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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 981/1992

Date of decision: 29.04.1993

Shri Ramesh Chand

...Applicant

Versus

The Deputy Commissioner of Police

...Respondents

For the Applicant

...Shri Shanker Raju, Counsel

For the Respondents

...Shri Anoop Bagai, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. S.R. ADIGE, ADMINISTRATIVE MEMBER

1. To be referred to the Reporters or not? 45

JUDGMENT (ORAL)

(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman(J))

The petitioner was subjected to disciplinary proceedings. The Inquiry Officer after recording the findings etc. submitted a report to the punishing authority (the Deputy Commissioner of Police). The Deputy Commissioner of Police on 26.03.1992, issued a show cause notice to the petitioner calling upon him to explain as to why he should not be dismissed from the Police Force and his suspension period from 21.05.90 onward be decided as period not spent on duty. At that stage, this application was filed.

2. On 08.03.92, this Tribunal passed an interim order that the respondents shall not proceed with the show cause notice dated 26.03.92 proposing to dismiss the petitioner from service.
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3. A reply has been filed on behalf of the respondents Counsel for the parties have been heard.

4. In the forefront, the submission advanced is that the Deputy Commissioner of Police intends to make use of the evidence recorded in the preliminary enquiry. The submission is that this is not permissible under the Delhi Police (Punishment & Appeal) Rules, 1980 and, therefore, the officer concerned should be restrained from making use of such statements.

5. There is force in the arguments advanced on behalf of the petitioner. Rule 15(3) enjoins, inter alia, that the file of the preliminary enquiry shall not form part of formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There is, however, no bar to the Enquiry Officer to bring on record any other documents from the file of the preliminary enquiry, if he considers it necessary.

6. On a perusal of the impugned notice, it transpires that the Deputy Commissioner of Police intends to make use of the statement of witnesses recorded in the preliminary enquiry. There is no indication in the notice that the statement of some witness recorded in the preliminary enquiry and who ^{were} not available in the departmental enquiry, is sought to be utilised. In Rule 15(3) a distinction is drawn between the statement of witnesses and any other documents. Therefore, the statement of a witness cannot be considered to be a document. It follows that Rule 15(3) by necessary implication prohibits the use of the statement of a ^{recorded} witness in the preliminary enquiry, if he deposes before

the Enquiry Officer or he is available for being examined before that officer.

7. In Rule 16(iii) it is emphasised that the Enquiry Officer is empowered to bring on record the earlier statement of any witness whose presence cannot in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided it is recorded by a police officer etc. Here again the idea is that normally a statement recorded behind the back of the delinquent in a preliminary enquiry, should not be used against him. However, in the extraordinary situation enumerated in the Rule, a departure is permissible from the normal Rule.

8. Rule 16(x) provides, inter alia, that if, in the opinion of the disciplinary authority, some important evidence having a bearing on the charge has not been recorded or brought on the file, he may record the evidence himself or sent back the enquiry to the same or some other Enquiry Officer, according to the circumstances when the case for such evidence is duly recorded. This Rule empowers the disciplinary authority to record fresh evidence either by himself or get the same recorded by others. It is implicit that, if fresh evidence is recorded, the delinquent will be given an opportunity to cross-examine the witness afresh, if evidence ^{is} to be brought on record. This Rule either expressly or impliedly does not permit the use of the statement of a witness recorded in the preliminary enquiry if he has either deposed before the Enquiry Officer or he is available for getting his deposition recorded.

9. The petitioner has so far not given his reply to the show cause notice. He shall do so within a period of 2 weeks from the date of receipt of this order. After the receipt of the reply from the petitioner, the punishing authority shall pass an order strictly in accordance with the relevant rules and in the light of the observations made in this order.

10. The learned counsel for the respondents has urged that this Tribunal has no jurisdiction to entertain this application. He has also urged that, in any case, this Tribunal should not interfere at this stage. According to him, the petitioner would have a remedy of an appeal from the order of the punishing authority, if necessary. We are not impressed with this solution. We are exercising a writ jurisdiction in service matters. In our opinion, this is a fit case where necessary direction should be given to the punishing authority.

11. With these directions, this application is disposed of finally but without any order as to costs.

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(S.R. ADIGE)
MEMBER (A)
29.04.1993

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(S.K. DHAON)
VICE CHAIRMAN
29.04.1993

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