

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 66/2003

New Delhi, this the 15th day of September, 2003

Hon'ble Justice Shri V.S. Aggarwal, Chairman
Hon'ble Shri R.K. Upadhyaya, Member (A)

Mukesh Kumar
PIS No. 29860024
R/o C-1, 29/30, Rama Park,
Nazafgarh Road,
New Delhi - 110 059.

...Applicant

(By Shri Anil Singhal, Advocate)

Versus

1-A. G.N.C.T. through Commissioner of Police,
PHQ, I.P. Estate, New Delhi.

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

2. Additional Dy. Commissioner of Police
(South West Distt.)
P.S. R.K. Puram,
New Delhi.

...Respondents

(By Shri Ajesh Luthra, Advocate)

ORDER (ORAL)

Justice V.S. Aggarwal, Chairman

The applicant- Mukesh Kumar is a Constable in Delhi Police. Departmental proceedings had been initiated against the applicant pertaining to the following charge:-

"I, Inspr. R.K. Meena, EO/DE Cell charge you Const. Mukesh No. 1317/SW and Const. Paramjit Singh No. 720/SW that while you were posted at PS Dabri on 5.8.1999 Shri Ravinder Sharma s/o Shri Chand r/o Plot No. 82, Gali No. 14, Durga Park, New Delhi made a complaint alleging therein that when his brother Sushil was raising a boundary wall of plot at P-Block West Sagar Pur, by about 3 feet. You Ct. Mukesh Kumar reached the spot in the evening beat up Shri Sushil, resulting labourers run away and demolished the whole boundary wall. Thereafter the matter was negotiated with Shri Ravinder,

ls Ag

the complainant. Further both of them were asked to go to Police Station Dabri alongwith paper of plot. When both of them started moving towards police station, you Const. Mukesh took Ravinder aside and told him that it will be no use to go to police Station because if the SHO came to know about this matter, he (Ravinder) have to pay more money. You Const. Mukesh to pay Rs. 15000/- for getting the Boundary Wall constructed because he would have to give half of that amount to you Ct. Paramjit. When they showed their inability to pay the huge amount, then you Ct. Mukesh demanded Rs. 10,000/- from them. They again refused to pay the money. Then you Ct. Mukesh asked him to pay the money whatever they had at that time. Thereafter Shri Ravinder brought Rs. 1000/- from his wife and gave the same to you, Ct. Mukesh. After getting money you, Const. Mukesh No. 1317/SW allowed Ravinder to construct the boundary wall upto the same height as it was earlier. After 5/6 days you, Const. Paramjit reached the said plot and asked Ravinder as to how he dared to construct the Boundary Wall in your absence. Ravinder told that it is the same boundary wall for which the matter has already been agreed of Rs. 10,000/-. Ravinder was then pressed for giving remaining amount of Rs. 9,000/-. You Const. Paramjit also told him that information had been reached to SHO and your constables would not give the amount to the SHO out of their own pocket. Your Const. Paramjit also threatened to make B.C. and would be implicated in case of keeping illegal weapon. On 4.8.1999 at about 10.00 P.M. both Consts. Paramjit and Mukesh reached the house of Ravinder and abused him. Both of you in order to get the door opened, knocked at the door and pushed the same.

The above act on the part of your Const. Mukesh Kumar No. 1317/SW and Const. Paramjit No. 720/SW amount to gross misconduct, indiscipline and corrupt practice unbecoming of a police officers. This is punishable u/s 21 of Delhi Police Act, 1978"

2. Enquiry Officer had been appointed who returned the findings against the applicant. Resultantly, the disciplinary authority recording

ls Ag



separate reasons but accepting the said findings imposed a penalty:

"Keeping in view the overall facts and circumstances of the case, and agreeing with the findings of the E.O. I hereby impose the penalty of forfeiture of five year's approved service of Constable Mukesh Kumar No. 1377/SW and Constable Paramjeet Singh, No. 720/SW temporarily, for a period of one year. The pay of Constable Mukesh Kumar, No. 1377/SW and Constable Paramjeet Singh, No. 720/SW, is reduced by five stages from Rs. 3575/- P.M. to Rs. 3200/- and Rs. 3725/- P.M. to Rs. 3350/- P.M. respectively, in the time scale of pay for a period of five years. They will earn their increments of pay during the reduction period and on the expiry of this period, the reduction will not have the effect of postponing of their future increments of pay. Their suspension period from 20.08.1999 to 12.1.2000 is treated as period not spent on duty."

3. The applicant preferred an appeal which has been dismissed.

4. By virtue of the present application, the applicant seeks quashing of the orders passed by the disciplinary as well as the appellate authorities.

5. The petition has been opposed.

6. During the course of submissions, learned counsel for the applicant raised the following contentions:

a) There was a preliminary enquiry held and keeping in view the said fact before initiating



disciplinary proceedings against the applicant, approval of the Additional Commissioner of Police was necessary, which has not been obtained;

b) The preliminary enquiry report has not been supplied to the applicant and this has caused prejudice to the claim of the applicant;

c) Witnesses had been examined particularly PW-8 beyond the list of the witnesses.

d) It was a matter of 'no evidence', and

e) There has been violation of sub rule (3) to rule 15 and sub rule (iii) to rule 16 of Delhi Police (Punishment & Appeal) Rules.

7. After hearing the parties' learned counsel, we are of the considered opinion that in the facts of the present case keeping in view the violation of sub rule (2) to Rule 15 of the Rules, referred to above, the proceedings as well as the impugned orders have to be quashed.

