

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.664/2003

New Delhi this the 30th day of January, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Sanjay Vikram,
S/o Sh. Ram Mahesh,
R/o Flat No.904, Gomukh Aptts,
Delhi Police Avas Complex,
Khaushambi, Ghaziabad,
Uttar Pradesh

-Applicant

(By Advocate Shri Shyam Babu)

-Versus-

1. Govt. of NCT of Delhi,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Additional Commissioner of Police,
(PCR Communications),
Police Headquarters,
I.P. Estate,
New Delhi.
3. Dy. Commissioner of Police,
PCR, Police Headquarters,
I.P. Estate,
New Delhi.

-Respondents

(By Advocate Mrs. Rashmi Chopra)

O R D E R (ORAL.)

Heard.

2. Audi alteram partem is a recognized principle of natural justice to be followed even in quasi judicial orders. Nobody can be condemned unheard. In this conspectus orders passed by the respondents on 30.5.2002 confirming upon applicant a punishment of censure as well as appellate order dated 15.1.2003, upholding the punishment ^{are} assailed.

3. One of the grounds taken by the learned counsel for applicant is that before issuance of show cause notice a fact finding enquiry in the form of vigilance enquiry has preceded, which is nothing but preliminary

enquiry, which has brought into record the quantum of evidence, default and other material to facilitate a disciplinary proceeding, which includes issuance of a show cause notice under Rule 6 of the Delhi Police (Punishment and Appeal), Rules, 1980. Placing reliance on Rule 15 (3) of the Rules it is contended that ~~when~~^w such a record is to be taken in departmental record even for imposing minor punishment of censure the same should be furnished to the concerned delinquent official, which would give the delinquent official an opportunity to effectively defend the charge.

4. Learned counsel for applicant relies on a Division Bench decision of the High Court in **Ex-Constable Randhir Singh, CRPF v. Union of India & Others**, 1991 (5) SLR 731 as well as decision of the Apex Court in **Badrinath v. Govt. of T.N. & Others**, (2000) 8 SCC 395 to contend that documents which are to be relied upon, even if not specifically demanded, it is obligatory upon respondents to have furnished a copy of such documents, which would be in consonance with the principles of natural justice.

5. Drawing my attention towards show cause notice, order passed confirming the punishment as well as appellate order it is stated that the punishment and its affirmation has taken place due to the fact that allegations have been substantiated against applicant in the vigilance enquiry.

6. On the other hand, learned counsel for respondents contends that the procedure laid down for a departmental enquiry cannot be applied to procedure laid

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down for imposing minor penalty of censure. According to the learned counsel as record of the PE is not forming part of the record, the vigilance enquiry report where allegations against applicant have been substantiated was not provided to him. However, it is stated that applicant had never demanded these documents at the time of show cause notice as well as not referred ^{to} ~~to~~ ⁱⁿ appeal.

7. On careful consideration of the rival contentions having regard to the decision of the Apex Court in **State of U.P. v. Shatrughan Lal**, JT 1998 (6) SC 55. Documents from preliminary enquiry which are relied upon are to be served upon delinquent official even if there is no demand, relied upon documents have to be served.

8. Rule 15 (3) of the Rules provides that the preliminary enquiry, which is a fact finding enquiry is held to find out default etc. and if the enquiry has all the ingredients of Rule 15 (1) it is to be ~~described~~ ^{as} PE. Rule 15 (3) provides that documents from the file of PE shall not form part of departmental record. However, if any document from the PE file is to be taken on record in the departmental enquiry copy thereof should be served upon delinquent official. This applies to a minor penalty proceeding also. Departmental record is maintained for a minor punishment as well. It is not disputed that on the basis of this record a show cause notice for minor penalty has been served upon applicant. In this view of the matter it was obligatory upon disciplinary authority to have furnished a copy of the vigilance report before affirmation of the show cause notice.

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9. From the perusal of the orders passed by the respondents it transpires that this vigilance report has weighed heavily in the mind of the disciplinary authority to arrive at the finding of guilt and imposition of punishment against applicant. Being a quasi judicial authority it is not only fair but in consonance with the principles of natural justice that a fair hearing and reasonable opportunity is accorded to a police official before imposition of any punishment. Even minor penalty of censure is an impediment for further future progression. In this view of the matter as the act of the respondents is not in consonance with the principles of natural justice, denial of vigilance enquiry report has certainly prejudiced applicant, as he has failed to effectively defend the charges against him.

10. In the result, for the foregoing reasons, OA is allowed. Impugned orders are quashed and set aside. No costs.

S. Raju

(Shanker Raju)
Member (J)

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