CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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OA No.1165/2003

New Delhi, this the 3rd day of November, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member(A)

HC Krishan Lal
(PIS No.28780046)
R/o H.No.124, Masjid Mord Village
NDSE Part-II
New Delhi-110049. .. Applicant

(Shri Anil Singal, Advocate)

versus

1. GNCT through
Commissioner of Police
Police Headquarters
I.P.Estate, New Delhi.

2. Joint Commissioner of Police
(New Delhi Range),PHQ
IP Estate, New Delhi.

3. Addl. DCP (New Delhi Distt.)
PHQ, IP Estate
New Delhi. .. Respondents

(By Mrs.Sumedha Sharma, Advocte)

ORDER

Justice V.S. Aggarwal

Applicant (Krishan Lal) is a Head Constable in Delhi Police. In the departmental proceedings initiated, the following charge had been framed against him:-

" I, Inspector, Dharampal Singh charge you HC Kishan Lal No.288/ND while posted at Security picket, New Delhi Distt. on 13.3.2002 you were called by DO/SI Ajay Bali. On asking about the whereabouts of Ct.Krishan Kumar No.597/ND your Mess Munshi you told the I that your Munshi Ct.Krishan Kumar had been permitted rest by Chitha Munshi HC Brij Nandan No.245/ND. The SI confirmed the facts from HC Brij Nandan who showed his ignorance about any such permission to Ct.Krishan Kumar. You then stated that you were Mess Manager and could leave your Munshi for 3/4 days and for that you required no permission from anybody. SI Ajay Bali then directed you HC Kishan Lal to perform duty at BD-15

picket as there was shortage of staff for duties. You refused to perform the said duty. After short while you came to duty officer room and stated that "tere jaise kuture thanedar sadakon par bhikh mangte phirtey hain aur tere jaise thanedaron ki wajah se hum sipahi public se pittey hain. Police ka bedagark hi there jaise officers ne kiya hai. Tu kal ka bharti hoga aur tu mujhe sikha raha hai ki police working kya hai". You abused the SI/DO and attempted to assault the SI with the helmet which was snatched from you by wireless operator. HC Pradeep Kumar, You, HC Kishan Lal No.288/ND in the presence of Ct.Mahavir No.447/ND, HC Brij Nandan No.245/ND, HC Pradeep Kumar No.79/Commn., Ct.Sandeep Kumar No.389/ND, Ct.Ajeet No.431/ND and Ct.Wazir Singh No.860/ND continued to abusing the SI and tried to assault him again and again and stated "Tum to refugee sale aakar hamain sikhaoge police ke bare mein, main chahoo to tujhe abhi suspend karva sakta hook too mujhe nahin janta main kaun hoon. Ek bar koi allegation laga diya to maf nahin kiya jaoge". The SI lodged the above facts in the rojnamacha vide D.D.No.6 dt.13.03.02. You after going through this entry of SI, recorded D.D.No.7 to counter the report of SI and reported false facts in the rojnamacha.

The above act on the part of you HC Kishan Lal No.288/ND amounts to gross misconduct, grave indiscipline, refusal for duty and disobeyance of lawful directions of your senior officer which render you liable for punishment under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980 and Section 21 of Delhi Police Act 1978."

The inquiry officer had been appointed and he concluded that there is sufficient evidence to prove the following facts:-

"1. That the defaulter had allowed Ct.Krishan Kumar No.597/ND his mess Munshi to avail rest without the permission of chitha munshi and the duty officer. Also he gave wrong information to DO/SI that the Const.was permitted by the chitha munshi to avail rest.

2. The defaulter abused the DO/SI Ajay Bali by using un-parliamentary and insulting language in the presence of the staff.

3. The defaulter had picked up the helmet to attack the DO/SI Ajay Bali but he was prevented by the staff present in the DO room.

4. The defaulter made fictitious entry in the DD register not based on the facts."

The disciplinary authority on basis of the same had imposed a penalty of withholding of one increment with cumulative effect for a period of two years. The applicant preferred an appeal which was dismissed by the Joint Commissioner of Police on 19.4.2003. By virtue of the present application, the applicant seeks quashing of the same.

