

Ashok Kumar Vs. Additional Dy. Commissioner of

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Dec-20-2002

Reported in : (2004)(1)SLJ181CAT

Judge : L S Vice, M a S.K.

Appellant : Ashok Kumar

Respondent : Additional Dy. Commissioner of

Advocate for Def. : Mr. George Paracken, Mr. J.A. Chaudhary

Advocate for Pet/Ap. : Mr. Shyam Babu

Judgement :

1. The present O.A. was earlier disposed of vide Tribunal's order dated 2.5.2000. Thereafter the applicant had filed writ petition No.4246/2000 before the Hon'ble High Court of Delhi which was disposed of vide Hon'ble High Court's order dated 17.9.2001. The relevant portion of the Hon'ble High Court's order reads as follows:- "Petitioner and his colleague Jitender Pal Singh, both Constables in Delhi Police were dismissed from service allegedly for extorting money from one person. It is claimed that this was done pursuant to a joint Enquiry. Both files O.As. before Tribunal against this taking the plea that non-supply of preliminary report had prejudiced their defence in reference to Rule 15(3) of Delhi Police (P&A) Rules 1980. Tribunal allowed O.A. 1406/96 of Jitender Pal but dismissed O.A. 2021/96 of petitioner. Hence this petition.

We have examined both orders and we find that Tribunal had drawn distinction in petitioner's O.A. on noticing that he had not demanded Preliminary Enquiry report and had declined to cross-examine witnesses. Mr. Sham Babu asserts that Jitender Pal also had not asked for any such report and yet Tribunal had allowed his petition and quashed his termination.

If Sham Babu was to be believed on his word, it would emerge that Tribunal had proceeded contrary to record which could call for review of its orders. Relevant record is not available to enable us to ascertain the position. Petitioner, is therefore, left to seek appropriate remedy in the matter.

Petitioner is accordingly dismissed with liberty to petitioner to take such remedy if Tribunal was prima facie convinced that his case was similar and identical in all respects to that of Jitender Pal, it shall examine the matter irrespective of any limitation plea involved." 2. The earlier judgment referred to in the above order i.e., filed by Constable Shri Jitender Pal Singh (O.A. 1406/1996) had been noted but distinguished in the later order passed by the Tribunal on 2.5.2000 in the present O.A.3. In pursuance of the aforesaid order of the Hon'ble High Court, the applicant had filed R.A. 377/2001. Mr. Shyam Babu, learned Counsel for the review applicant and Mr. George Paracken, learned Counsel for the respondents were heard. Having regard to the observation of the Hon'ble High Court quoted in para 1 above, namely, that if the learned Counsel for applicant's averments were to be believed on his word, it would emerge that the Tribunal has proceeded contrary to record. R.A.377/2001 was allowed. The earlier order dated 2.5.2000 was recalled with a direction that O.A. 2021/1996 may be placed for hearing. We have heard Mr. Shyam Babu, learned Counsel for the applicant and Mr. George Paracken, learned Counsel for the respondents at length, on the issue referred to above. Particularly with reference to the observations of the High Court. We would like to record the valuable assistance rendered by Mr. Shyam Babu, learned Counsel for the applicant and Mr.

George Paracken with Mr. J.A. Chaudhary, learned Counsel for the respondents in dealing with this case, Mr. George Paracken, learned Counsel has also produced the Departmental Enquiry (DE) proceedings file relevant parts of which we have

perused and the same has also been shown to Mr. Shyam Babu, learned Counsel.

4. Both the learned Counsel have repeatedly referred to the relevant portions of the judgments of the Tribunal dated 4.12.1998 in O.A.1406/1998 and dated 2.5.2000 in the present O.A.. Learned Counsel for the applicant has contended that the decision in the present case must necessarily be in accordance with the reasoning and conclusions arrived at in the order dated 4.12.1998 in Jitender Pal Singh's case (*supra*).

On the other hand, Mr. George Paracken, learned Counsel has submitted that perusal of the relevant paragraphs of these two judgments, and particularly paragraph 8 of the judgment dated 2.5.2000, wherein the Tribunal had distinguished the facts from the facts applicable to Jitender Pal Singh's case (*supra*) are very relevant which are also fully supported by the documents available in the DE proceedings file.

Learned Counsel for the respondents prays that there was, therefore, no illegality in the order dated 2.5.2000 in distinguishing the earlier judgment on the facts, which was permissible under law.

