CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2046/93

(5)

New Delhi this the 21st day of July, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

Ex-Constable Jasmer Singh No.600/NW
Son of SHri Suraj Singh,
R/o V. & P.O. Sandhi
P.S. & District Rohtak (Haryana). ...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

1. Delhi Admn. through the
Addl. Commissioner of Police,
Northern Range, Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.

2. Dy. Commissioner of Police,
North-West District,
Ashok Vihar,
New Delhi-110052. ...Respondents

(By Advocate Shri Anil Singhal)

O R D E R

By Reddy. J.-

On certain allegations of grave misconduct departmental enquiry was initiated against the applicant, who was a Constable in Delhi Police. An enquiry officer was appointed and he conducted the enquiry. The allegation against the applicant was that while he along with 3 other Constables were at the Police Station he was alleged to have been checking vehicles near Lokesh Cinema with mala fide intention and ulterior motives, in connivence with a country liquor contractor. Since the respondents have not responded to the summons, they were set exparte. The enquiry officer examined two witnesses and having gone through the evidence and other documents on file held that the charges against the applicant and

others were proved. He, therefore, submitted the report dated 11.11.91 to the disciplinary authority. The disciplinary authority, after going through the representation of the applicant, the enquiry officer's report and other evidence on record, accepted the findings of the Enquiry Officer and passed the impugned order imposing the punishment of dismissal from service by order dated 25.2.92 (Annexure A-10). The appeal filed by the applicant ended in dismissal vide the order dated 28.5.93 (Annexure A-12). The above orders of dismissal are under challenge in this OA.

2. Several grounds are raised by the learned counsel for the applicant. Firstly, it was contended relying on Rule 10 of Delhi Police (Punishment & Appeal) Rules, 1989 that an order of dismissal could not have been passed unless there was a clear finding that the applicant was completely unfit for police service. In the impugned order of dismissal, it is contended, there was no such finding. In the impugned order it is clearly stated that the applicant was guilty of the acts of indiscipline, and that it was not desirable to retain him in service. It was also stated that such acts are highly objectionable. The above finding clearly indicates that the applicant was unfit to be retained in police service. In fact, Rule 8 empowers the authority to impose the punishment of dismissal from service for acts of grave misconduct which rendered the delinquent completely unfit for police service. As the finding given by the disciplinary authority goes to show that the applicant was unfit for police service, the contention has to be rejected.

3. The learned counsel for the applicant seriously contends that the enquiry is vitiated inasmuch as the enquiry officer has not applied his mind to the evidence on record in reaching the conclusion and that the enquiry report is not a speaking order. The learned counsel for the respondents, however, submits that the enquiry officer has stated that he has gone through the evidence and passed the impugned order. Hence, it cannot be said that he has not applied his mind to the evidence. The enquiry does not suffer from any infirmity.

4. It is, therefore, necessary to see the enquiry officer's report dated 11.11.91. The enquiry officer after narrating the evidence of the witnesses and framing the charge given his conclusions which are as follows:

> "CONCLUSION:-
>
> I have carefully gone through the prosecution evidence and documents on file. From the statements of both the P.Ws. and written confession of the 3 defaulters namely Harpal Singh, No.701/NW, Const. Kartar Chand, No.793/NW and Jagminder, No.602/NW has fully proved the charge against all 4 defaulters."

4. We do not find in the above conclusion any discussion at all except stating that he has gone through the evidence. A one line sentence stating that he has gone through the evidence cannot be said to be the assessment of the evidence. It is not, therefore, a speaking order. A speaking order should contain reasons for the conclusion supported by sufficient material. This is a classic case of non-application of mind of the

Enquiry Officer. The nature of the disciplinary enquiry and the duties of the enquiry officer have been indicated by the Supreme Court in Anil Kumar v. Presiding Officer & Others, (1995 SCC (L&S) 815):

> "It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In Madhya Pradesh Industries Ltd. v. Union of India (1966) 1 SCR 466:(AIR 1970 SC 671), this court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard."

5. In view of the above authoritative decision we have no hesitation in holding that the enquiry is vitiated.

6. The disciplinary authority has also not improved the situation except agreeing with the findings of the enquiry officer.

7. In view of the above we do not propose to consider the other contentions raised by the learned counsel for the applicant.

8. We are well within our rights to order fresh enquiry. But since the incident occurred in 1990 and now we are in 1999 and the charges appear to be not serious, we do not propose to reopen the matter at this stage. We hope that the applicant has suffered sufficient mental agony which itself would amount to sufficient punishment in this case.

9. In the circumstances, the OA is allowed and the impugned orders of dismissal are set aside. The applicant is directed to be reinstated and paid consequential benefits. Since the Court has taken a compassionate view of the matter not to reopen the enquiry, the applicant is not entitled to full emoluments. He is entitled only to the 50% of the emoluments. No costs.

(R.K. Ahooja)
Member(A)

(V. Rajagopala Reddy)
Vice-Chairman (J)

'San.'