been complied with. In the disciplinary proceedings conducted against co-delinquent SI Ashok Kumar he was also awarded a similar punishment by the disciplinary authority and the appeal filed by him was also dismissed. He had challenged the orders of the disciplinary and the appellate authority in OA No.1326/2003 on identical ground, which has been partly allowed and the orders of the disciplinary and appellate authority have been set aside. The applicant is also entitled to be treated with equality.

6. The respondents has contested the OA. They have justified the orders of the disciplinary authority and the appellate authority by which they have held the Article of Charge proved against the applicant and have awarded the punishment to the applicant. However, it was not denied that co-delinquent SI Ashok Kumar had filed OA assailing the orders of the disciplinary and the appellate authority holding him guilty of the charge and this Tribunal by order dated 24.10.2003 had set aside those orders for non-compliance with Rule 16(xii).

7. We have heard the learned counsel for the parties at length and have also gone through the record.

8. Rule 16(xii) of Delhi Police (Punishment and Appeal) Rules, 1980 provided that 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:-

“Furnish to the accused officer free of charge, a copy of the report of the Inquiry Officer, together with brief reason for disagreement note, if any, with the findings of the Inquiry Officer”.



9. The Inquiry Officer has exonerated the applicant of the charge holding that the guilt of the delinquent was not established. The disciplinary authority, however, was in disagreement with this finding of the Inquiry Officer. Accordingly, he recorded a disagreement note (Annexure A-2) and served it on the applicant calling upon him to submit his reply. He did not send the copy of the report of the Inquiry Officer with the disagreement note despite the applicant making request for its supply. The disciplinary authority, as such, failed to obey the mandate of Rule 16 (xii) of the Rules.

10. The Supreme Court in *Yoginath D. Bagde Vs. State of Maharashtra*, 1989 SCC (L&S) 1385 had observed that in case the disciplinary authority disagrees with the findings of the Inquiry Officer, it is incumbent upon him to record a disagreement note, serve it on the charged employee with a copy of the enquiry report so as to provide an opportunity of hearing to the delinquent. It was also held that the principles of natural justice are enshrined in the disciplinary rules and even where the rules do not specifically require the supply of the copy of the enquiry report and the disagreement note, an opportunity of hearing has to be provided. The Hon'ble Supreme Court in *Yoginath D. Bagde Vs. State of Maharashtra and Another* (supra) has made the following observation on this question:-

“ 28. In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that

Yoginath D. Bagde

the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, 'an opportunity of hearing' may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be 'not guilty' by the Inquiring Authority, is found 'guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of 'not guilty' has already been recorded".

11. Three Judges Bench of the Hon'ble Supreme Court in **Punjab National Bank and Others Vs. Kunj Behari Mishra JT 1998 (5) SC 548** relying upon the earlier decision of the Apex Court in **State of Assam Vs. Bimal Kumar Pandit, AIR 1963 SC 1612, Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, JT 1986 SC 671** and a Constitutional Bench decision in **Managing Director, ECIL, Hyderabad and Others Vs. B. Karunakar and Others, JT 1993 (6) SC 1** and the decision in **Ram Kishan Vs. Union of India, JT 1995 (7) SC 43** has held as under:-

"29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of

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charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of 'hearing' in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the 'tentative' reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of 'not guilty' already recorded by the Inquiring Authority was not liable to be interfered with".

12. As held by the Hon'ble Supreme Court in the above cited cases, in case the Disciplinary Authority disagrees with the findings recorded by the Inquiry Officer in his report, it is incumbent upon him to provide a copy of the inquiry report and findings of the Inquiry Officer with disagreement note to the charged official, notwithstanding the Service Rules do not specifically provide for it, before recording his own findings. Principles of natural justice are enshrined in the Disciplinary Rules even where providing an opportunity of hearing is not specific requirement of the Rules at this stage of the proceedings.

