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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2630/1993

New Delhi, this 20<sup>th</sup> day of August, 1999

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

Vijay Pal Singh  
V. Kazipur, P.O. Dasna  
Dt. Ghaziabad, U.P. .. Applicant

(By Shri B.S. Charya, Advocate)

versus

Union of India, through

1. Commissioner of Police  
Delhi Police, Police Hqrs.  
MSO Building, I.P. Estate, New Delhi
2. Secretary  
Ministry of Home Affairs, New Delhi
3. Addl. Commissioner of Police(S&T)  
Delhi Police, Police Hqrs.  
I.P. Estate, New Delhi .. Respondents

(By Shri Rajinder Pandita, Advocate)

ORDER

Hon'ble Shri N. Sahu

The prayer in this OA is to quash the order of the disciplinary authority dated 15.9.92 and that of the appellate authority dated 15.12.92 with consequential benefits. The applicant was a constable in Delhi Police. Disciplinary proceedings were initiated against him on 2.2.87 on the charge of carrying out unauthorised checking of the vehicles under the influence of liquor at about 7.45 PM on 1.1.87 at Azad Nagar Chowk. He was allegedly caught red-handed and was taken to Civil Hospital from where both he and another constable escaped from the custody of the police officials and did not report for duty thereafter. The departmental enquiry concluded that the charge was substantially proved and as such the applicant dismissed from service by order dated 19.5.88. It is also important to mention that he was

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placed under suspension with effect from 1.1.87. Applicant filed an appeal against the order of dismissal before R-3 who rejected the appeal by an order dated 7.3.89. He had filed OA 927/89 before CAT which by its order dated 13.2.92 quashed and set aside the order of dismissal on the ground that copy of the enquiry officer's report had not been supplied to him before passing the final order. Liberty was given to the disciplinary authority to revive the enquiry proceedings from the stage of supply of copy of the EO's report. Thereafter, the applicant was reinstated in service on 19.5.88 by order dated 14.5.92. Fresh proceedings thereafter were conducted and the earlier punishment of dismissal was again awarded and hence this OA. EO's report was furnished to him on 22.5.92. The grounds taken by the applicant, which are repeated in this OA, are that he was not permitted to represent his case through a retired government servant or a legally trained person. It is next contended that it was nowhere proved that he escaped from the custody of police officials. Finally, the applicant contended that there was no mention of vehicle number and the name of any driver from whom he had allegedly extorted money. The authority which passed the impugned order recorded the following:

"All the pleas adduced by the Constable have carefully been examined and found to be baseless and untenable. He had recorded in his own handwriting on the memo of evidence on 22.6.87 as "Received summary of allegation alongwith relevant papers". He had neither sought permission for representing his case through a retired Govt. servant or a legally trained person in writing nor orally as per record. Recording of evidence of the witnesses afresh who have already been examined on transfer of DE is not provided under the rules. He could not be got medically examined as he had escaped from the police party while he was being taken for medical examination. And he was not charged for extorting money."




3. The appeal filed against the impugned order was disposed of by an order dated 15.12.92. The important reasons given by the appellate authority for dismissing the appeal are as under:

"From the evidence recorded, I am fully convinced that the defaulter was present at the time of checking and he had guilty intention and as such ran away when he was being taken for medical examination. The points raised by the defaulter in his appeal are not fully in consonance with the evidence of prosecution witnesses. The Asstt. Commissioner of Police and the Traffic Inspector have categorically supported the prosecution version. Similarly in a disciplined force the quantum of punishment awarded is also not unjustified. Such like defaults and abrasions, if not curbed strictly, send wrong signals to the whole force"

4. This OA was fixed for hearing on 15.7.99, when both the counsel were heard and we have consulted the records.

5. The applicant impugns the vires of Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 for giving liberty to the EO to cross-examine the witnesses and represent the cause of the establishment when he was supposed to act independently as an enquiry officer. There is no provision in the said rule for representation by a legal practitioner or a co-employee as in the civil service rules. He states that Rule 16(iii) and (iv) suffer from patent irregularities. This rule is a departure from CrPC, and is not wholly in conformity with principles of natural justice. He also states that Respondent No.2 (appellate authority) did not consider the contentions raised in the representation dated 16.6.92. He denied that he did not seek permission for taking defence assistant. He sought permission but it was turned down without recording reasons thereof.



6. We have carefully considered the submissions. We are of the view that there is no infirmity in the impugned orders. Applicant was allowed to file his representation, a copy of EO's report was furnished to him and he had sufficient opportunity to represent his case. We are satisfied that the applicant should have asked for defence assistant in a written representation. It is necessary to take appropriate orders from the competent authority and in case he sought the assistance of a co-government servant, the competent authority had to be consulted to seek the release of the said government servant for assistance to the applicant. As the respondents have denied that the applicant made request for defence assistant, we do not take any cognisance of the alleged oral request which was denied. His impugning of Rule 16 is, in our view, without any basis. The important point to note is whether any prejudice was caused to him by the enquiry. We have not been shown any specific instance that prejudice was caused to him. We are, therefore, of the view that the provisions of Rule 16 which embodies only well-known rules of natural justice are substantially complied with. Punishment was ordered on the basis of a proper appraisal of evidence. We cannot sit as an appellate authority to reappraise the said evidence. We, therefore, consider that there is no justification to interfere with the order of the disciplinary authority. The OA is dismissed. No costs.



(K.M. Agarwal)  
Chairman



(N. Sahu)  
Member(A)