

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1398/93

New Delhi, this the 20th day of May, 1999

(8)

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of...

Ex. Woman Sub Inspector Preeti Arora No.D/2099
daughter of Shri H.N.Arora,
aged about 28 years,
previously employed in Delhi Police,
R/o B.4/95-A, Lawrence Road,
Delhi-110035. Applicant
(By Advocate: Sh. Shankar Raju)

Vs.

1. Delhi Administration
(through Lt. Governor of Delhi)
5,Rajpur Road, Delhi-110054.
2. Additional Commissioner of Police,
(Crime) Police Headquarters, M.G.O. Building,
New Delhi.
3. Dy. Commissioner of Police
Crime (Women) Cell,
Nanakpura, New Delhi. Respondents
(By Advocate: Sh. Rajinder Pandita)

JUDGMENT

By Hon'ble Shri T.N.Bhat, Member (J)

The applicant while working as a Woman Sub Inspector in Delhi Police was served with a chargesheet with the allegation that she had demanded illegal gratification of Rs.2000/- from one Mrs. Soni and had also misused her official position by asking one Sh. Amar Singh to repair her house without paying him the labour charges. Resp. No.3 herein, namely, the Deputy Commissioner of Police (DCP, for short) ordered departmental enquiry on 6.11.90. The summary of allegations were served upon the applicant alongwith the copies of some documents upon which the prosecution relied. After completion of the enquiry the Enquiry

Officer, vide his findings, as at Annexure A-9 held the charge proved against the applicant. The applicant filed her reply to the findings and the disciplinary authority after receipt of the applicant's reply passed the impugned order dated 29.5.92 awarding the punishment of dismissal from service upon the applicant. (9)

2. Aggrieved by the order of the disciplinary authority the applicant preferred an appeal and the appellate authority, namely, the Additional Commissioner of Police (ACP, for short), Resp. No.2 herein, also dismissed the appeal by the order dated 1.12.92, as at Annexure A-12.

3. The applicant in this OA assails not only the orders passed by the disciplinary authority and the appellate authority but also the chargesheet dated 14.8.91 as also the findings of the Enquiry Officer dated 4.11.91.

4. The main ground agitated is that adequate opportunity was not granted to the applicant to defend herself and that the Enquiry Officer had also contravened the principle of natural justice.

5. The respondents have in their counter resisted the OA on the ground that there was sufficient evidence on the basis of which the charge could be said to be established against the applicant. It is denied by the respondents that the applicant was not granted adequate opportunity. In reply to the applicant's contention that disciplinary proceedings could not be initiated against her without obtaining approval from the Additional

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✓ Commissioner of Police the respondents have in their counter taken the plea that seeking the approval of the higher authority was a mere formality and that the concerned DCP being the appointing authority the DE in the instant case had correctly being initiated by the DCP and that this could not be said to be any violation of the principle of natural justice or the rules.

(10)

6. We have heard the learned counsel for the parties at some length.

7. On a bare perusal of the enquiry report as also the orders passed by the disciplinary authority and the appellate authority one finds that a preliminary enquiry had been conducted in this case and the person who conducted the enquiry had submitted a detailed report. Not only that but also were the witnesses examined during the course of the preliminary enquiry and full use of those statements has been made by the Enquiry Officer, the disciplinary authority and the appellate authority in coming to the conclusion that the alleged misconduct was established. In this regard it would be necessary to state that two witnesses out of the three who had some personal knowledge about the alleged incident had resiled from the depositions attributed to them which they had allegedly made during the course of the preliminary enquiry. Even so the Enquiry Officer in his report states that their depositions during the course of the DE need not be relied upon and that the depositions made during the preliminary enquiry could be considered. The rules provide that depositions made during the preliminary enquiry can be relied upon in the departmental enquiry.

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✓ only if the witnesses are not available or their production would cause delay and involve expenses. The respondents seem to be of the view that those witnesses who have actually been examined during the course of the departmental enquiry need not have been examined and that the depositions made by them during the preliminary enquiry could be pressed into aid. We are afraid, this contention of the respondents is misconceived. When the witnesses were available and were actually examined during the DE proceedings their depositions made during the preliminary enquiry could not at all have been considered.

(V)

8. That leads us to the question as to whether the applicant was entitled to get the copies of the depositions made during the course of the preliminary enquiry as also the copy of the preliminary enquiry report. According to the contents of the enquiry report the applicant's request for copies of the aforesaid documents was admittedly rejected by the Enquiry Officer on the specious plea that the preliminary enquiry was "interdepartmental communication" and, further, that the E.O. himself did not rely on those documents and depositions. This contention of the respondents is patently false. Not only did the Enquiry Officer rely on the depositions and the preliminary enquiry report but also did he consider the preliminary enquiry report to be one of the most important documents which could be relied upon by the prosecution in this case. This is evident from the fact that Inspector Kapoor Singh who had conducted the preliminary enquiry was cited as a witness to prove that he had conducted the preliminary enquiry into the complaint of Mrs. Soni against the applicant.