13. But in the instant case Rule 16(xii) of the Rules specifically required the disciplinary authority to supply copy of the report of Inquiry Officer, disagreement note and the findings of the Inquiry Officer to the delinquent official before he took a

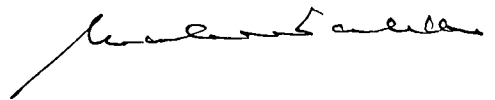
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decision. Failure to supply the documents in accordance with abovementioned Rule results in not only contravention of the mandate of the Rules but it is also a denial of an opportunity of hearing to the charged official consequently a violation of the principles of natural justice.

14. In the instant case non-supply of the copy of the enquiry report and the disagreement note with the findings of the Inquiry Officer is a clear contravention of Rule 16(XII) of the Rules. It also violates the principles of natural justice since reasonable opportunity of hearing, which is enshrined in the said Rules, has not been provided to the applicant by withholding the report and findings of the Inquiry Officer from the delinquent.

15. The order of the disciplinary authority as well as the appellate order, impugned in the OA, are vitiated and cannot be sustained.

16. Moreover, the co-delinquent SI Ashok Kumar, against whom disciplinary proceedings were held on the identical charge, was also exonerated by the Inquiry Officer but the disciplinary authority after serving a disagreement note on him, without furnishing a copy of the report Inquiry Officer and the findings recorded by him had held the charge established against the charged officer and had awarded him punishment similar to the punishment which had been awarded to the present applicant. The appeal preferred by SI Ashok Kumar assailing the order also failed. The delinquent then challenged the orders of the disciplinary authority and the appellate authority by filing OA No.1326/2003 on the same grounds, which have been set up by the applicant in the OA for challenging the impugned orders. This Tribunal holding that the reasonable opportunity of hearing has not been provided to the applicant and Rule 16 (Xii) of the



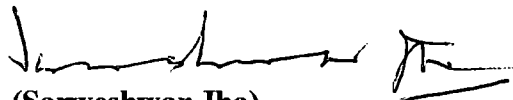
Rules has not been followed, partly allowed the OA by passing the following order on 24.10.2003 (Annexure -5):-

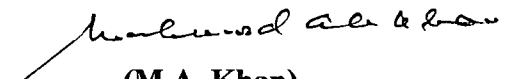
“ In the result, for the foregoing reasons, the OA is partly allowed. Impugned orders are quashed and set aside. However, this shall not preclude the respondents, if so advised, to take up the proceedings from the stage of supplying a copy of the findings of the enquiry officer to the applicant and to complete the proceedings in accordance with rules and instructions. No costs”.

17. The case of the applicant and the respondent in their respective OA and their counter give rise to the determination of the same question, which was raised and decided by this Tribunal in the above mentioned order. The imputation of charges against the applicant in the instant case and SI Ashok Kumar applicant in OA 1326/2003 were identical. The disciplinary proceedings were conducted and the Inquiry Officer exonerated them and returned a finding that the article of charge was not proved against them. The disciplinary authority, however, recorded a disagreement note, served it on both the delinquent officials and invited their representation without supplying the copy of the enquiry report and the findings of the Inquiry Officer. The disciplinary authority disagreeing with the findings of the Inquiry Officer held the imputation of charge against both the applicant and SI Ashok Kumar having been established by the available evidence. Disciplinary authority imposed similar penalty on both of them. Their appeal was also dismissed. SI Ahsok Kumar field OA challenging the orders of the disciplinary authority and the appellate authority on the grounds similar to the grounds pleaded in the present OA and this Tribunal disposed it off by an order, which has been reproduced above. The applicant and SI Ashok Kumar, as such, are similarly placed persons and they are entitled to be treated with equality. The counsel for the applicant has also submitted

that the instant OA may also be disposed off by an order similar to the order passed in OA 1326/2003. We have no reason to disagree with it.

18. Accordingly, for the reason stated above, we allow the OA partly. Orders of the disciplinary authority dated 30.1.2003 and the appellate authority dated 9.4.2003 (cumulatively marked Annexure A-1) are set aside. But it will be open to the respondent to start disciplinary proceedings from the stage of supplying a copy of the findings of the enquiry officer to the applicant and giving him reasonable opportunity of hearing in accordance with Rules and law. The parties are left to bear their own costs in the peculiar facts and circumstances of the case.


(Sarweshwar Jha)
Member (A)


(M.A. Khan)
Vice Chairman (J)

Rakesh