5. Learned Counsel for the respondents has submitted that in the DE proceedings held against the applicant in, 1995, there was a distinction which has come on record in the proceedings held on 10.3.1995 against the applicant. To the question "do you accept your guilt", the applicant had answered 'Yes' in Hindi. On the other hand, to a similar question put to the applicant, Jitender Pal Singh in O.A.No. 1406/1996 in the proceedings held on 7.3.1995, whether he accepted the guilt he had answered by saying 'No' in Hindi. Apart from this distinction, learned Counsel has also submitted that the inquiry officer had neither introduced the preliminary enquiry (PE) report which was conducted by PW8, Shri Ved Pal Singh, nor has he relied on the same so as to attract the provision of Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules, 1980. He has emphatically pointed out that this is what was specifically held in paragraphs 8 and 9 of the Tribunal's order dated 2.5.2000. In the circumstances of the case, Mr. George Paracken, learned Counsel, has vehemently submitted that there is no prejudice at all caused to the applicant in the present case, as he has not only admitted the guilt of his

misconduct for which he had been prosecuted in the departmental proceedings but there is also no legal infirmity in the earlier order of the Tribunal passed on 2.5.2000 after seeing the DE proceedings file noting these facts. He has, therefore, submitted that no interference in the order dated 2.5.2000 is called for, even after rehearing the case.

6. Both the parties have also referred to the pleadings in the O.A., in which according to the averments made in paragraph 5.5 of the counter affidavit, the respondents have stated that the applicant has admitted his guilt in his own handwriting on 26.9.2000 in the formal inquiry conducted by the SHO/Hari Nagar. This fact has been denied by the applicant in the rejoinder stating that he had not admitted his guilt in his writing during the formal inquiry and has referred to the provisions of Rule 15 (3) of the Delhi Police (Punishment & Appeal) Rules, 1980.

7. On perusal of the departmental inquiry proceedings file it is we noted that there is a statement of the SHO dated 27.10.1992 on record, which has also been shown to learned Counsel for the applicant. In this statement it has been noted that the applicant, along with Jitender Pal Singh, applicant in O.A. No. 1406/1996, when called during the inquiry admitted his guilt in writing.

8. We have carefully read and re-read the relevant portions of the judgments of the Tribunal dated 4.12.1998 and 2.5.2000, with particular reference to the aforesaid observations of the Hon'ble High Court and considered the submissions made by the learned Counsel for applicant thereon. The only main issue in this case is whether Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules, 1980 is applicable or not.

Relevant portion of this Rule reads as follows:- 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 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." 9. It is relevant to note that the learned Counsel for the applicant has nowhere contended that this is a case of no evidence or that there is only the evidence of PW8 who had conducted the PE. In Tribunal's order dated 2.5.2000 it has been clearly recorded as follows:- "8..... But in this case it is seen that the Enquiry Officer has not brought the report made by PW-8. The witness on his own accord having stated that he wanted to give the Enquiry Officers' report to Senior Officer which was formally marked as an exhibit, but as stated Supra the said report was not relied upon by the E.O. What the rule contemplates is when E.O. seeks to rely upon the statements or other documents in the file of preliminary enquiry, he should have furnished them to the charged officer along with the documents when the charge-memo was served on him. If any document was exhibited by a witness, it should be given to charged officer only if it was to be relied upon by Enquiry Officer. As seen Supra, no prejudice was caused to charged officer, as he did not choose to cross-examine PW-8. We do not, therefore, find any violation to Rule 15(3)." 10. On the other hand, Mr. Shyam Babu, learned Counsel has relied on paragraph 3 of the Tribunal's order dated 4.12.1998 in O.A. 1406/1996 which reads as follows:- "3. We have given our anxious consideration to the facts and circumstances brought out in the pleadings and evidence and have heard the learned Counsel appearing for the parties at considerable length.

The contention of the applicant that there is a total dearth of evidence on the basis that two of the complainants have failed to identify him, cannot be accepted as Kanhya Lal one of the complainants has identified the applicant and given evidence of his involvement in the offences. However, we find that PW-8 Ved Prakash who conducted the enquiry was examined in the proceedings and the report submitted by him was marked as an exhibit. It is not disputed that a copy of the report of the preliminary enquiry was not supplied to the applicant and that the applicant therefore did not cross-examine PW-8. The introduction of the preliminary enquiry report and the examination of PW 8 without giving the applicant a copy of the enquiry report has caused substantial prejudice to the applicant in his defence and the procedure adopted is opposed to the provisions of Sub-rule (3) of Rule 15 of the Delhi Police (Punishment and Appeal) Rules, argued

the learned Counsel. Learned Counsel invited our attention to a decision of this Bench of the Tribunal in *Jai Singh v. Delhi Administration and Ors.* (O.A. No. 1788/1991 decided on 31 August, 1995) in which it was held that the preliminary enquiry report having been admitted in evidence by the enquiry officer without giving a copy thereof to the charged official, vitiated the proceedings. Learned Counsel of the respondents argued that Sub-rule (3) of Rule 15 of the Delhi Police Punishment and Appeal Rules enables the enquiry authority to bring on record of the enquiry any material from the file of the preliminary enquiry and that as the applicant had an opportunity to cross-examine the official who held the preliminary enquiry no prejudice has been caused to him and that therefore the argument based on provisions of Rule 15(3) has no force at all. We are unable to accept this argument. That a preliminary enquiry has been held and a report thereof has been admitted in evidence at the enquiry by examination of the official who held the enquiry are not in dispute.

