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

% ***Judgment dated: 7th September, 2016***

+ W.P.(C) 10562/2015

SUNIL KUMAR

..... Petitioner

Through: Dr.Kanwal Sapra and Dr.P.S.Batra,
Advocates.

versus

THE COMMISSIONER OF POLICE AND ORS.

..... Respondents

Through: Mr.Satyakam, Addl. Standing Counsel for
GNCTD with SI Harinder, HAP Branch
in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

1. The petitioner has laid a challenge to an order passed by the Central Administrative Tribunal dated 29th July, 2015 by which the O.A. filed by the petitioner herein stands dismissed.

2. Brief facts necessary for deciding the present petition are that the petitioner was appointed as a Constable with Delhi Police on 15th July, 1996. He was promoted to the post of Head Constable on 30th March, 2008. Post his marriage, an FIR was registered against him on 31st August, 2009 under Sections 498-A/406/34 IPC. Simultaneously, a departmental inquiry was also initiated against the petitioner on 25th February, 2011. The respondent No.1 issued orders against the petitioner for punishment of forfeiture of four years approved service permanently by order dated 7th November, 2012. An appeal preferred by the petitioner against the aforesaid order was rejected by the respondents on 18th September, 2013, which led to the filing of the O.A. before

the Central Administrative Tribunal which was dismissed by the Tribunal by an order dated 29th July, 2015 which is impugned in the present writ petition.

3. Learned counsel for the petitioner submits that the inquiry was conducted as per the Delhi Police (Punishment & Appeal) Rules, 1980. He submits that the Inquiry Officer was conscious of the rights of the petitioner, had not declined the request of the petitioner to cross-examine the witnesses, but the Inquiry Officer overlooked the fact that despite the witnesses after their examination-in-chief were called for their cross-examination, they did not appear for their cross-examination. Since the petitioner was deprived of his legitimate right to cross-examine the witnesses who had deposed, the enquiry proceedings would stand vitiated.

4. On the merits of the matter, learned counsel for the petitioner submits that the conduct of the petitioner would not amount to misconduct and that the respondents have failed to cite any particular rule or clause which has been violated by the petitioner in respect of discharge of his official duties. It is contended that the petitioner had an unblemished record and that there was no complaint against the petitioner by any superior officer or colleague or any public person dealing with him and thus it can be safely said that the petitioner was discharging his official duties diligently and honestly to the satisfaction of his superior officers. It is further contended that a false complaint was lodged by the wife of the petitioner. It is the case of the petitioner that he was all along interested in keeping the marriage which is evident from the fact that he filed a petition under Section 9 of the Hindu Marriage Act and only after the petition under Section 9 for restitution of conjugal rights was filed, did his wife resort to the registration of a false FIR against him as a counter blast. Counsel submits that had there been any truth in the allegations made in the FIR, the wife of the petitioner would have lodged a complaint at the first opportunity available to her.

5. The original record has been produced before us. As per the original record, the witnesses appeared before the Inquiry Officer on 13th May, 2011 when their examinations-in-chief was conducted. On that date, the petitioner herein had sought an adjournment on the ground that his defence assistant was not available which was granted by the Inquiry Officer and the next date was fixed as 20th May, 2011. On the next date, notices were issued to the witnesses to remain present for their cross-examination. However, despite various opportunities, the witnesses did not appear and hence the cross-examination of the witnesses could not take place. Certified copy of the order-sheets has been handed over by counsel for the petitioner today in Court. Reliance is also placed by learned counsel for the petitioner on the Para 10.3 of the Vigilance Manual, Vol.-I, Chapter-IX of Government of India, which reads as under:-

“Cross examination of a witness is the most efficacious method of discovering truth and exposing falsehood. During the examination in chief, the witness may say things favourable to the party in whose behalf he tenders evidence and may deliberately conceal facts which may constitute part of opponent’s case. The art of cross-examination lies in interrogating a witness in a manner which would bring out the concealed truth.”

6. Learned counsel for the respondents, on the other hands, submits that the inquiry has been conducted in a fair and just manner. He further submits that there is no infirmity in the order passed by the Tribunal which would require interference by this Court in proceedings under Article 226 of the Constitution of India.

