

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3466/2010

Date of Decision 16th July, 2010

COMMISSIONER OF POLICE AND ORS. Petitioners
Through: Mr. Yashpal Rangi, Adv. with Mr.
Manjit Singh, Adv.
versus

BIKRAM SINGH Respondent
Through: Mr. V.K. Tandon, Adv.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

MOOL CHAND GARG,J (oral)

1. ASI Vikram Singh, the respondent herein, was proceeded departmentally in accordance with the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as the "Rules"). He was served with a charge memo, containing the following allegations:-

"It is alleged against you, ASI Vikram Singh, No. 1258/D that while posted at P.S. Adarsh Nagar on 11.04.2005 you met complainant Smt. Kamlesh Gupta between 1 to 2 PM and stated her that a PCR call for illegal possession of shop No. B-36, Shankracharya Road, Adarsh Nagar, Delhi by her son and husband after breaking the locks of the said shop had been received at the Police Station. She hand her husband shown paper of registry and house tax slip to you. He husband Sh. Shyam Sunder Gupta also stated that a case regarding commercial cum residential use, DDA Vs. Shayam Sunder Gupta is pending since last two years in the court of Shri B.K. Khanna, room No. 31, Patiala House Court. Smt. Kamlesh also shown the cutting of newspaper in which Manish Gupta was disowned

from the property, but you ASI Vikram Singh did not hear anything, rather u stated that a case u/s 448 IPC will be registered against them and they will be sent to jail. You, ASI Vikram Singh also stated that SHO Adarsh Nagar was very much angry on them and had ordered to arrest them. You, ASI Vikram Singh took the key of said shop by showing them the fear of arrest u/s 448 IPC and handed it over to Manish Gupta. You ASI Vikram Singh, failed to take proper legal action into the matter rather handed over the possession of the shop to their youngest son, after taking keys and Rs. 30,000/- from them.

The above act on the part of you, ASI Vikram Singh 1258/D amounts gross negligence, carelessness and dereliction in the discharge of official duties and reflects unbecoming police officers, which renders you, ASI Vikram Singh, liable for regular departmental enquiry under the provisions of Delhi Police (Punishment & Appeal) Rules 1980."

2. The respondent pleaded not guilty to the charge and accordingly, a departmental enquiry was held by SI Jagdev Singh, who ultimately acted as the Enquiry Officer. As per his report dated 28.04.2006 he found the respondent guilty of the charges leveled against him. This resulted in passing of an order of punishment by the Disciplinary authority dated 23.04.2007, whereby a major penalty of forfeiture of five years' approved service was inflicted upon the respondent. The respondent then filed an appeal before the Appellate Authority competent to hear the appeal under the Rules i.e. the Joint Commissioner of Police. The Appellate Authority vide order 11.04.2008 dismissed the appeal and upheld the punishment imposed upon the respondent.

3. The respondent then approached the Central Administrative Tribunal, Principal Bench (hereinafter referred to as the "Tribunal") by filing OA No. 570/2009, which has been decided vide order dated 09.10.2009. The Tribunal set aside not only the enquiry report but also the orders of the Disciplinary Authority and the Appellate Authority by observing that the initiation of enquiry was in violation of

the provisions contained under Rule 15(2) of the Rules inasmuch as, the prior permission of the Additional Commissioner of Police had not been obtained before issuing a charge sheet to the respondent. The second point which weighed with the Tribunal was that the Enquiry Officer while conducting the enquiry cross-examined the witnesses produced by the petitioners before him.

4. It was observed by the Tribunal that in view of the allegations leveled against the respondent which discloses commission of cognizable offences as per the requirement of Rule 15(2) of the Rules as aforesaid, there is a necessity of obtaining prior permission of the Addl. Commissioner of Police, which admittedly has not been done in this case. The relevant Rule is reproduced hereunder:-

“Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 deals with the aspect of preliminary inquiries before the decision regarding initiation of a regular departmental inquiry is taken. As per Rule 15(1), a preliminary inquiry is a fact finding inquiry which need not be held where the requisite information for commencement of the departmental inquiry is already available, though in all other cases, a preliminary inquiry should normal precede a departmental inquiry. The relevant provision in the present context is sub-Rule 2 which runs as under:-

“(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.”

5. Having taken note of the judgment delivered by the Hon'ble Supreme Court in the case of Vijay Singh Vs. Union of India & Ors. 2007 (3) SCALE 581 , the Tribunal held that initiation of enquiry against the respondent was not in accordance with these Rules. It was thus observed that:

“The fact of not obtaining the approval of the Additional Commissioner of Police before commencement of the departmental inquiry, is not in dispute. On the other hand, the stand of the respondents-as revealed from the AA’s order and corroborated in the C-A is that the same had not been considered necessary since the allegation of giving Rs. 30,000 to the delinquent had not been substantiated due to lack of evidence. In the given situation, we are inclined to accept the contention of the applicant’s counsel that the respondents are approbating and reprobating in the same breadth. On the one hand, they are not abiding by the provisions of Rule 15(2), observance of which has been held by the Apex Court as mandatory in nature; on the other hand, they are not only including the same in the summary of allegation/ the charge framed by the IO but are also holding it as proved and imposing the punishment on that basis.”

