CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 685 of 1992

New Delhi this the 29th day of May, 1998

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HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Pramod Kumar
R/o Village Bachhaur
PO Chaparauli PS Chaprauli
District Meerut UP. .Applicant

By Advocate Mrs. Avnish Ahlawat.

Versus

1. The Delhi Administration
through its Chief Secretary,
Old Secretariat,
Delhi.

2. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi. ..Respondents

Shri S.K. Gupta, proxy counsel for Shri B.S. Gupta,
Counsel for the respondents.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant challenges the impugned orders of the disciplinary authority dismissing him from police service after departmental enquiry and the appellate order rejecting his appeal. He also challenges the vires of Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980, as being unconstitutional. It is stated that the applicant was proceeded against on the basis of the charge that on 1.11.1990 when he was in the parade of the Company No.6 of the Ist Bn. DAP, he fell out from the platoon without any permission and started smoking a cigarette and on being directed not to smoke cigarette in the parade ground, he did not pay heed to the order of the Head Constable not to smoke and to join the platoon for the parade. As he continued smoking, he was again

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directed by another Head Constable of another Company not to fall prey to the habit of smoking while on parade. He was charged that while he continued smoking, he became furious and abused the Head Constable and used filthy language against him and also manhandled and threatened him with dire consequences. After the enquiry, the Inquiry Officer returned the finding that the charge against the applicant was proved, which was accepted by the disciplinary authority resulting in the impugned orders.

2. Applicant challenges the impugned orders mainly on the ground that he was not served with any show cause notice as required in Rule 16(X) of the Delhi Police (Punishment & Appeal) Rules, 1980 and that there was no evidence of his misconduct and that the punishment imposed was disproportionate to the alleged misconduct if at all and that no copy of the findings of the Inquiry Officer was given to him which was in violation of the principles of natural justice. The applicant also alleges that on the same day several other Constables were also smoking during the break provided in the parade and that there was no misconduct, as such, on which he could be dismissed from service. The other grounds taken by the applicant are that the Inquiry Officer had given a totally perverse finding and he was not given proper opportunity for defence. He also submits that the procedure prescribed under Rule 16 is contrary to the CCS (CCA) Rules, 1965 which provide for proving the charge by the prosecution after framing of the charge whereas under the Delhi Police Rules, the charged official is asked to

disprove the charge which is in contravention of the provisions of Section 21 of the Delhi Police Act and Articles 14, 16 and 311 of the Constitution. Another ground taken by the applicant is that the Inquiry Officer himself has acted as a prosecutor inasmuch as he has cross-examined the defence witnesses which he has no authority to do.

3. On the aforesaid grounds, the applicant prays for quashing the impugned orders and also seeks a declaration that Rule 16 of the Delhi Police (Punishment and Appeal) Rules, 1980 is ultra vires of the constitution as it does not provide for minimum facility of defence assistant in the rules for purposes of effective defence and the prosecution charge is to be disproved by the charged official instead of the charge being proved by the prosecution.

4. The respondents have contested all the grounds taken by the applicant. It is stated that the enquiry was conducted strictly in accordance with the provisions of the rules and the Inquiry Officer had rightly held that the charge against the applicant was proved in view of the statements given by the PW-2, PW-3, PW-4. The applicant was allowed the necessary facility of cross examining the prosecution witnesses. He did not avail of the same and signed the daily statements of the enquiry. The deposition of defence witnesses was also duly taken into account. The respondents contend that it was clear from the statements of PW-2, PW-3, PW-4 particularly PW-2

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who was in-charge of the platoon that the applicant fell out from the platoon and started smoking cigarette and did not obey the orders of the Head Constable and charged that he abused another Head Constable Dharambir Singh PW-4 in a filthy language was also proved as per the evidence.

5. We have heard the learned counsel for the parties and have perused the record before us including the relevant record of the departmental enquiry.

6. The main point stressed by the learned counsel for the applicant is that in this case the applicant being a Constable, he was pitted against the senior officers of the department. The Enquiry Officer himself was Assistant Commissioner of Police and the applicant was not provided with the Defence Assistant to effectively cross-examine the witnesses. The learned counsel pointed out that the procedure outlined in Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 is at variance with the procedure outlined in the CCS (CCA) Rules, 1965, inasmuch as the Delhi Police Rules have clearly violated the principles of natural justice. Effective defence opportunity is not provided to the lower subordinate officials of the police department as the rules do not provide for his engaging a defence assistant particularly when he is to defend against the senior officer who are appointed as Enquiry Officer or where the prosecution witnesses are also senior officers, and he is handicapped to the extent that he is liable to

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be overheard by their presence and it is all the more necessary in these circumstances that the rules should have provided for giving assistance to the delinquent official to engage the defence assistant as is available under the CCS (CCA) Rules, 1965.

