

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1190/92
Miscellaneous Application No. 330/99
New Delhi, this the 19th day of March, 1999

26

Hon'ble Mr. R.K. Ahoja, Member (A)
Hon'ble Mr. S.L. Jain, Member (J)

1. Davinder Kumar s/o Shri Jetha Nand,
R/o House No. 257, Pocket II,
Paschimpuri, New Delhi.
2. Dilawar Singh son of Shri Lal Singh,
R/o C/o Shri Devinder Kumar, House No. 257,
Pocket II, Paschimpuri, New Delhi.
3. Joginder Singh son of Shri Harbans Singh,
R/o WZ-155, Jajwanti Garden,
New Delhi - 46. Applicants.

(By Advocate : Shri Shankar Raju)

VERSUS

1. The Commissioner of Police,
Delhi Police Headquarters, MSO Building,
I.P.Estate, New Delhi - 2
2. Additional Commissioner of Police,
New Delhi Range, Delhi Police Headquarters,
M.S.O. Building, I.P.Estate,
New Delhi - 2.
3. Deputy Commissioner of Police,
East District, Vishwas Nagar,
Near Shalimar Park, Delhi - 32. Respondents.

(By Advocate : Shri Vijay Pandita)

O R D E R .

By Mr. S.L.Jain, Member (J) :-

This is an application under section 19 of the Administrative Tribunal Act 1985 for quashing order No. 759-80/HAP/E dated 3.2.89 passed by the respondent No. 3 order No. 2506-15/HAP/E dated 20.4.89 passed by the respondent No. 3, summary of allegations and charge served by the Enquiry Officer, order No. 1257-1310/HAP/E dated 25.4.91 passed by respondent No. 3, order No. 7080-81/50/NDR dated 29.10.91 and reinstatement with all consequential benefits.

Syam

21

2. The applicants who were appointed in Delhi Police as Constables were posted at P.S. Shakkar Pur East District, Delhi, were placed under suspension, they were served with the suspension order dated 3.2.1989, a preliminary enquiry was conducted, departmental enquiry was ordered vide order dated 20.4.1989, summary of allegations dated 8.5.89 were served on them, the enquiry was conducted and the report dated 7.7.89 was submitted, the applicants were dismissed vide order dated 25.4.1991 against which an appeal was filed which was rejected by order dated 29.10.91.

3. The grievance of the applicants is that the charges levelled against them is based on false allegations, complaint was filed late by 4 days, no orders were passed or served on the applicants under rule 15(1) of Delhi Police (Punishment and Appeal) Rules 1980, Rule 15(3) of the said rules was also not complied with, prior to the impugned order passed by the respondent Shri Sharif Ahmed, the then DCP/East District who was otherwise not competent to pass the punishment order of dismissal, was already relieved of the charge of DCP, East Delhi awarded the punishment but on appeal the said Appellate Authority quashed the same and passed the order of de novo enquiry, which is not provided by any rule incorporated as Delhi Police (Punishment and Appeal) Rules 1980, the departmental enquiry was conducted in violation of mandatory provision contained in Rule 15(3) and 16(III) of Delhi Police (Punishment and Appeal) Rules 1980, the enquiry officer brought the statement of PW 4, Shri Abdul Sattar Khan son of Nanhe Khan who did not make direct statement during the departmental enquiry, and his statement earlier recorded during the preliminary enquiry was brought on record in violation of Rule 16(III) of the Delhi Police (Punishment and Appeal) Rules 1980, PW 1, 2, 5 & 7 did not support the prosecution story and this was admitted in the findings by the enquiry officer, the Appellate Authority in spite of the it held guilty and awarded the extreme penalty, the remaining witness are interested, as such their statements cannot be relied upon, the complaint and Shri Abdul Sattar Khan are close relatives and PW 3 Shri Ahmed Asi was the instrumental in getting the departmental

JYH

enquiry initiated against applicants being belonged to a Mohandum Community and also joined hands with them and take the accused Anwar of this case to the house of his relatives, order is passed illegally although he was not justified to do so. The accused was arrested under Section 116/117 of M.V. Act and there was no reason to take him to the house of his relative as was found by the investing officer. The defence witnesses 9 in number were examined who categorically supported the innocence of the applicants but the evidence was not relied on. The Punishing Authority as well as the Appellate Authority did not apply its mind in coming to the conclusion that the applicants are guilty and in awarding punishment. Their old records were not considered at all. Hence this Q.A. for the above said reliefs.

