

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.1913/2003

New Delhi, this the 31st day of March, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI SARWESHWAR JHA, MEMBER (A)

HC Suresh Babar
No.71/SW
P.S.Pharganj
New Delhi.

... Applicant

(By Advocate: Sh. P.K.Jain, proxy of Ms. Harvinder Oberoi)

Versus

1. Commissioner of Police
P.H.Q., I.P.Estate
New Delhi.
2. Joint Commissioner of Police
Southern Range, I.P.Estate
New Delhi.
3. Addl. Deputy Comm. of Police
South West District, I.P.Estate
New Delhi. ... Respondents

(By Advocate: Sh. Ajesh Luthra)

ORDER

Justice V.S. Aggarwal:-

The applicant is working as Head Constable in Delhi Police. He faced disciplinary proceedings and the following charge had been framed:

"I, O.P.Dalal, Inspector/E.O., DE Cell hereby charge you Head Constable Suresh Babbar No.71/SW vide posted in Police Station Sarojani Nagar in and performing best duty in the of Safderjung Enclave, on 19-11-99. you approached one Mr. Vimal Mahant of G-6B, Nauriji Nagar, New Delhi at A-1 Block, Safderjung Enclave, New Delhi and prosecuting him vide DD No.34B dt. 19-12-99, PS Sarojini Nagar for not wearing Helmet while driving his scooter. On the assume day you also apprehended one Jeewan s/o Pale Ram of G-121, Nauroji Nagar, New Delhi for not wearing helmet while driving his scooter. You filled his challan form and threw it away. Later on their torn challan of Sh. Jeewan was picket up by Shri Vimal Mahant and handed it over to



Sh. Vinaj Tiwari, a reporter in the English Daily, "The Time of India", who published it in his news paper on 21.12.99 captioned as "This Traffic challan may be fake". The above illegal act on your part reflection your integrity and tarnished the image of Delhi Police.

The above act on the part of you HC Suresh Babbar No.71/SW amount to gross misconduct, malafide intention, negligence and dereliction in the discharge of your official duties which render you liable for punishment under provision of Delhi Police (Punishment & Appeal) Rules, 1980 read with Section 21 D.P.Act-1978."

2. The inquiry officer had held that the charge had been substantiated. Agreeing with the said report, the disciplinary authority ordered one year approved service of Head Constable Suresh Babbar to be forfeited by diferent of an increment temporarily for a period of one year. His period of suspension was treated as not spent on duty. He preferred an appeal, which was dismissed by the appellate authority holding:

"The plea that the statement of witnesses had not proved the charge can not be accepted because Enquiry Officer has applied himself to the statement and given a detailed valid order. Keeping in view the Rule-16(iii) of Delhi Police (Punishment & Appeal) Rules, 1980, which clearly provided that the Enquiry Officer was empowered to bring on record any earlier statement of any of the witnesses, whose presence can not, in the opinion of such officer, be procured without undue delay. These PWs could not be examined during the PE proceedings as they did not join the proceedings despite best efforts made by the Enquiry Officers. However, their statement recorded during prosecution evidence had already been supplied to the appellant. The appeal is, therefore, rejected.

Let the appellant be informed accordingly."

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3. By virtue of the present application, the applicant seeks quashing of the order passed with consequential benefits.

4. The application has been contested. During the course of submissions, learned counsel for the applicant asserted that the statements of the witnesses, namely, Shri Vinay Tiwari and Mr. Jeewan had not been recorded during the course of the inquiry. The same were transferred as had been recorded during the preliminary inquiry on the record and were considered. In view of the learned counsel, this is in violation of Sub-Rule (3) to Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980. On the contrary, the learned counsel for the respondents urged that in terms of Sub-Rule (iii) to Rule 16 when witnesses could not be procured without undue delay and they were not willing to come forward, the inquiry officer as well as other authorities were justified in acting on the said statements.

5. Delhi Police (Punishment and Appeal) Rules, 1980 provides the procedure with respect to the departmental inquiries. Under Rule 15 of the said Rules, a preliminary inquiry has been stated to be a fact finding inquiry. The purpose is (i) to establish the nature of default and identity of defaulter(s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental inquiry. Sub-Rule (3) to Rule 15 of the said rules further provides that a preliminary inquiry

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is not a part of the formal departmental record but statements can be provided from the record when the witnesses are no longer available. Sub-Rule (3) to Rule 15 reads as under:

"Rule 15(3): The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary inquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer."

6. In addition to that, Rule 16 provides the procedure in detail pertaining to the departmental inquiries. If prima-facie a misconduct is proved, and is likely to result in a major punishment the procedure prescribed has been referred to in Rule 16. Sub-Rule (iii) to Rule 16 empowers the inquiry officer to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer be procured without undue delay, inconvenience or expense, if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a Magistrate and is either signed by the person making it, or has been recorded by such officer during an investigation or a judicial enquiry or trial. Sub-Rule (iii) to Rule 16 reads as:



"Rule 16(iii): If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements of documents thus brought on record."

7. As already pointed above, the argument advanced was that the statements which were transferred to the departmental inquiry were during the preliminary inquiry and therefore it is only Sub-Rule (3) to Rule 15 which come into play.

8. On behalf of the respondents, reliance was being placed on the decision of a Co-ordinate Bench of this Tribunal in the case of Ompal Singh v. Union of India & Others, OA No.2098/2001, decided on 5.2.2002. The following passage was relied upon by the respondents' learned counsel.



