

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

**Judgment pronounced on: 17.05.2013**

**W.P.(C) 4656/2002**

**DELHI GOVERNMENT & ANR**

**..... Petitioners**

Through: Ms. Zubeda Begum, Advocate

*versus*

**UNION OF INDIA & ANR**

**..... Respondents**

Through: Mr. Shekhar Kumar, Advocate for R-2

**CORAM:**

**HON'BLE MR. JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

**J U D G M E N T**

**SIDDHARTH MRIDUL, J.**

1. The petitioners herein seek to challenge the judgment and order dated 04.02.2002 passed by the Central Administrative Tribunal in O.A No. 58/2001 wherein it was directed that the Respondent No.2's forfeiture of four years of service be restored and he shall be given all consequential benefits.

2. Brief facts necessary for the instant adjudication are enunciated in the succeeding paragraphs:

3. A departmental enquiry was initiated against the Respondent No.2 on 09.09.1999 on the allegation that while posted at P.S. Subzi Mandi on

18.06.1999 he was entrusted with the investigation of case in FIR No.208/99 under Sections 279/337 of the Indian Penal Code, 1860 (IPC). During the course of investigation he arrested one Anil Kumar and seized vehicle bearing registration No.HR-41-7832 allegedly driven by the accused, Anil Kumar. He asked accused driver Anil Kumar to call the owner of the vehicle and also to arrange for full '*Kharcha Pani*'.

4. On 19.06.1999 Shri Sandeep Singh, owner of the vehicle, contacted the Respondent No.2 who demanded a sum of ₹4000/- as illegal gratification for bailing out the accused driver and releasing the vehicle. When the owner of the vehicle showed his inability to pay illegal gratification, he was threatened and told that if his demand was not met, the driver and vehicle would not be released. Finding no other alternative but to pay illegal gratification, Shri Sandeep Singh paid a sum of ₹1500/- to the Respondent No.2 on which driver Anil Kumar was bailed out.

5. On the matter of release of the vehicle, Respondent No.2 told Shri Sandeep Singh that the same would be released as and when the remaining amount would be paid. Shri Sandeep Singh was asked to come with the remaining amount on 26.06.1999. On 26.06.1999 he contacted the Respondent No.2 and submitted an application for the release of his vehicle, and Respondent No.2 again demanded the remaining amount for releasing

the vehicle. On 27.06.1999 Shri Sandeep Singh contacted the Respondent No.2, who again demanded the balance amount for releasing his vehicle.

6. Thereafter, Shri Sandeep Singh reported the matter to the Anti Corruption Branch (ACB) and a trap was organized by ACB comprising Inspector Y.S. Negi, Panch witness Shri Santosh Sharma, the complainant and other staff members of ACB. After observing all necessary formalities, the complainant along with the Panch witness Shri Santosh Sharma went to the Respondent No.2 to handover the bribe money. Respondent No.2 told him that both the SHO and the Additional SHO had been transferred to District Lines and as such orders for release of the vehicle could not be passed and he did not accept the balance amount on that date, that is on 27.06.1999. Thereafter, the Respondent No.2 was also transferred to District Lines and as such the trap could not materialize.

7. The Enquiry Officer in his report dated 30.11.1999 held the charge against the Respondent No.2 to be substantiated. A copy of the Enquiry Officer's report was furnished to the Respondent No.2 for representation, if any. Respondent No.2 submitted his representation on 24.12.1999. Upon consideration of the representation and after perusing the materials on record, the Disciplinary Authority passed the impugned order dated 10.02.2000 forfeiting four years approved service of Respondent No.2

permanently and reducing his pay from ₹4305/- to ₹3965/- p.m. in the time scale of pay for a period of four years with immediate effect during which period Respondent No.2 would not earn his increment and on expiry of this period the reduction would have the effect of postponing future increment.

8. The Respondent No.2's appeal was rejected by the appellate order dated 31.7.2000.

9. The Tribunal allowing the OA, passed directions to restore the forfeited years of service with all consequential benefits.

10. Learned counsel for the petitioner has canvassed 2 grounds in support of the instant petition:

- a) Rule 15(2) Delhi Police (Punishment & Appeal) Rules, 1980 is not attracted and therefore the proceedings cannot be vitiated on this ground.
- b) The Enquiry Officer is lawfully permitted to ask clarificatory questions

**PRELIMINARY ENQUIRY:**

11. Rule 15 Delhi Police (Punishment and Appeal) Rules, 1980 reads as under:-

“15. Preliminary enquiries-

(1) Preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulters(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 precede a departmental enquiry.**

(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.

