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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2545/2003

New Delhi, this the 30th day of September, 2004

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

HC Azad Singh Bhardwaj
No.316 NW, Distt North West
New Delhi. ... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Commissioner of Police
PHQ, IP Estate
New Delhi.
2. Addl. Commissioner of Police (AP)
N.P.L.Kingsway Camp
New Delhi.
3. Deputy Commissioner of Police
III Bn., DAP NPL, Kingsway Camp
Delhi. ... Respondents

(By Advocate: Mrs. Renu George)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant (HC Azad Singh Bhardwaj) by virtue of the present application seeks to assail the punishment order of 12.1.1998 passed by the disciplinary authority and the order of 1.8.2003 passed by the appellate authority besides the inquiry report.

2. Some of the relevant facts are that a departmental inquiry had been initiated against the applicant on the allegations that on 4.12.1996, Sub Inspector Daya Kishan, 2nd Incharge, Karkardooma Judicial Lock up informed Shri Ram Singh, Assistant Commissioner of Police (ACP) that Under Trial Prisoner (for short 'UTP') Naresh was detected by HC Vijay Pal under influence of liquor at the lock up. An inquiry was conducted through Shri Ram Singh, ACP. During

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the inquiry, it revealed that UTP Naresh was served with liquor when the applicant took him out of Dakhila without recording any reason in the daily diary and was loitering with him up and down on the stairs of the lock up. Thereafter, the applicant lodged the UTP inside the Dakhila without subjecting him to proper search. The applicant was held responsible for the said incident.

3. The departmental inquiry was conducted and completed by Shri Ram Singh, ACP. Agreeing with the findings of the Inquiry Officer, the disciplinary authority had awarded the punishment of reduction in rank to the applicant for a period of three years from Head Constable to Constable. He had preferred an appeal. The penalty was modified to that of forfeiture of three years approved service permanently for a period of three years entailing reduction in his pay and that he will not earn increments of pay during the period of reduction and on the expiry of this period the reduction will have the effect of postponing his future increments of pay vide order dated 15.9.1998.

4. Applicant had preferred OA 752/2002. The matter was remitted by this Tribunal on 30.10.2002, back to the appellate authority to pass a fresh order keeping in view the decision taken in the case of **Shakti Singh v. Union of India & Ors., CWP No.2368/2000, decided on 17.9.2002**. It is, therefore, that a fresh order was passed by the appellate authority whereby three years approved service of the applicant was forfeited temporarily entailing reduction in his pay from Rs.4220/- to Rs.3965/- Per Month for a period of three years. It is in this backdrop that the present application has been filed praying for the reliefs to which we have referred to above.

5. During the course of submissions, the learned counsel for applicant raised number of pleas. One such plea agitated was that the applicant was not supplied a copy of the preliminary inquiry report particularly when the Department had relied upon it and proved it by examining the witness. On behalf

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of the respondents, it was urged that it was not so necessary to do so because it was merely a preliminary inquiry. Otherwise, a fair opportunity had been granted to the applicant.

6. We are aware of the decision of the Supreme Court in the case of **S.K.SINGH v. CENTRAL BANK OF INDIA AND OTHERS**, (1996) 6 SCC 415. The Supreme Court held that if inquiry report is not supplied and no prejudice is caused, in that event the proceedings cannot be held to be vitiated. The Supreme Court referred to with advantage to the decision in the case of **Managing Director, ECIL v. B.Karunakar** [(1993) 4 SCC 727]. Identical was the decision rendered in the case of **VIJAY KUMAR NIGAM (Dead) THROUGH LRs. v. STATE OF M.P. AND OTHERS**, (1996) 11 SCC 599. The Supreme Court held that preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent and it did not form any foundation for passing the order of dismissal and, therefore, in that particular case, it was held that there was no illegality in this regard. Same was the decision in the case of **NARAYAN DATTATRAYA RAMTEERTHAKHAR v. STATE OF MAHARASHTRA AND OTHERS**, (1997) 1 SCC 299.

7. On the contrary, the Supreme Court in the **STATE OF U.P v. SHATRUGHAN LAL & ANR.**, JT 1998 (6) SC 55 held:

“Preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in *Kashinath Dikshita v. Union of India & Ors.* (1986) 3 SCC 229 (*supra*), wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence.”

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8. It is in the backdrop of the aforesaid that we have to revert back to the facts of the present case. But before doing so, necessary conclusions can conveniently be stated to be drawn that ordinarily preliminary inquiry report is not to be given if no prejudice, in this regard, is caused. But if prejudice, in this regard, is shown to be caused, in that event it is necessary to make available the report of the preliminary inquiry when it is asked for. In the present case before us, Shri Ram Singh, ACP who had conducted the preliminary inquiry, thought it proper to examine PW-4. During the inquiry, he not only stated the facts that were concluded by him but even proved his report (PW-4/A). What is important is that even when the charge was framed by the inquiry officer, there was a positive reference to this effect. The said charge reads:

“I, Ram Pat Singh, ACP/HQ.III Bn. DAP charge you, HC Azad Singh No.2154/DAP that on 5.12.96 SI Daya Kishan 2nd I/c Karkardooma Judicial lock-up/III Bn. DAP informed Sh. Ram Singh, ACP/Lock-ups III Bn. DAP at his residence in the morning that UTP Naresh @ Chuttan S/O Faqir Chand was detected by HC Vijay Pal No.3841/DAP I/C dakhila that on 4.12.96 after production UTP Naresh @ Chuttan S/O Faqir Chand has consumed liquor at the lock-up. The said UTP was further sent to Swami Dayanand Hospital, Shahdara and was got medically examined.

An enquiry in this regard was conducted by Sh. Ram Singh, ACP/Lock-ups III Bn. DAP and during the enquiry it revealed that UTP Naresh @ Chuttan S/O Faqir Chand was served with liquor when you, HC Azad Singh No.2154/DAP MHC E.D.Lock-up took the UTP out of dakhila without recording any D.D. and was seen loitering him up and down stairs of the lock-up for about 15 minutes. Thereafter, you yourself lodged the said UTP inside the dakhila without subjecting the UTP to a proper search, hence you were held responsible for the above incident.

The above act on the part of you, HC Azad Singh No.2154/DAP amounts to gross misconduct, negligence and dereliction in the discharge of your official duties which render you liable for punishment as envisaged in Delhi Police (Punishment & Appeal) Rules, 1980.”

9. In other words, the fact finding or preliminary inquiry has positively been relied upon but copy of the same has not been supplied. In the peculiar facts, once it is so, the applicant can reasonably complain that prejudice is caused to him. This is obvious because not only the same is being proved but is being

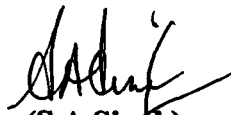
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mentioned as a part of the charge that an inquiry was held and findings thereupon were relied upon. This Tribunal, in the case of VIJAY SINGH v. GOVERNMENT OF NCT, DELHI AND OTHERS, O.A. No.173/1994, dated 28.6.1999 also held that copy of the Fact Finding report should be given when the person concerned is cited as a witness. Identical are the findings recorded by us. In view of the facts of the present case, therefore, once the report which is being relied upon was not supplied, the applicant can reasonably complain of prejudice having been caused.

10. For the aforesaid reasons, we allow the present application and quashed the impugned order. It is directed that the preliminary inquiry report may be supplied to the applicant and thereafter, if deemed proper, inquiry may proceed from the appropriate stage in accordance with law.


(S.A.Singh)
Member(A)


(V.S.Aggarwal)
Chairman

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