2. The application has been contested. The basic facts which we have already reproduced above from the charge that was framed have been reiterated. It has been contended that the findings have been arrived at based on the facts that were established. There is no procedural irregularity and that the facts have been appreciated in a proper manner. According to the learned counsel, therefore, there is no ground to interfere in the impugned orders.

3. The learned counsel for the applicant in the first instance urged that a preliminary enquiry had been conducted. The copy of the said report had not been supplied and, therefore, prejudice had been caused to the applicant. In support of his argument, he further urged that even the appellate authority had relied upon the report of the preliminary enquiry. Resultantly, a copy of the same should have been supplied.

4. Under Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 (for short, the Rules), the preliminary enquiry is a fact finding enquiry. Its purpose is to establish the nature of default and identify the defaulters; to collect the evidence; to judge the nature of the default and to bring the relevant documents on record to facilitate a regular departmental enquiry., It is to proceed the departmental enquiry. If the same is to be referred during the course of the departmental proceedings, in that event, a copy of it must be supplied.

5. Our attention has not been drawn to any request made in writing to the authorities concerned for supply of the copy of the preliminary enquiry report. In other words, at this stage to contend that such a copy had been demanded but not supplied would be of no avail. Otherwise also, all these questions have necessarily to be seen in the light of the prejudice, if any caused. When the said report had not been relied upon nor was demanded, the applicant cannot be heard to state that prejudice had been caused.

6. So far as the order of the appellate authority (Joint Commissioner of Police) is concerned, there is only a reference to the fact that the Inspector Security picket also conducted an enquiry into DD No.6 in which all the Prosecution Witnesses deposed the actual facts. This cannot be termed to be reliance on the preliminary

enquiry report. This is the only reason given while discussing the testimonies of the defence witnesses. Therefore, supplying the copy of the preliminary enquiry report would have not served any purpose and in the facts of the present case, no prejudice is caused. Resultantly, there is no ground to accept the said contention.

7. In fact under sub-rule (3) to Rule 15 of the Rules, it has been provided that the concerned police officer may or may not be present at the preliminary enquiry. The file of the preliminary enquiry shall not form part of the formal departmental record, but statements can be brought on record when the witnesses are no longer available. In almost similar terms is sub-rule (iii) to Rule 16 of the Rules which permits that the enquiry officer is empowered to bring on record the earlier statement of any witness whose presence could not be procured without undue delay, inconvenience or expense, if he considers such statements necessary. In the present case, no such statement of any witnesses recorded during the preliminary enquiry had been brought on the record. Resultantly, on this count also, in the absence of any other plea, the applicant cannot be heard to state that such a report should have been supplied.

8. It was urged further that it is a case of no evidence and, therefore, this Tribunal may interfere.

9. Ordinarily this Tribunal will not sit as a court of appeal to re-appreciate the evidence. In judicial review, the limited scope would be to interfere in case it is a matter in which there is no evidence or no reasonable person would come to such a conclusion. If there is some evidence which has been acted upon, this Tribunal will not venture to interfere in the findings of fact.

10. In the facts of the present case, it is obvious from the nature of the charge that the evidence had been produced in the form of witnesses with respect to the charge that had been framed. Further discussion would be improper, therefore, in this regard, taking stock of these facts, we hold that there is no ground to interfere.

11. The only other submission made was that the defence of the applicant was not considered. Even in this regard, the argument has to be rejected because perusal of the impugned orders certainly shows that the defence of the applicant had been looked into. It cannot, therefore, be termed that it is a case where the defence has totally been ignored. The disciplinary authority recorded:-

> "(iii) PWs 1 to 5 are the eyewitnesses of the incident and they had deposed what they had seen. Whereas the DWs deposed as per convenience of the defaulter HC. If the defaulter HC was not at fault why these DWs had not told the whole matter to the

senior officer then and there. But their inaction on that day proved that the defaulter HC was at fault."

The above facts clearly repel the plea of the applicant.

12. No other argument has been advanced.

13. Resultantly, the present application being without merit must fail and is dismissed. No costs.

(S.A.Singh)
Member (A)

(V.S.Aggarwal)
Chairman

/sns/