

Central Administrative Tribunal
Principal Bench.

(15)

O.A. No. 134/92
&
O.A. No. 49/92

New Delhi this the 5 th day of November, 1996.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hon'ble Mr. R.K. Ahooja, Member(A).

O.A. 134/92.

Kushpal Singh (1050/E),
Ex. Constable,
S/o Shri Man Behari Prashar,
House No. 128, Gali No. 4/2,
Karawal Nagar Extn.,
Delhi-110094.

..Applicant.

By Advocate Shri Shyam Babu.

Versus

1. Delhi Administration, Delhi,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.
2. Addl. Commissioner of Police,
(New Delhi Range), Police
Headquarters, I.P. Estate,
New Delhi-110002.
3. Deputy Commissioner of Police,
(East District),
Delhi. ..Respondents.

By Advocate Shri Girish Kathpalia.

O.A. 49/92.

Rashpal Singh (28/E),
Ex. Head Constable,
S/o Shri Ran Singh,
R/o Qr. No. H-18, Police Station
Mandir Marg,
New Delhi.

..Applicant.

By Advocate Shri Shyam Babu.

Versus

1. Delhi Administration, Delhi
through its Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.

19/11

(16)

2. Addl. Commissioner of Police,
(New Delhi Range), Police
Headquarters, I.P. Estate,
New Delhi.

3. Deputy Commissioner of Police,
(East District),
Delhi. .. Respondents.

By Advocate Shri Amresh Mathur.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

These two cases have been taken up together for hearing as the facts and issues involved are the same and as such they are being disposed of by a common order. For the sake of convenience, the facts and issues in O.A. 134/92 are given below:

O.A. 134/92.

2. The applicant is aggrieved by the order dated 27.8.1991 by which he was dismissed from service and the appellate order rejecting his appeal dated 17.12.1991. He has, therefore, filed this application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the impugned orders as well as the Inquiry Report dated 29.4.1991.

3. The brief facts of the case are that the applicant was proceeded against in a departmental inquiry. The allegations made against him were that while he and Head Constable Rashpal Singh were on Motor Cycle patrolling duty on the night of 30/31.7.90, they intercepted a TSR near Jheel at about 2.00 A.M. in the area of P.S. Krishna Nagar and extorted Rs.100/- from Shri Hukam Chand Jain who was carrying a tin of Mustard Oil in the TSR on the pretext of arresting

18

him. On the above acts, the applicant was charged with grave misconduct, unbecoming of a police officer and dereliction in the discharge of his duties and he was proceeded departmentally u/s 21 of the Delhi Police Act, 1978. The respondents placed the applicant under suspension immediately by the order dated 4.9.1990. The Inquiry Officer in his report came to the conclusion based on the testimony of the Prosecution Witnesses and the Defence Witnesses that the charge levelled against the applicant stands proved.

4. The applicant has submitted that the preliminary inquiry had been conducted when he was not present and as such no opportunity was given to him to cross examine the witnesses. According to the applicant, there was no evidence on record to the effect that he and Head Constable Rashpal Singh while on patrolling duty intercepted a TSR and extorted Rs.100/- from one Shri Hukam Chand Jain who was carrying a tin of Mustared Oil in the TSR on the pretext of arresting him. Shri Shyam Babu, learned counsel for the ^{the} applicant, submits that if there was extortion, ^{as alleged} it disclosed a commission of the cognizable offence by the applicant. As such, no departmental inquiry could have been ordered against him without obtaining the prior approval of the Addl. Commissioner of Police under Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Rules'). The learned counsel has submitted that as disclosed in the reply filed by the respondents, no approval had been taken as required under Rule 15(2) of the Rules. In the

reply, the respondents have submitted that as the vigilance inquiry has already been perused by the Addl. Cs.p/N.D.R. and Law and Order who had ordered to initiate the departmental inquiry against the applicant, there was no need to obtain fresh approval under Rule 15(2) of the Rules. He also relies on Rule 16(iii) of the Rules.

5. The second ground taken by the learned counsel for the applicant is that as can be seen from the impugned punishment order the statement of witnesses given during the preliminary inquiry had been relied upon by him which is impermissible under Rule 15(3) of the Rules.

