

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 271/92

Date of decision: 14.12.92

Dharam Pal

..Applicant.

Versus

C.P.Delhi & others

.. Respondents.

Sh.Shankar Raju

.. Counsel for the applicant.

Sh.Makhan Singh S.I.

.. Departmental representative for
the respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J).

The Hon'ble Sh.I.P.Gupta, Member(A).

J U D G E M E N T

(Delivered by Hon'ble Sh.Justice Ram Pal Singh, V.C.(J)

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying therein for quashing the impugned order dated 19.4.91 (annexure D), by which penalty of removal from service against the applicant has been passed by the disciplinary authority. He has also prayed for quashing the appellate order dated 12.9.91, by which his appeal has been rejected by the appellate authority. He also prays for quashing the entire departmental proceedings with consequential benefits.

2. The applicant is a Constable in Delhi Police and on 28.6.90 he was detailed on duty on departmental motorcycle for patrolling alongwith Homeguard Constable Dath Prakash, by Police Station, Parliament Street . At about 8.00 P.M. he is alleged to have stopped a Maruti Car of one Jasbir Singh near Gaffar Market, Karol Bagh, New Delhi in which the Driver of that Maruti^{car} was also having the company of two ladies. The applicant is alleged to have asked the said driver to serve him.

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But after accepting an illegal gratification of Rs.70/- from Jasbir Singh, the applicant Constable is said to have released that Maruti Car and the driver. It is at this moment it is also alleged that his companion Homeguard Constable took away a gold ring weighing 9.200 gms. The applicant was charged for that alleged offence and the enquiry officer submitted his report to the disciplinary authority. The disciplinary authority on 19.4.91 passed impugned order (Annexure D) in which he accepted the findings of the enquiry officer and awarded the above noted punishment. The applicant preferred an appeal and the appellate authority, on 12.9.91, passed the appellate order. Thus both the orders are under challenge in this O.A.

3. On notice the respondents appeared and filed their counter controverting the grounds taken by the applicant. We have heard in great detail the learned counsel for the applicant, Sh.Shankar Raju and Sh.Makhan Singh, S.I. Departmental representative of the respondents. The main thrust of the learned counsel for the applicant is that before the enquiry started a preliminary enquiry was held and in that preliminary enquiry the statements of the witnesses were recorded. But the same was read in evidence without affording him an opportunity to confront the witnesses examined during the enquiry. We have perused the record. On perusal of the enquiry report and also the Annexure 'D', passed by the disciplinary authority, we have noted ^{that} the statements recorded during the preliminary enquiry were not read in evidence by the disciplinary authority nor the enquiry officer passed his findings on the statements of the prosecution

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witnesses recorded during the preliminary enquiry. It was the appellate authority who has mentioned in para 4 of the judgement that " the allegations levelled against the appellant by the complainant were fully substantiated during P.E." Thus neither the enquiry report nor the orders passed by the disciplinary authority can be said to ^{have} suffered from any legal infirmity. The enquiry officer as well as the disciplinary authority have rely upon the complaint filed by the complainant Jasbir Singh after the commission of the offence. Jasbir Singh, during the enquiry had turned hostile and resiled from his written complaint. But during the enquiry he was confronted and ^{he} admitted that he had filed a written report after the alleged commission of the offence. The enquiry officer and the disciplinary authority have not considered the previous statement of Jasbir Singh which was recorded during the preliminary enquiry. Preliminary enquiry is held under the provisions of rule 15 of Delhi Police (Punishment and Appeal Rules, 1980) and its sole purpose is of a fact finding enquiry. The said rule is reproduced for convenience:

"15. Preliminary enquiries. (1) A Preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter, (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally precede a departmental enquiry.

(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

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of the Addl. Commissioner of Police concerned as to whether a Criminal case should be registered and investigated or a departmental enquiry should be held.

(3) The suspected Police Officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witnesses. 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 no 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".

4. Thus, if the enquiry officer or the disciplinary authority wants to read that statement it has to follow the provisions contained in Rule 15. As the enquiry officer and the disciplinary authority have not used that statement of Jasbir Singh, which was recorded during the preliminary enquiry, their recommendations/findings cannot be said to be against the law. It is the appellate authority which has used the previous statement of Jasbir Singh during the preliminary enquiry without affording an opportunity to the applicant, which is described in Rule 15. We, therefore, quash the appellate order dated 12.9.91 and direct the appellate authority to pass a fresh order according to law and also consider all the grounds taken by the applicant in the memorandum of appeal, after affording an opportunity of being heard to the applicant. The appellate authority is further directed to pass a speaking order within a period

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► of three months from the date of receipt of a copy of this judgement. However, the applicant shall be at liberty, if he is aggrieved by the appellate order, to file a fresh O.A. raising all those grounds which have been raised in this O.A. The O.A. is thus disposed of with the above directions with no order as to costs.

I.P. Gupta
(I.P.GUPTA) 14/12/92
MEMBER(A)

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN(J)