(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 to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer.

(emphasis supplied)

15. Learned counsel for the petitioner submitted that the raid proceedings carried out by Sh Y. S Negi were not in the nature of a preliminary enquiry. Admittedly there was no preliminary enquiry and consequently the approval of the Additional Commissioner of Police was not sought before initiation of the disciplinary proceedings. The purpose of a preliminary enquiry being a fact finding exercise, the same was not required in the instant case. Specific information regarding the nature of default, the identity of defaulter, the

quantum of default and the relevant documents being available, Rule 15(1) assumes significance and Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as the said Rules) is not attracted in the instant case.

**16.** The Tribunal has dealt with this aspect by observing that Sh Y. S. Negi while carrying out the necessary formalities of the raid report has in substance conducted a preliminary enquiry. The raid report was in the nature of a preliminary enquiry so as to ascertain the facts, to establish the nature and quantum of default and to identify the defaulter, in order to bring the other evidence on record.

**17.** However, the Tribunal also observed:

“11. Even if for a moment we accept the respondent's contention that the aforesaid raid report was not a preliminary enquiry and, there was therefore no violation of Rule 15(2), applicant's counsel is on strong footing in regard to the second ground namely that this is a case of no evidence and the E.O. has assumed the function of a prosecutor.”

**18.** Two questions need to be decided in order to address this issue. The first being whether Rule 15(2) of the said Rules is attracted in the instant case. If so, whether the raid report can be termed as a preliminary enquiry in substance of the matter.

19. The law as laid down in the case reported as **Vijay Singh vs. UOI:** **2007 (9) SCC 63** makes the position very clear. The Supreme Court has considered Rule 15(2) of the said Rules and observed:

**4. A reading of Rule 15(1)&(2) together and the language employed therein clearly discloses that a preliminary enquiry is held only in cases of allegation, which is of weak character and, therefore, a preliminary enquiry is to be held to establish the nature of default and identity of defaulter; to collect the prosecution evidence; to judge quantum of default and to bring relevant documents on record to facilitate a regular departmental enquiry. In cases, where specific information is available, a preliminary enquiry is not necessary and a departmental enquiry may be ordered by the disciplinary authority straightaway. It is because of this reason Sub-rule 2 of Rule 15 is couched in such a way as a defence to the delinquent officer. The Additional Commissioner of Police being higher in hierarchy next to DGP, the requirement of his approval is mandatory, so that the delinquent officer is not prejudiced or harassed unnecessarily in a departmental enquiry. Such approval, if any, must also be accorded after due application of mind. It is a case of violation of mandatory provisions of law. Therefore, the appeal must succeed. The appellant was dismissed by an order dated 21.1.1998 preceded by an enquiry. The order of dismissal is set aside. The appellant shall be re-instated forthwith. The orders of the Appellate Authority, the Revisional Authority and the High Court are set aside.**

(emphasis supplied)

20. In case of **Vijay Singh** (*supra*) the contention of the appellant was that a preliminary enquiry was conducted preceding the departmental enquiry, however no prior approval of the Additional Commissioner of Police was

sought which in effect vitiated the entire proceeding. It is in this context that the Supreme Court has held that Rule 15(2) of the said Rules is a mandatory provision the non-observance of which would vitiate the disciplinary proceedings.

**21.** A preliminary enquiry need not be held where specific information regarding the nature of default or the identity of the defaulter and the prosecution evidence and relevant documents to facilitate regular departmental enquiry are already on record and it is also possible on the basis of the evidence available to prima facie adjudge quantum of default. In the instant case it is observed that there being specific information available with regard to the charge, there was no requirement of conducting a preliminary enquiry. The complainant had approached the ACB with specific details about his case registered as FIR No.208/99 under Sections 279/337 IPC. He had disclosed that the Respondent No.2 had demanded a sum of Rs. 4000/- of which the complainant had paid ₹1500/- to bail out his driver Anil. Therefore, in our view, this case is covered by Rule 15(1) and Rule 15(2) of the said Rules is not attracted.

**22.** Adverting to the question as to whether the raid report can be termed as a preliminary enquiry, this question has been considered in the case of **Constable Rajender Kumar vs. Govt. of NCT of Delhi & Ors** in WP(C) No.