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9. At page 14 of the enquiry report (page 102 of the paper book) the Enquiry Officer has stated that the complainant Mrs. Soni as also the PW-3 Smt. Laxmi Devi had denied that the applicant had demanded any illegal gratification. Even so the Enquiry Officer states that since those witnesses had in their earlier statements made during the preliminary enquiry categorically stated that the applicant had made a demand of Rs.2000/- the deposition made by those witnesses during the DE cannot be relied upon. This finding of the Enquiry Officer is patently illegal and against the rules. The disciplinary authority and the appellate authority have also fallen into the same error by stating that even though Smt. Soni and Smt. Laxmi Devi had resiled from their earlier statements those earlier statements alone need be taken into consideration.

10. This Tribunal has in a catena of judgments held that where the preliminary enquiry report is relied upon or is made use of by the prosecution in any manner the delinquent official is entitled to copies thereof before the prosecution witnesses are examined during the enquiry. In a judgment dated 5.3.97 delivered in OA-874/96 (Sh. Prem Pal Singh vs. UOI & another) a Coordinate Bench held that supply of the copy of the preliminary enquiry report is a must where such an enquiry has been held. That Bench of the Tribunal quashed the punishment order as also the appellate order. Similarly, in the judgment dated 4.8.94 in Sh. Gandhi Ram vs. Additional Commissioner of Police, another Bench held on identical facts that taking on record those statements

which were recorded during the preliminary enquiry was invalid under the Delhi Police (Punishment and Appeal) Rules as also the principles of natural justice.

(3)

11. More recently in a judgment dated 19.3.99 another Coordinate Bench has in the case Devender Kumar and others vs. Commissioner of Police and others held that witnesses should orally be compelled to testify so as to give the delinquent official the opportunity to cross-examine the witnesses and that making use of the depositions made during the course of the preliminary enquiry without furnishing copies of the same to the delinquent official and affording him the opportunity to cross-examine the witnesses was not permissible under the law.

12. We are convinced that in the instant case the principles of natural justice have been contravened by not according to the request of the applicant for copies of the preliminary enquiry report and the statements of the witnesses made during that enquiry.

13. The Apex Court has in its judgment in Kuldip Singh vs. Commissioner of Police and others, reported in JT 1998 (8) SC 603 held that the Court can certainly interfere where it finds that the findings of fact recorded at the domestic enquiry are based on no evidence or that the findings are perverse. In the instant case, as already mentioned, the findings of the Enquiry Officer as accepted by the disciplinary authority and the appellate authority, are based on inadmissible evidence, in that, the depositions made during the course

✓ of preliminary enquiry have been accepted while those made during the regular departmental enquiry have been rejected. We are convinced that the findings recorded in the instant case are such as could not have been reached by a person of ordinary prudence and are therefore perverse. (A)

14. That apart, under Sub Rule (2) of Rule 15 of the Delhi Police (Punishment and Appeal) Rules a disciplinary enquiry against a Sub-Inspector can be ordered only after seeking the necessary permission from an officer of the rank of Additional Commissioner of Police concerned. As already indicated, the respondents have not in their counter denied the assertion made by the applicant in the OA that no such sanction/permission had been sought in the instant case. The reply given by the respondents on this plea raised by the applicant is that seeking the approval of the higher authority was a mere formality and that the DPC being the appointing authority the disciplinary enquiry could have been initiated at his instance. However, on going through the departmental records submitted by the learned counsel for the respondents we find that after submission of the preliminary enquiry report the concerned DCP had forwarded the matter to the Additional Commissioner of Police (CID) who granted approval on 15.10.90. But on a closer scrutiny of the note put up by the DCP we find that approval had been sought by him only for referring the matter to the Departmental Enquiry cell and the Addl. C.P. had given his approval.

15. We need not, however, carry this issue further, in view of the fact that the OA succeeds on the other ground as indicated hereinabove.

(V)

16. For the foregoing reasons the impugned punishment order and the appellate order cannot be allowed to stand. This OA is allowed and the aforesaid orders are quashed. The respondents are directed to reinstate the applicant forthwith. As regards back wages the applicant shall be entitled to 50% of the pay and allowances due. It shall, however, be open to the respondents to hold a fresh enquiry from the stage of serving the chargesheet provided the copies of the preliminary enquiry report and the depositions of witnesses made during the preliminary enquiry are furnished to the applicant alongwith the fresh chargesheet. If the respondents choose to initiate the fresh enquiry they shall as far as practicable complete the enquiry within 6 months from the date of receipt of the copy of this order.

17. In the facts and circumstances of the case we make no order as to costs.


(S.P. BISWAS)

Member (A)

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(T.N. BHAT)

Member (J)