6. The third ground taken by the learned counsel for the applicant is that there has been violation of the provisions of Rule 16(i) of the Rules. He alleges that under this Rule, the Inquiry Officer has to be appointed by the disciplinary authority whereas, as seen from the order passed by the Addl. Deputy Commissioner of Police (East District), Delhi dated 19.9.1990, the departmental inquiry has been ordered by him against the applicant and Head Constable Rashpal Singh to be conducted by an officer nominated by an officer of DE Cell. According to the learned counsel for the applicant, this would mean that there are two disciplinary authorities which cannot be so under the Rules. He submits that the DCP/DE Cell who has appointed the Inquiry Officer, as seen from the order dated 19.1.1990, has not been properly appointed as only the DA can appoint the Inquiry Officer in accordance with Rule 16(i) of the Rules. Further to the order

19

dated 19.9.1990 of the East District, by order dated 9.10.1990 the Inquiry officer was appointed /against the applicant and Head Constable Rashpal Singh. He also relies on the following judgements:

- (i) **Delhi Administration Vs. Chanan Shah**, 1969 SCR (3) 653.
- (ii) **Jagan Nath Vs. Senior Suerintendent of Police, Ferozepore & Ors.**, AIR 1962 Punjab 38.
- (iii) **Sarup Singh Vs. State of Haryana & Ors.**, 1984(1) SLJ 258 (P&H).
- (iv) **Union of India Vs. Ram Kishan**, 1972(Vol.7) SLR 11.
- (v) **Manihar Singh Vs. Supdt of Police, United Khasi-Jaintia Hills, Shillong and Ors.**, AIR 1969 (Assam) 1.
- (vi) Tribunal's judgements in O.As 1152/91 & 1788/91. The applicant has, therefore, submitted that the impugned orders are arbitrary and not based on the facts and rules and he has, therefore, sought a direction to quash the same.

7. The respondents have filed their reply controverting the above allegations. They have submitted that the impugned dismissal order and the appellated order have been passed in accordance with the rules and based on the evidence before the Inquiry Officer which has been fully proved. Shri Girish Kathpalia, learned counsel for the respondents, has also been heard.

8. The reply to the ^{first} ground has already been referred to in para 4 above. Regarding the second ground Shri Girish Kathpalia, learned counsel, had referred to the inquiry report (page 63 of the paper book) in which it has been stated that PW-I, Shri Hukam Chand Jain, had recorded his statement Ex.PW-1/A which he has stated to be correct and bore his signatures.

He further submitted that the applicant/defaulter had also examined this witness and, therefore, there was no infirmity as regards the provisions of Rule 15(3).

9. On the third ground, the respondents have submitted that in accordance with Rule 4 of the Delhi Police (Appointment and Recruitment) Rules, 1980, the DCP, Addl. DCP or any other officer of equivalent rank is the appointing authority. They have further submitted that in accordance with S.O. No. 290 since the allegations against the applicant had a vigilance angle, the departmental cell could inquire into it. Therefore, the DE was entrusted to that Cell and there was, therefore, compliance with the rules.

10. We have carefully considered the above arguments of the learned counsel and the records.

11. Rule 15 of the rules reads as follows:

"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(s), (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 straight-away. In all other cases a preliminary enquiry shall normally proceed a departmental enquiry.

(2) In cases in which a preliminary enquiry disclose 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 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 during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer.

11. In this case, the respondents have submitted that the Addl. Commissioner of Police had after perusal of the ~~affixx**~~ vigilance enquiry ordered that the departmental inquiry should be instituted against the applicant. In the facts and circumstances of the case, it cannot, therefore, be stated that Rule 15(2) has been violated inasmuch as the DE proceedings have been initiated only after obtaining prior approval of the Addl. Commissioner of Police.

12. The impugned punishment order of dismissal dated 27.8.1991 refers to the examination done by the disciplinary authority of the relevant evidence on DE file and the contentions raised in the written reply which he has discussed as follows:

"That there is no evidence on DE file to prove that they intercepted the TSR & extorted Rs.100/- from Shri Hukam Chand.

- This contention of the defaulters is totally wrong and denied. Sh. Hukam Chand clearly stated in his statement during PE that the TSR was intercepted by the defaulters and they extorted Rs.100/- from him. However, he resiled from his earlier statement as he has been won over by the defaulters."