**9473/2007.** The Court has considered the scope of Rule 15 and noticed that Rule 15(3) of the said Rules provides that all statements recorded during the preliminary enquiry shall be signed by the person making them and attested by the Enquiry Officer. In other words, it provides that statements have to be attested by the Enquiry Officer for a lawful preliminary enquiry. Thus, a preliminary enquiry can be conducted only by the Enquiry Officer who has been specifically appointed for the said purpose. Such an appointment has to be made by the disciplinary authority or an appropriate authority. If a person investigates into the facts of a case of his own free will, without the order of the competent authority, at best it can be taken to be information supplied to the authority and not a preliminary enquiry. If such information is received pursuant to a raid, investigation or vigilance enquiry it cannot be equated with a preliminary enquiry. The competent authority can order a preliminary enquiry in case it feels that facts have to be collected. The Court has observed:

17. .... We find that the question as to what is preliminary inquiry has not been gone into. In our opinion the two Full Bench decisions of the Tribunal lay down the law correctly. We accordingly hold that there has to be an order to initiate preliminary enquiry by the competent authority. The preliminary enquiry must precede the departmental enquiry to collect the facts contemplated under Rule 15(1) of the Rules. Anti-corruption raids, investigation or vigilance enquiry including the enquiries by PGR Cell cannot be equated with preliminary enquiry

as contemplated under Rule 15(2) unless there was an order by the competent authority to hold such an enquiry contemplated under Rule 15(1) of the Rules.

**23.** The law as laid down has emphasised the importance of a preliminary enquiry, where required, under Rule 15(1) of the said Rules, and has stressed on the observance of necessary procedures for the same by way of Rules 15(2) and 15(3) Delhi Police (Punishment & Appeal) Rules, 1980. The factum of conducting a preliminary enquiry is not an empty formality and has to be in accordance with due process of law. The decision in **Constable Rajendra Kumar** (*supra*) is not attracted to the facts and circumstances of the instant case since we have already held that the specific information regarding the default or the identity of the defaulters was already on record and that consequently there was no occasion to conduct a preliminary enquiry in the matter. Rules 15(2) and 15(3) of the said Rules thus have no application in the present case. The Tribunal thus fell into error in holding that the raid report on the basis of which the trap was laid was in the nature of a preliminary enquiry.

**ENQUIRY OFFICER:**

**24.** The Tribunal has observed that none of the PWs have supported the prosecution case and the Enquiry Officer has on the basis of his own cross examination of PW-5 established the identity of the defaulter. This is in

contravention of Rule 16 (v) of the said Rules, as the Enquiry Officer is legally permitted to ask questions only to clear ambiguities or to test the veracity of the witnesses and not subject them to cross-examination.

**25.** Rule 16 (v) of the said Rules is reproduced below for ready reference:

16. Procedure in departmental enquiries – The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where prima facie the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer:

.....  
.....

(v) The accused officer shall be required to state the defence witnesses whom he wishes to call and may be given time, not exceeding two working days, to prepare a list of such witnesses together with a summary of the facts they will testify and to produce them at his expense in 10 days. The enquiry officer is empowered to refuse to hear any witness whose evidence he considers to be irrelevant or unnecessary in regard to the specific charge. He shall record the statements of those witnesses whom he decides to admit in the presence of the accused officer who shall be allowed to address question to them, the answers to which shall be recorded; provided that the enquiry officer may cause to be recorded by any other Police Officer superior in rank to the accused officer the statements of a witness whose presence cannot be secured without delay, expenses or inconvenience and may bring such statements on record. When such a procedure is adopted, the accused officer may be allowed to draw up a list of questions he wishes to be answered by such witnesses. **The enquiry officer shall also frame questions which he may wish to put to the witnesses to clear ambiguities or to test their veracity.** Such statements shall also be read over to the accused officer and he will be allowed to take notes.

(emphasis supplied)

26. The counsel for the Petitioner submitted that the Enquiry Officer has put forth certain questions to the complainant to remove ambiguity and to test the veracity of the testimonies of the witnesses. In the instant case, the Enquiry officer has questioned the witnesses to establish the identity of the Respondent No.2 and was at liberty to do so.