4. The respondents in reply in para 5(e) of OA filed in C.A. on 19th August, 1992 stated that as regards the statement of Shri Abdul Sattar, he corroborated his previous statement and after understanding the same, the applicants put 20 cross questions. Therefore, there is no violation of Rules 16(III) of Delhi Police (Punishment and Appeal) Rules 1980 and a plea taken in this para is baseless. Additional affidavit filed on 17th July, 1997 the respondent in para 2(1) stated "As regards the statement of PW 4 Shri Abdul Sattar, he corroborated his previous statement and after understanding the same, the applicants put 33 questions by way of cross examination, therefore, There is no violation of Rule 16(III) of Delhi Police (Punishment and Appeal) Rules and Rules 15(3) of Delhi Police (Punishment and Appeal) Rules. For ready reference Rule 15(3) of Delhi Police (Punishment and Appeal) Rules 1980 is mentioned which is as under :

5. 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 statement 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.

(29)

6. On perusal of the same provision, we are of the opinion that the circumstances in which the statement of witnesses may be brought on record, that is to say, in the departmental proceedings when the witness is not available. In the present case, the witness PW 4 Abdul Sattar was available. Hence the procedure adopted by the enquiry officer is against the provision contained in Rule 15(3) Delhi Police (Punishment and Appeal) Rules 1980.

7. In QA No. 248 of 1993 Shri Gandhiram versus the Additional Commissioners of Police and others the Principal Bench of the Central Administrative Tribunal, New Delhi has held that the provisions contained in Rule 15, when the witnesses present they should first have been examined orally, thereafter along with the statements recorded earlier could have been taken on record either to confirm or contradict them. Witnesses should orally be compelled to testify in the presence of the enquiry officer, this will give an opportunity to the enquiry officer to not only hear what the witnesses say but also observe his reactions to the questions put to him is something extra for the atmosphere where a preliminary enquiry was conducted. In particular, there will be no pressure on a witness when he testifies before the enquiry officer, therefore, it is possible that witness is testified orally before the enquiry may state things which are materially different from what he has stated earlier in the preliminary enquiry. This gives a vital opportunity to the delinquent to wear down the witness in cross examination and establish that the previous statement cannot be relied upon and that the truth is something different. This is merit of directly examining the testimony. We are of the view that by not following this procedure, the applicants have been prejudiced in as much as he was prevented from getting material which would have given to him from direct oral testimony. The question is whether this vitiates the proceeding.

Sy)

Q. There can not be much argument about this. The right to cross-examination is one of the important ingredients in a departmental proceedings safeguarding the interest of the C.O. Admittedly, the provisions of Rules 16(iii) have been violated without any justification or necessity. Thereby circumstances were created which prevented effective cross-examination. The learned counsel for the respondents however contended that no injustice has been done to the applicant and has relied on the Supreme Court judgement in K.L. Tripathi *Supra*.

Q. The learned counsel for the respondents relied on the judgement of State Bank of Punjab and others versus S.K. Sharma reported in JT 1996(3) SC 772 for the proposition that in domestic enquiries test is prejudice and if no prejudice is resulted, enquiry is not violated. We agree to the same proposition of law but in the same judgement in para 6 at page 745 the test has been mentioned.

Q. Applying the said test we are of the opinion that provision contained in Rule 15(3) of Delhi Police (Punishment and Appeal) Rules 1980 which lays down procedure law, the hearing has been concluded ~~in violation thereof~~ and thereby resulting fair play of justice. We agree with the judgement of co-ordinate Bench pronounced in O.A. NO. 248 of 1993.

Q. Appreciation of evidence is within the jurisdiction of Disciplinary Authority and the Appellate Authority. But on perusal of the pleadings of the parties, we are of the opinion that it is a case not covered by 'No Evidence' case.

Q. The punishment is entirely within the jurisdiction of the departmental authorities as held in (1994) 2 Supreme Court cases 537 State Bank of India and others versus Samanendra Kumar and others, (1995) 6 SCC 750 Union of India and another versus BC Chaturvedi unless and until it shocks the conscious of the Tribunal.

Q. The applicants departmental enquiry was against provisions contained under Rule 15(3) of Delhi Police (Punishment and Appeal) Rules 1980. Hence punishment awarded deserves to be quashed.

J. J. DK

16. In the result OA deserves to be allowed and is allowed, order No 7080-81/50/NDR dated 29.10.91 wherby a joint appeal by the applicants was rejected by respondent No. 2 is quashed, consequently order dated 3.2.89, order dated 20.04.1989, summary of allegations and charges served order dated 25.04.1991 is quashed and the applicants are ordered to be reinstated in service, the period of suspension shall be governed by Rule 30 of Delhi Police (Punishment and Appeal) Rules 1980. Looking to the facts and situation of the case, it is ordered that both the parties shall bear their own costs.

MA No.330/99 for substitution for legal heir is allowed.

S.L.JAIN
MEMBER(J)

R.K.AHOOJA
MEMBER(A)

Amit