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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2570/1993

New Delhi this the 14th Day of July 1999

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Sub Inspector Sushil Chander No. D/544
son of Late Shri S.R. Sharma,
aged about 35 years,
presently posted at Main Security Line,
Chanykya Puri,
Resident of Qtr. No. C.9,
Police Station Paharganj,
New Delhi.

Applicant

(By Advocate: Shri Shankar Raju)

Versus

1. National Capital Territory of Delhi
(through Additional Commissioner of Police
Northern Range) Police Headquarters,
I.P. Estate, New Delhi.
2. Deputy Commissioner of Police
North-District, Civil Lines,
Near Old Sectt.,
Delhi - 110054.

Respondents

(By Advocate: Shri S.K. Gupta proxy
counsel for Shri B.S. Gupta)

ORDER (Oral)

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

In this application the applicant has
challenged the validity of the punishment order
dated 24.6.92 issued by Respondent No.2 whereby
one year's approved service was forfeited permanently,
for a period of one year entailing reduction in his
pay by one stage proportionately and withholding of
increment. The appellate authority by order dated
15.9.93 had rejected his appeal which has also been
impugned in this O.A.

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2. The aforesaid impugned orders had been passed after holding a ~~preliminary~~^{departmental} enquiry against the applicant Under Section 21 of the Delhi Police Act, 1978. Briefly stated, the charge against the applicant was that on the night of 19/20 August, 1990 one girl namely Bimla along with one boy (name unknown) came to Police Post ISBT and the girl complained that she had been molested by the boy, but the applicant did not take any legal action against the boy. It was also stated that the applicant who had detained the girl in his retiring room till 9.30 AM the next morning neither informed any senior officer, namely SHO/Kashmiri Gate and ACP/Sadar Bazar nor deputed any lady police with the girl when she was detained at Police Post ISBT for the whole night. On these charges, the Enquiry Officer came to the conclusion that the charge was proved. He did so after examining the witnesses and analysing the documents on record. The disciplinary authority, after seeing the enquiry officer's report ^{and} giving the applicant an opportunity to make a representation and considering the same and other relevant documents on records held that in view of the fact that the girl had been kept in the Police Station, although nothing happened nor did she complain of any ~~harm~~ harassment by any Policeman imposed the penalty of forfeiture of one year approved service permanently with attending consequences as mentioned above.

3. One of the main grounds taken by Shri Shankar Raju, learned counsel for the applicant is that when the respondents held the departmental proceedings and called the officer i.e., PW 4 Shri P.S.Bhusang ACP, who had conducted the preliminary enquiry, they

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ought to have supplied him a copy of the preliminary enquiry report. This admittedly had not been done by the respondents. Shri Shankar Raju, learned counsel has drawn our attention to the Circular dated 1.5.80 issued by the respondents on this subject. Para 2(ii) of the Circular reads as follows:

"The officer who had conducted the preliminary enquiry was cited and examined as P.W, but copy of his preliminary enquiry report was not furnished by the E.O. to the defaulter or giving him an opportunity to cross examine the witness. This has affected proper cross examination of such witness and goes against the principles of natural justice vitiating the departmental enquiry ab initio. Copy of P.E report in such cases should have been supplied suo moto at the initial stage along with the summary of allegations even if no specific request is made by the defaulter."

4. Learned Counsel for the applicant has contended that the procedure adopted by the Respondents has resulted in violation of the rules and Circular, thereby depriving him of the right to proper cross-examination. We are informed at the Bar that the aforesaid Circular has not been modified and is still in force. Shri Shankar Raju, learned counsel has also relied on the Order of this Tribunal in Prempal Singh V. Union of India (O.A. 874/96) decided on 5.3.1997 (copy placed on record). Under the provisions of the Delhi Police Act, 1976 read with Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules, 1980 and in terms of the Respondents' own Circular dated 1.5.1980 since the officer (P.W 4) who prepared the preliminary enquiry report was called as a witness in the departmental proceedings, the applicant ought to

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have been given a copy of the report which has not been done.

5. In the facts and circumstances, we see force in the contention ^{of the applicant's Counsel} that this failure has deprived the applicant of a reasonable opportunity to make his submissions, including cross examination of the witness effectively. This is in violation of the principles of natural justice and the Rules and Circular. In this view of the matter, we do not wish to make any comments on the merits of this case or refer to the other grounds taken by the applicant in impugning the penalty orders.

6. In Prem Pal Singh's case (supra) in similar circumstances, the Tribunal had quashed the impugned penalty order and the appellate authority's order and had remanded the case to the respondents to conduct a fresh departmental enquiry in accordance with law from the stage of supplying the preliminary enquiry report to the applicant. The observations of the co-ordinate Bench of this Tribunal in Prem Pal Singh's case are fully applicable to the facts of this case. We also note that in the present case, the applicant has been placed under suspension by order dated 1.10.90. Therefore, in accordance with the decision of the Hon'ble Supreme Court in State of Punjab Vs. Dr. H. S. Greasy (J.T 1996(5) SC 403), the applicant shall be deemed to be continuing under suspension till the departmental proceedings which had been initiated against him, which is the subject matter in this O.A., are concluded.

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7. In the result, the O.A is allowed to the extent that the impugned punishment order dated 24.6.92 and appellate authority's order dated 15.9.93 are quashed and set aside with the following directions:

- (i) The case is remanded to respondents to conduct fresh departmental proceedings against the applicant in accordance with law, Rules and Instructions, from the stage of supplying copy of the preliminary enquiry report to the applicant. This shall be concluded as expeditiously as possible and in any case, within four months from the date of receipt of a copy of this order, in which the applicant shall also fully co-operate
- (ii) The applicant shall be deemed to continue under suspension pending enquiry;
- (iii) The respondents shall pass appropriate orders on the conclusion of the enquiry with regard to the period of suspension;
- (iv) Parties to bear their own costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member(J)

V.Ramakrishnan
(V.Ramakrishnan)
Vice Chairman(A)

vtc.