27. Per contra the counsel for the Respondent No.2 has vehemently argued that the Enquiry Officer has extensively cross-examined the witnesses in order to extract the desired answers. The nature of questioning by the Enquiry Officer in the instant case is far beyond the extent permitted by law to clear the ambiguities and to test the veracity of the testimony of the witnesses. Thereafter, relying upon the same answers, the Enquiry Officer has arbitrarily proved the charge against the Respondent No.2.

28. Learned counsel for the Respondent No.2 has relied on a decision of this Court in **Commissioner of Police & Ors vs. Bikram Singh** in WP(C) **3466/2010**. Examining an allegation against the Enquiry officer regarding extensive cross-examination of witnesses in a departmental enquiry, the Court has observed:

“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.”

**29.** The Tribunal has arrived at a finding that the Enquiry Officer has cross examined PW-5 Shri Anil Kumar in such a manner so as to fill up the gaps in the enquiry and to bring on record evidence against the charged officer. It seems that the Tribunal has arrived at this finding without any factual basis.

**30.** From a perusal of the findings of the Enquiry Officer, it is clear that the Enquiry Officer has put forth certain questions to the witnesses. It is well settled that the Enquiry Officer does have a right to ask questions as he is not supposed to act as a mute spectator. The Enquiry Officer has ample power to

put forth questions to the witnesses to test the authenticity of their statements. Disciplinary proceedings cannot be regarded as adversarial in nature as the sublime philosophy behind these proceedings is a quest to unravel the truth.

**31.** In the instant case the Enquiry Officer has put forth certain questions to establish the identity of the charged officer. There is no allegation to the effect that the charged officer was denied a further right to cross-examine the witnesses. The questions have, as such, not caused any prejudice to the case of the Respondent No.2. The Enquiry Officer held the charges as proved based on a conjoint deposition of the witnesses. The decision in ***Bikram Singh's*** case (*supra*), therefore, does not come to the aid of the Respondent No.2.

**32.** On perusal of the record it is further noticed that the deposition of the witnesses does not evince any testimonial compulsion upon the said witnesses and therefore the observation that answers were extracted from witnesses has no merit and is misconceived.

**33.** In a case titled as **Badruddin (Sub Inspector (S.I.)) vs. Govt. of NCT of Delhi & Ors.** : W.P. (C) No. 7070/2011, a Division Bench of this Court has considered Rule 16 of the said Rules and has observed:

“7. .... We have perused the statement of the witnesses as set out in the inquiry report and are unable to fathom any irregularity or violation of any rule therefrom. It cannot be lost sight of that the rules of inquiry proceedings are inquisitorial and not adversarial. A Division Bench of this Court in Om Pal Singh Vs. UOI held that the purpose of disciplinary inquiry proceeding is to find out the truth and whether or not the misconduct alleged against the delinquent Officer stands proved; in the said proceedings the adjudicatory authority i.e. the Inquiry Officer is empowered to put questions to and cross examine witnesses; that the mere fact that the Inquiry Officer under Rule 15 (The said case also related to Delhi Police and it was the Delhi Police (Punishment and Appeal) Rules 1980 which were under consideration) is required to examine witnesses himself, put questions to the witnesses and cross examine the defence witnesses cannot by any stretch be regarded as violation of Article [311\(2\)](#) and [14](#) of the Constitution. From a perusal of the evidence, we are unable to find any irregularity in the Inquiry Officer putting a few questions to the witnesses appearing before him. The Supreme Court as far back as in Workmen Vs. Buckingham & Carnatic Mills (1970) 1 LLJ 26 held that Inquiry Officer in a domestic inquiry can put questions to the witnesses for clarification wherever necessary and the inquiry proceedings cannot be impeached as unfair on this ground. It was so reiterated in Mulchandani Electrical and Radio Industries Vs. The Workmen : (1975) 4 SCC 731.”

**34.** In view of the foregoing discussion, we find that the Enquiry Officer was well within his powers to ask questions to the witnesses in order to establish the identity of the delinquent officer i.e., the Respondent No.2 and his approach was in accordance with the procedural requirements contemplated under Rule 16 of the said rules.

**35.** For the reasons aforementioned, the impugned order cannot be sustained. The same is accordingly set aside. The petition is allowed. There shall be no order as to costs.

**SIDDHARTH MRIDUL  
(JUDGE)**

**MAY 17, 2013**  
*dn*

**BADAR DURREZ AHMED  
(JUDGE)**

