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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2628/1993

New Delhi, this 7th day of ~~August~~ ^{September}, 1999
transcribed

Hon'ble Shri Justice K.M. Agarwal, Chairman
Hon'ble Shri N. Sahu, Member(A)

Constable Chukhan Singh, No. 763/E
F-69, Nai Gaon
Usmanpur Second Pushta
Delhi-110 053

... Applicant

(By Shri Shyam Babu, Advocate)

versus

Union of India, through

1. Administrator
NCT of Delhi
Raj Niwas, Delhi

2. Addl. Commissioner of Police
New Delhi Range, Police HQ
I.P. Estate, New Delhi

... Respondents

(By Shri Raj Singh, Advocate)

ORDER

Hon'ble Shri N. Sahu

Applicant impugns the penalty order dated 27.7.93 dismissing him from service and the appellate order dated 3.11.93 which confirms the penalty of dismissal on the following grounds.

- (i) Disciplinary authority failed to appreciate that summary of allegations was not accompanied by list of witnesses and list of documents to be relied upon which were essential to be supplied in terms of Rule 16(i) of the Delhi Police (Punishment & Appeal) Rules, 1980;
- (ii) essential documents required for defence were not furnished;
- (iii) Enquiry was conducted despite the applicant's specific request in a language in which the applicant was not proficient;
- (iv) EO did not read over or explained the summary of allegations;
- (vi) EO did not allow the applicant to cross-examine PWs;

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(vii) EO conducted the departmental enquiry ex-parte and did not issue notices of the hearing particularly when the applicant was present on every notified date of hearing alongwith his defence assistant;

(viii) EO misbehaved and humiliated the applicant and his defence assistant for which specific complaints were lodged;

(ix) No charge was prepared, or it was got approved from the competent authority nor it was delivered to the applicant;

(x) the applicant was denied reasonable opportunity to plead his case or adduce defence evidence or defence statement etc.

2. After notice, respondents denied most of the above allegations except that list of witnesses and documents were not supplied to the applicant alongwith the summary of allegations. At the same time, respondents state that PWs were examined only after supply of list of documents.

3. The ground taken by the applicant's counsel, both at the time of arguments as well as in the written submissions, is that one of the charges was a telephone call from an official attached to Member of Parliament received by the ACP(Hqrs.) not to take any action against the applicant, which was considered as putting extra departmental pressure. The applicant was charged with violating Rule 13 of Delhi Police (General Conditions of Service) Rules. The said ACP was not examined and the charge held to be proved on the ground of the report of Shri Bram Singh submitted behind the back of the applicant. The report was also not made available to the applicant nor the said ACP(Hqrs.) produced for the purpose of cross-examination. The second argument is that the disciplinary authority did not form an opinion about the "gross misconduct" of the applicant in terms of Rules 8(a) and 10 of Delhi Police (P&A) Rules.

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4. The next point of the applicant was that the EO examined the prosecution witnesses on 14.10.92 without supplying him with necessary documents as per the requests of the applicant on 16.9.92 and 13.10.92. No doubt documents were furnished but on 14.1.93 applicant raised objections that the documents supplied were illegible. As per requisition applicant appealed on 16.2.93 but the EO was not available. In this background, applicant stated that the conduct of ex-parte proceedings on 5.3.93 was unjustified. He further contended that the list of witnesses relied upon and the gist of their depositions were not supplied to him. 20

5. Respondents submitted that when R.I./East District was directed to enquire into the alleged charge, applicant tried to put extra pressure through Shri Gautam, attached to Shri Ram Bilas Paswan, the then Member of Parliament and thereby violated Rule 13 of Delhi Police Rules, 1980. It is next stated that that the question of applicability of Rule 8(a) and Rule 10 of the Delhi Police (P&A) Rules, 1980 is to be adjudicated in the light of the decision of the Full Bench on this point. It is further stated that the suspension period was treated as not spent on duty under the Fundamental Rules. Applicant was given proper opportunities to defend himself. Further, he was provided with documents as per Annexure A-15. Summary of allegations were duly explained in Hindi and understood by him and therefore there was no violation of any rule. He attended the DE proceedings upto 5.2.93 and thereafter he did not cooperate and delayed repeatedly. Dates of hearing were informed to him. Although he attended those hearings alongwith his defence assistant, there was no

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constructive cooperation from his side. Respondents denied that the applicant ever applied for inspection of documents as required under Rule 16(vi) of the Delhi Police (P&A) Rules. In spite of repeated opportunities, he did not file written statement. There was no material on record to prove that the EO was biased. It was, therefore, submitted by the learned counsel that DE proceedings were conducted and concluded in accordance with the procedures in law. 21

6. We have carefully considered the submissions. We are satisfied that all the documents were handed over to the applicant. We are also satisfied that the contents of the charge-sheet were made available to him in Hindi. It is noted that he was assisted by defence assistant who knew English very well. Because of delayed tactics, ex-parte orders were issued. According to para 5.13 of the counter reply, witnesses were examined directly in the presence of the applicant, he was afforded all opportunities to cross-examine them but he did not avail the same. Applicant received the original charge but refused to sign in token of having received it. To this effect there was a noting in the daily diary of PS, Kalyanpuri on 2.4.93. He was afforded adequate opportunities to produce defence witness, but he did not avail the same. In para 5.16, it was categorically stated that the applicant never applied for inspection of documents as required under Rule 16(vi) of Delhi Police Rules, 1980 for preparing his defence statement.

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7. In para 5.22, it is stated that after recording the prosecution evidence, formal charge was framed and was got approved by the disciplinary authority and when a copy of the same was delivered to the applicant, he refused to give acknowledgement for the same.

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8. The essence of the charge was that he forged the signature of RI/East on the recommendation roll and when he came to know about the enquiry in this regard, he lifted the said recommendation roll from the table of RI/East in his absence.

9. With regard to misapplication of provisions under Rules 8(a) and 8(d), the matter is concluded by the decision of the Full Bench dated 28.7.99 while disposing of 19 OAs. The question referred to the Full Bench was whether the disciplinary authority is required to record specific findings that the delinquent official was guilty of grave misconduct rendering him unfit for police service before passing punishment of dismissal or removal from service in terms of Rule 8(a). This question was also to be read with Rule 10. The Full Bench in its judgement stated that the disciplinary authority is not required to record specific finding. However, the order must indicate that mandate of statutory provision was borne in mind by the disciplinary authority while passing the order of dismissal. The Full Bench also recorded as under:

"(iii) Generally speaking, if the punishment order of dismissal from service does not indicate 'continued misconduct indicating incorrigibility and complete unfitness for police service' on the basis of the past service record of the delinquent officer, the punishment of dismissal or removal from service may be converted into a punishment of reduction

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in rank for a specific time as provided in Rule 10, but there may be exceptions like cases of Constables where no reduction in rank is possible, or cases of misconduct based on allegations creating criminal liability involving moral turpitude".

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10. With regard to the provisions relating to vires of Rule 16, we are satisfied that there is no merit in the applicant's claim. We are also satisfied that no prejudice has been caused to him. No amount of opportunity would satisfy a person who deliberately delayed and was non-cooperative with the EO.

11. In the result, the OA is dismissed but without any order as to costs.


(K.M. Agarwal)
Chairman


(N. Sahu)
Member(A)

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