7. We are unable to appreciate this argument. On a careful perusal of Rule 16, as outlined in the Delhi Police (Punishment & Appeal) Rules, 1980 it cannot be said that this Rule falls short in the matter of providing adequate opportunity of proper defence to the delinquent officer. At every stage of the enquiry, due opportunity is provided to the delinquent official for his defence.

8. In the light of the aforesaid detailed procedure it cannot be said that the prescribed procedure, prima facie, suffers from any infirmity or in violation of the principles of natural justice. Although, there is no specific provision for the accused officer to engage the defence assistant, the respondents have averred that although Rule 16 is silent in regard to the provision of a defence assistant to the charged official, if the applicant wanted to engage the defence assistant, he should have asked the Enquiry Officer in writing. Having failed to do so, he cannot raise this as a ground of denial of opportunity. We are of the view that the opportunity of asking for a defence assistant is always inherent in the procedure and it is for the charged officer to seek such a facility and only if it is denied,

there can be a grievance on this account. This does not, however, imply that the facility has been denied to the delinquent official.

9. We have perused the proceedings of the enquiry and we find that the applicant had participated fully in the enquiry and has also cross-examined the prosecution witnesses. The defence witnesses named by him have also been examined in full.

10. There is also no merit in the contention of the applicant that the rules provide that only the accused officer has to disprove his charge instead of prosecution proving the charge. It is provided specifically that the Enquiry Officer after recording all the prosecution and defence evidence and appraising the same should proceed to record the finding and then forward his case with his finding on each of the charges together with the reasons therefor to the disciplinary authority. In view of this it cannot be stated that the onus of disproving the charge lies only on the accused officer and the prosecution does not have to prove the charge.

11. In regard to the applicant's contention that he was not served with any show cause notice as required under the rules, we find that the applicant was duly served with the notice and the copy of the Enquiry Officer findings was also served on him and he was

directed to submit his representation, if any, within 15 days. From this it would appear that the respondents have served the show cause notice on the applicant and, therefore, his contention is not tenable.

12. From the facts and circumstances of the case and the records of the disciplinary proceedings, it is well established that the enquiry has been conducted according to the prescribed procedure and due opportunity has also been provided to the applicant for his defence. We are, therefore, unable to conclude that there has been any infirmity in the disciplinary proceedings and that the decision making process has been vitiated. We also do not agree that the rules prescribed for this purpose are violative of the provisions of Articles 14, 16 and 311 of the Constitution.

13. In the departmental enquiry Courts and Tribunals cannot sit as a courts of appeal and they cannot also reappraise the evidence. It is a well settled law that so long as the the decision making process has not been vitiated, the Courts and Tribunals cannot interfere with the orders of the disciplinary authority. We only have to refer to these cases: Union of India Vs. Upendra Singh, JT 1994(1) SC 658; Government of Tamil Nadu Vs. Rajapandian, AIR 1995 SC 561 and B.C. Chaturvedi VS. Union of India & Others, JT 1995(8) SC 865. In H.B. Gandhi, Excise and TAxation Officer Vs. Gopinath and Others, 1992 Supplementary 1(2) SCC 312, the Apex Court had held that 'it would be erroneous to think that Courts

sit in judgment not only on the correctness of the decision making process, but also on the correctness of the decision itself". Regarding the contention that the punishment of dismissal is disproportionate to the charge and is very harsh, we are guided by a recent decision of the Apex Court in Union of India and Another Vs. G. Ganayutham, JT 1997(7) SC 572, wherein it is held that unless the Court/Tribunal opines that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. We are of the considered view that in this case it cannot be said that the disciplinary/appellate authorities were irrational in the punishment imposed by impugned orders according to the Wednesbury or CCSU norms and, therefore, there is no ground for quashing the impugned orders.

14. In the conspectus of the above discussion, we see no merit in the application and it is accordingly dismissed. There shall be no order as to costs.

(DR. A. VEDAVALLI)
MEMEBR (J)

(K. MUTHUKUMAR)
MEMBER (A)

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