"As regards the jurisdiction of the enquiry officer to bring on record the earlier statement from the file of the preliminary enquiry the same has an object sought to be achieved. The witnesses whose presence cannot be procured but for undue delay and inconvenience and if these statements are necessary the same are made admissible in the departmental enquiry. However a safeguard is provided in the rules that the statement should be recorded and attested by a police officer superior in rank to the police officer and are recorded by such an officer during investigation, judicial enquiry or trial. These statements are read over to the accused officer who has an opportunity to cross-examine the witnesses proving these statements. The unsigned statements can also be brought by recording the statement of the person who recorded it and is also subjected to cross-examination. In this view of the matter, the accused is not at all prejudiced and his rights are protected by accord of a reasonable opportunity to confront these statements by cross-examination. Apart from it, the apex court in several rulings including that of **State Bank of Bikaner and Jaipur Vs. Srinath Gupta & Anr.**, 1997 (1) SC SLJ 5 as held that even the statements during trial under Section 61 CRPC can be taken into the record of the disciplinary proceedings. Apex Court in **Kuldeep Singh Vs. Commissioner of Police**, JT 1998 (8) SC 603 has upheld the vires of Rule 16 (iii) and it is no more res integra."

A perusal of the same clearly shows that the question that has been agitated before us has not been considered and, therefore, the above said findings will not come to the rescue of the argument of the respondents' learned counsel:

9. In that event, the learned counsel for the respondents urged that Sub-Rule (iii) to Rule 16 is a general provision, therefore, it is in any case applicable.

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10. The basic principle in law is not a subject matter of controversy. Normally the witnesses have to be examined with a right to the alleged delinquent to cross-examine the same. The Rule, which provide to bring on record the earlier statements, is an exception to the above said rule. They have been drawn from the ratio of Sections 32 and 33 of the Indian Evidence Act. To that extent there is no controversy.

11. It is a settled principle that rules must be read as a whole. One provision should be construed with reference to other provisions to make a consistent compilation of the rules. The duty of the Court is to avoid head long clash of the Rules.

12. Almost, five decades ago, the Supreme Court in the case of Raj Krushna Bose v. Binod Kanungo and Others, AIR 1954 SC 202 held:

"It is the duty of courts to avoid that and, whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise."

13. Same principle had been reiterated by the Supreme Court in the decision rendered in the case of University of Allahabad and Others v. Amrit Chand Tripathi and Others, AIR 1987 SC 57. The principle of harmonious construction of rules and statutes was reiterated stating:

"These provisions have to be construed harmoniously so as to eliminate any conflict, without rendering any provision of the Act or any authority created by the Act, superfluous."

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Sec.45(1) lays down the rules of eligibility for admission to a course of study in the university."

14. The provision of one Section of the Rule, cannot be used to defeat the other, unless it is not possible to re-concile. This was so held by the Supreme Court in the case of D. Sanjeevayya v. Election Tribunal, Andhra Pradesh and Others, AIR 1967 SC 1211. The Supreme Court held:

"It is a well-settled rule of construction that the provisions of a statute should be so read as to harmonise with one another and the provisions of one selection cannot be used to defeat those of another unless it is impossible to effect reconciliation between them."

15. The position herein is identical. Sub-Rule (3) to Rule 15 emphatically prescribes that preliminary inquiry shall not form part of the departmental record but statements can only be brought on record when witnesses are no longer available. There is no other exception prescribed under Sub-Rule (3) to Rule 15. Sub Rule (iii) to Rule 16, in general terms, gives power in bringing on record on earlier statements of the witnesses in the exceptions which we have referred to above already. They contemplate where there is undue delay, inconvenience or expense, the inquiry officer can transfer those statements.

16. We note from the decision of the Supreme Court in the case of South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivendrum and Another, AIR 1964 SC 207 that a special provision

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should be given effect to the extent of its scope, leaving the general provision to control cases where the special provision does not apply.

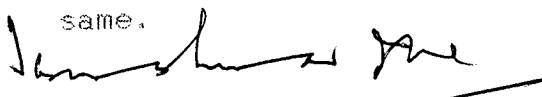
17. Sub-Rule (3) to Rule 15 is a special provision necessarily when statements recorded in the preliminary inquiry have to be transferred. It can only be so done under the strict language of Sub-Rule (3) to Rule 15, i.e., when witnesses are not available. In other cases the general provisions of Sub-Rule (iii) to Rule 16 will come into play.

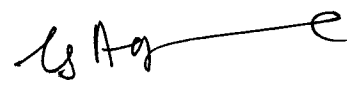
18. Reverting back to the facts of the present case, it was not disputed that witnesses were available but were not willing to come forward and the learned counsel informed us that despite being summoned they were not ready to make a statement. Since their statements have been recorded in the preliminary inquiry, therefore, in terms of Sub-Rule (3) to Rule 15 it could not be transferred to the departmental proceedings. We hold accordingly.

19. However taking stock of these facts, for the present, we quash the impugned order and direct the disciplinary authority to take necessary steps and consider the material on the record if proper and pass any further order deemed appropriate under the facts and circumstances of the case.

20. We make it clear that we are not expressing any opinion pertaining to the merits of the

same.


(Sarveshwar Jha)
Member(A)


(V.S. Aggarwal)
Chairman