Sub-rule 3 of Rule 15 of the Delhi Police (Punishment and Appeal) Rules of course enable the enquiry authority to bring on record any material from the preliminary enquiry but it provides that before bringing such material on record of the enquiry, a copy thereof should be supplied to the charged official. This requirement has not been met in this case. The argument of the learned Counsel of the applicant that on account of non-supply of a copy of the preliminary report the applicant was disabled from cross-examining the official who conducted the preliminary enquiry and that this has prejudiced the defence of the applicant has considerable force. We therefore hold that the proceedings of the enquiry is vitiated for non-compliance with the provisions of Sub-rule 3 of Rule 15 of the Delhi Police (Punishment and Appeal) Rules. Since the enquiry officer has committed a grave error in relying on the preliminary enquiry report without giving a copy of the preliminary enquiry report to the applicant to enable him to cross-examine the PW 8 properly, the proceedings stand vitiated. Therefore, the impugned order (Annexure-A) based on that enquiry report and the finding as also the appellate order are liable to be set aside." 11. Mr. Shyam Babu, learned Counsel has contended that in both the cases i.e., *Jitender Pal Singh's* (supra) and applicant's, the PE report was not asked for and, therefore, the cases stood on the same basis and there was no ground at all for the Tribunal to distinguish the facts on this point.

His contention is that the fact that the PE was held has not at all been denied by the respondents. It is also a fact that the report was introduced in the inquiry as an exhibit, which, therefore, necessarily means that a copy of the same ought to have been given to the applicant. He has further contended that without giving a copy of the PE report, it is meaningless to ask the applicant to cross-examine PW-8, which he had denied to do when he was asked by the enquiry officer. He has, therefore, vehemently contended that the conclusion drawn by the Tribunal in its order dated 2.5.2000 that even after the applicant was asked to cross-examine that witness/PW-8, he did not avail the opportunity and has not asked for the copy of the report is wholly illegal and contrary to the provision of Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules, 1980 which according to him, is fully applicable to the facts of the case. He has also contended that the papers of the proceedings conducted by the respondents on 10.3.1995 in the final report produced before the Court only contain photocopy of a single sheet of paper which cannot be relied upon, However, he further submits that this statement of the applicant has not been relied upon by the inquiry officer nor impleaded. With regard to the fact that this document cannot be relied upon, as contended by the learned Counsel for the applicant himself, nothing has been recorded by the inquiry officer. As such, we do not find that any prejudice has been caused to the applicant besides the fact that his contentions will also not assist the applicant.

12. As mentioned above, after careful perusal of the earlier two judgments of the Tribunal dated 4.12.1998 and 2.5.2000, we find merit in the submissions made by Mr. George Paracken, learned Counsel for the respondents. The reasoning in the order dated 2.5.2000 when read with the DE proceedings records which have now been produced by the respondents, do not warrant any modification of the conclusions in that order with regard to the issues raised in this rehearing of the O.A., in pursuance of the High Court's order. The reasons are that, as mentioned by learned Counsel for applicant himself, the competent authority while passing the impugned penalty order has not relied only on the admission given by the applicant on 10.3.1995 and he has himself not impleaded this fact. Further it is not a case where it has even been argued that this is a case of no evidence, where there is justification for the Tribunal to interfere in the matter in exercise of the power of judicial review. It is relevant to note that it appears from the official

records that both in the PE and in the Departmental inquiry, the applicant has admitted his guilt of the misconduct for which he was charged, which is not exactly the same position in the case of Jitender Pal Singh (O.A. 1406/1996). Therefore, the matter has not simply arisen on the question of distinction or no distinction regarding the fact that they had admitted their guilt in the preliminary inquiry report, which seems to be the basis of the submissions of the learned Counsel for applicant before the Hon'ble High Court, on the basis of which the matter was remitted to the Tribunal.

13. In this view of the matter, after careful consideration of the facts of these two cases, perusal of the pleadings and records, we are unable to come to the conclusion that the case of the applicant in the present case is similar and identical in all respects to that of Jitender Pal Singh. It is also relevant to note the issue specifically referred to by the Hon'ble High Court in its order dated 17.9.2001 in CWP No. 4246/2000. In the result, for the reasons given above, we respectfully agree with the conclusions of the coordinate Bench of the Tribunal in the present case in order dated 2.5.2000 and accordingly O.A. is dismissed.

14. Before parting with this case, in passing it may be relevant to refer to a submission made by Mr. George Paracken, learned Counsel that in pursuance of the order dated 4.12.1998 in O.A. No. 1406/1996, necessary action was taken and the respondents have dismissed the applicant (Jitender Pal Singh) by the subsequent order dated 1.1.2002.

Mr. Shyam Babu, learned Counsel for the applicant has submitted that against the aforesaid order dated 4.12.1998, a Civil Writ Petition was filed by the applicant therein in the Hon'ble High Court on which notice was also issued. Thereafter, the said Writ Petition was withdrawn.

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