8. At the outset, we may mention that it was not in dispute before us that the approval of the Additional Commissioner of Police as contemplated has not been obtained while the disciplinary proceedings

USAg

12

had been initiated. However, learned counsel for the respondents urged vehemently that in the present case, there was no preliminary enquiry that had been held. Enquiry, if any, was by an order of the Assistant Commissioner of Police, who was not the disciplinary authority and, therefore, it cannot be termed to be a preliminary enquiry.

9. The arguments urged by the learned counsel for the respondents did provide a food for the thought. The answer can be searched from the plain language of the Rules. Sub rule (2) to Rule 15 unfolds itself in the following words:

"(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

10. Perusal of sub rule (2) to Rule 15, which we have reproduced above, shows that the language is plain, the meaning is clear and, therefore, there is no need to extend the law of Lexicon. In cases where preliminary enquiry discloses the commission of a cognizable offence, it is mandatory that before starting the disciplinary enquiry prior approval of the Additional Commissioner of Police is a ^{Sine - qua - non} ~~synchronize~~. This rule seemingly has been enacted to ensure as to whether criminal proceedings have to be initiated by

Q.A.

13

registering the case or a departmental enquiry has to be held. It will have no application where disciplinary proceedings are initiated along with criminal proceedings but where choice has been exercised the rule necessarily has to be followed in its strict sense.

11. Reverting back to the arguments raised on behalf of the respondents, we take advantage in referring to sub rule (1) to Rule 15 and sub rule (3) to Rule 15, which reads as under:-

"(1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identify 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 enquiry. In cases where specific information covering the above-mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally proceed a departmental enquiry.

(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 enquiry, 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."

U Ag

12. Sub rule (1) to Rule 15 shows and in fact explains that preliminary enquiry is a fact finding enquiry. The purpose has been mentioned in the rule itself to establish the nature of the default and to judge the quantum of the default etc. The rule does not mention as to who is the authority competent to direct preliminary enquiry to be held. But the first part of sub rule 1 to rule 15 cannot be read in isolation. It will draw a strength and colour from the second part of sub rule 1 to rule 15, which we have reproduced above. It says that departmental enquiry may be ordered by the disciplinary authority straightaway. This deals with cases where specific information covering the points which are to be investigated in preliminary enquiry are known and it is felt that preliminary enquiry is not necessary but necessary clues are obvious that ordinarily the preliminary enquiry should be by the disciplinary authority.

13. What is the position herein? The preliminary enquiry had been ordered by an Assistant Commissioner of Police who admittedly is not the competent authority. However, perusal of the record reveals that the enquiry officer in his report referred the said preliminary enquiry, stating it to be the enquiry held earlier, and even the disciplinary authority fell back on the said enquiry when it recorded:

"Inspector Ombir Singh Bhati (PW-8),
who had conducted the enquiry on the

U Ag

complaint of PW-I has verified during the DE proceedings, the statements of the witnesses, earlier recorded in the said enquiry, and has exhibited the same. As such, the version of the PWs during the course of DE proceedings and the allegation made by them in their earlier complaint and statements recorded by Inspector Ombir Singh Bhati cannot be absolve them from their misconduct."

14. Under sub rule 3 to rule 15 of the Rules, there is a clear mandate that file of the preliminary enquiry shall not form part of the formal departmental record. However, statements recorded thereon could be brought on record of the departmental proceedings in certain eventualities i.e. when witnesses are no longer available, the enquiry officer can bring on record the other documents forming part of the file of the preliminary enquiry if he considers it necessary after supplying the copies to the accused officer. Sub rule 3 to rule 16 also, almost in similar words, permits the enquiry officer to bring on record the earlier statements of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay or inconvenience.

15. Once the disciplinary authority itself referred to the statements of those witnesses that had been recorded earlier, obviously he was acting under sub rule 3 to rule 15 and sub rule 3 to rule 16 of the Rules. In other words, there is a tacit and implied approval to the order passed by the Assistant Commissioner of Police directing a preliminary enquiry. This is for the added reasons that at any point of time

ls Ag e

: 9 :

till the present application came up for consideration, the disciplinary authority thought it appropriate to record that this was not a preliminary enquiry at his behest or ordered by him for all practical purposes. Therefore, it must be taken to be a preliminary enquiry.

16. During the course of submissions, learned counsel for the applicant had drawn our attention to two decisions of this Tribunal in case of **Ex. Constable Narender Singh vs. Govt. of NCT of Delhi** (OA 169/99) decided on 1.11.2000 and in case of **Ex. Constable Ravinder Singh vs. Commissioner of Police** (OA No. 157/2002) decided on 17.4.2002. Learned counsel contended that even if there was no preliminary enquiry in cases which discloses commission of a cognizable offence like the facts of the present case, approval of the Additional Commissioner of Police is mandatory.

17. We have strong reservation about the correctness of this view but since we are remitting the matter and allowing the present petition, for the reasons already recorded above, we deem it unnecessary to dwell further into it.

18. For these reasons, without expressing any opinion on the other contentions of the learned counsel for the applicant which we have noted above, we allow

Ag

(2)

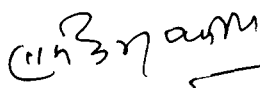
the present application and quash the impugned orders.

It is directed:

a) The impugned orders are quashed.

b) If the authorities deem it appropriate it may, from the stage the report of the preliminary enquiry was received, may proceed in accordance with law; and

c) The necessary consequential benefits shall accrue to the applicant.



(R.K. Upadhyaya)
Member (A)



(V.S. Aggarwal)
Chairman

/na/