13. The above shows that the disciplinary authority has relied on the preliminary enquiry statement given by Shri Hukam Chand Jain in arriving at his decision. It is also evident from the Inquiry Officer's report that Shri Hukam Chand Jain has been examined as PW-1 and also cross-examined by the applicant. The statement recorded in the preliminary enquiry, Ex.PW-1/A has also been referred to by the Inquiry Officer.

14. A mere perusal of Rule 15(3) of the Rules shows that the file of the preliminary enquiry shall not form part of the departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. The facts narrated above show, therefore, that while the witness Shri Hukam Chand Jain was very much available at the time of the departmental proceedings, not only the Inquiry Officer relied on preliminary but also the disciplinary authority have/enquiry statement.

In a similar case Rishi Pal Vs. Delhi Administration and Ors. (O.A. 1152/91), decided on 3.7.1995, this Tribunal has held as follows:

(23)

"This sub-rule (R.15(3) specifically provides that the file of preliminary enquiry shall not form part of the formal disciplinary enquiry but statements therefrom may be brought on the record of the disciplinary proceedings when the witnesses are no longer available. From this, it would appear that the statements of witnesses recorded during preliminary enquiry may be brought on the record of the disciplinary proceedings only when the said witnesses are no longer available. The inquiry officer is empowered to bring on record other documents also from the file of preliminary enquiry if he considers it necessary. However, these documents can be brought on record of the disciplinary proceedings only after supplying copies to the delinquent officer."

15. In another case also arising out of Rule 15(3) of the Rules, i.e. Jai Singh Vs. Delhi Administration and Ors. (O.A. 1788/91), decided on 31.8.1995, the Tribunal has further held that where the statements of certain prosecution witnesses were not admissible under sub-rule (3) of Rule 15 and could not be relied upon by the Inquiry Officer, the fact that the applicant cross-examined them in no way wipes out the irregularity.

16. Having regard to the facts and circumstances of the case and the aforesaid decisions of the Tribunal as also the provisions of Rule 15(3), the Inquiry Officer could not have brought on record the statement given by Shri Hukam Chand Jain in the preliminary enquiry as part of the record of the departmental proceedings as Shri Jain was very much available at the time of the enquiry. Merely because the respondents tried to show that the applicant was afforded opportunity to cross

12

(24)

examine the witness does not permit the Inquiry Officer or the disciplinary authority to make the statement as part of the departmental proceedings or rely upon the same. We, therefore, find justification in the submissions made by the learned counsel for the applicant that the respondents have conducted the departmental proceedings in violation of the statutory rules contained in Rule 15 and 16(iii) of the Rules and these O.A.s are liable to succeed.

17. Having regard to the provisions of Rule 4 of the Delhi Police (Appointment and Recruitment) Rules, 1980, we do not agree with the submissions made by the learned counsel for the applicant that the Inquiry Officer has not been properly appointed by the disciplinary authority or that there are, in fact, two disciplinary authorities. The judgement in Manihar Singh Vs. Supdt. of Police & Ors. (Supra), relied upon by the applicant will not assist him as the question of delegation of power does not arise in the present case. The other cases relied upon by the applicant deal with Rule 16.38 of the Punjab Police Rules and, therefore, do not appear to be relevant.

18. In the recent decision of the Supreme Court in State of Punjab & Ors. Vs. Dr. Harbhajan Singh Greasy (1996(4) Scale 195), the Supreme Court has held that it is now well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits/^{but} the matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. It was further

18

25

AL

held that pending enquiry, the delinquent must be deemed to be under suspension.

19. In view of the above, both the applications (O.As 134/92 and 49/92) are allowed and the order of punishment passed by the Deputy Commissioner of Police, East District, Delhi dated 27.8.1991 as also the appellate order passed by the Addl. Commissioner of Police dated 17.12.1991, are quashed and set aside. However, the case is remitted to the disciplinary authority to conduct the disciplinary proceedings against the applicants in accordance with the rules keeping in view the observations made above. This inquiry shall be completed within a period of three months from the date of ^{receipt of a copy of} copy of this order. The disciplinary authority shall also immediately pass the order regarding consequential benefits after completion of the inquiry in accordance with law. Pending enquiry, the applicant shall be deemed to be under suspension.

There is no order as to costs.

(R.K. Ahuja)
Member (A)

'SRD'

(Smt. Lakshmi Swaminathan)
Member (J)

Attested

Kishan
5/1/96
COL-C-II