6. The Tribunal on the basis of the report of the Enquiry Officer further observed that in this case while conducting enquiry, the Enquiry Officer cross-examined the witnesses produced by the petitioners.

7. It is not disputed by learned counsel for the petitioner that the enquiry officer could not have cross examined any witness as per the applicable rules governing the procedure to be followed during enquiry but could certainly ask clarificatory questions. We have also scanned the report of the Enquiry Officer and find that the Enquiry Officer while recording examination of PW-1 and PW-2 has asked number of questions regarding issuance of threat and demand of money by the delinquent. The questions asked by the Enquiry Officer for the sake of reference which certainly come within the realm of cross-examination are reproduced hereunder:

“Examination of PW-1 Shyam Sunder Gupta by E.O.

Q.No.1 I am showing your complainant which is in Hindi and bears your signature. Is this your signature?

Ans. Yes Sir.

Q.No.2 You have alleged against ASI Bikram Singh that he has forcibly given the possession to your son Manish Gupta and you have made these allegations against you son Manish Gupta and ASI Bikram Singh in anger?

Ans. Yes Sir.

Q.No.3 There was a case between you and your son in civil court. Whether it's true that now matter has been resolved between you and your son?

Ans. Case was not pending. It has been resolved.

Q.No.4 Whether it's true that ACP Model Town has investigated your complaint and recorded your statement?

Ans. Yes Sir.

Q.No.5 Whether your son Manish Gupta was in possession of shop No. B-36, Sankracharya Road, Adarsh Nagar, Delhi on 11.04.2005.

Ans. No Sir

Q.No.6 Whether ASI grabbed the key from you and handed the possession of shop to Manish Gupta?

Ans. Key was not grabbed. It was simply given to Manish.

Q.No.7 Whether ASI Bikram Singh threatened to arrest you u/s 448 IPC?

Ans. Yes Sir.

Q.No.8 Whether ASI Bikram Singh has demanded Rs. 30,000 from you?

Ans. Yes Sir.

Q.No. 9 Whether you want to say anything more?

Ans. No Sir."

8. Similar questions were put to PW2 Kamlesh Gupta the complainant which are reproduced hereunder:

"Examination by E.O.

Q.No.1 I am showing you one complainant, which is in Hindi and bears your signature. Is this your signature?

Ans. Yes

Q.No.2 You have alleged against ASI Bikram Singh that he has forcibly given the possession to your son Manish Gupta and you have made these allegations against you son Manish Gupta and ASI Bikram Singh in anger?

Ans. Yes Sir.

Q.No.3 There was a case between you and your son in

civil court. Whether it's true that now matter has been resolved between you and your son?

Ans. Case was not pending. It has been resolved.

Q.No.4 Whether it's true that ACP Model Town has investigated your complaint and recorded your statement?

Ans. Yes Sir.

Q.No.5 Whether you son Manish Gupta was in possession of shop No. B-36, Sankracharya Road, Adarsh Nagar, Delhi on 11.04.2005.

Ans. No Sir.

Q.No.6 Whether ASI grabbed the key from you and handed the possession of shop to Manish Gupta?

Ans. Key was not grabbed. It was simply given to Manish.

Q.No.7 Whether ASI Bikram Singh threatened to arrest you u/s 448 IPC?

Ans. Yes Sir.

Q.No.8 Whether ASI Bikram Singh has demanded Rs. 30,000 from you?

Ans. Yes Sir.

Q.No.9 Whether you want to say anything more?

Ans. No Sir."

9. Apparently, the aforesaid questions are cross examination of witnesses. The record shows that not only the Enquiry Officer cross-examined the witnesses but also gave no opportunity to the charged official to further cross-examine the witnesses. The aforesaid questions put to witnesses are not in the nature of clarification as submitted by the petitioners.

10. It is well-settled that an Enquiry Officer does have a right to ask clarificatory questions as the Enquiry officer is not supposed to act as a silent spectator. However, if he intends to seek clarification, he should say so specifically. He cannot cross-examine the witnesses and that also without permitting the charged official a further right to cross-examine the witnesses. The conduct of the Enquiry Officer thus caused a serious prejudice to the case of the respondent. The Tribunal rightly came to a conclusion that the enquiry report cannot

be sustained because it suffers from basic procedural flaws and is violative of not only the principle of natural justice but also of the prescribed rules and the law as discussed in the impugned order. Consequently, the Tribunal set aside the orders of the Disciplinary Authority as well as the Appellate Authority, which were based upon the findings in the enquiry report. We find ourselves in complete agreement with the views expressed and decision taken by the Tribunal. In view of that, we dismiss the writ petition in limine with no orders as to costs.

MOOL CHAND GARG, J

PRADEEP NANDRAJOG, J

JULY 16, 2010
ag/dc