7. We have heard learned counsel for the parties. It is not in dispute that the examination-in-chief of the witnesses was conducted on 13th May, 2011. Thereafter, the matter was adjourned to 20th May, 2011, 18th June, 2011, 18th July, 2011, 16th August, 2011, 20th September, 2011, 15th October, 2011, 12th November, 2011 and 30th December, 2011. However, the witnesses did not

appear for their cross-examination on any of the above dates except on 30th December, 2011 one Smt. Ramesh had appeared. The order-sheets read as under:-

“13.5.11 The delinquent HC Sunil Kr. No. 105/NE is present. The statement of witness Sarla, Chaman Lal, Laxmik Deir Nirmala, ASI Mahender Kr. & HC Rajesh Kr. was recorded. Cross could not be done as Defence Assistance was not present. Next date is fixed for 20.5.11.

*SD/-
E.O.*

20.5.11 Delinquent HC Sunil Kr. No. 10/NE is present but no witness appeared for cross examination. Next date Notice will be given for 18.6.11.

*SD/-
E.O.*

18.6.11 Neither delinquent HC Sunil Kr. No. 105/NE nor any witnesses appeared. Next date notice will be given for 18.7.11.

*SD/-
E.O.*

18.7.11 No witness appeared. Delinquent HC Sunil 105/NE is present. Next date fixed for 16.8.11.

*SD/-
E.O.*

16.8.11 Only witness Sarla appeared but delinquent did not appeared due to fever. Next date fixed for 20.9.11.

*SD/-
E.O.*

20.9.11 Delinquent HC Sunil Kr. 105/NE appeared but no witness is present. Next dt. fixed for 15.10.11.

*SD/-
E.O.*

15.10.11 Delinquent HC Sunil Kr. is present but no witness is present Next dt. Is fixed for 12.11.11.

*SD/-
E.O.*

12.11.11 Delinquent HC Sunil Kr. is present but no witness is present. Next date is fixed for 30.12.11.

*SD/-
E.O.*

30.12.11 One witness Smt. Ramesh is present & her statement was recorded in presence of delinquent HC Sunil Kr. No.105/NE. Cross was done. Next dt. Fixed for 6.1.11.

*SD/-
E.O.”*

8. A perusal of order-sheets would further show that upto 16th August, 2012, the witnesses did not appear before the Inquiry Officer for their cross-examination despite several notices. Thereafter, on 16th August, 2012 the Inquiry Officer merely recorded that since no witnesses are coming forward, no opportunity can be given to the delinquent/petitioner. It is worthwhile to note that the Inquiry Officer at no stage declined the petitioner the opportunity to cross-examine the witnesses, but it seems that since the witnesses, despite notices issued to them, did not appear, however, the Inquiry Officer submitted his report.

9. The right to cross-examine is implicit in the principles of natural justice, which are to be followed in all departmental proceedings. Only when the charged officer is given an opportunity of cross-examination of the witnesses, can he effectively meet the charges levelled against him. We are fortified by the judgment of the Surpeme Court in *Ayaabkhan NoorkhanPathanv. State of Maharashtra and Ors.*, (2013) 4 SCC 465 in respect of Caste Certificate Scrutiny Committee. The matter was remanded back to the Scrutiny Committee with the direction to give a fair opportunity to the appellant therein to cross-examine the witnesses. The relevant portion reads as under:

“Cross-examination is one part of the principles of natural justice

24. A Constitution Bench of this Court in State of M.P. v. Chintaman Sadashiva Waishampayan [AIR 1961 SC 1623] held that the rules of natural justice require that a party must be given the opportunity to

*adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice. (See also *Union of India v. T.R. Varma* [AIR 1957 SC 882] , *Meenglas Tea Estate v. Workmen* [AIR 1963 SC 1719] , *Kesoram Cotton Mills Ltd. v. Gangadhar* [AIR 1964 SC 708] , *New India Assurance Co. Ltd. v. Nusli Neville Wadia* [(2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850 : AIR 2008 SC 876] , *Rachpal Singh v. Gurmit Kaur* [(2009) 15 SCC 88 : (2009) 5 SCC (Civ) 549 : AIR 2009 SC 2448] , *Biecco Lawrie Ltd. v. State of W.B.* [(2009) 10 SCC 32 : (2009) 2 SCC (L&S) 729 : AIR 2010 SC 142] and *State of U.P. v. Saroj Kumar Sinha* [(2010) 2 SCC 772 : (2010) 1 SCC (L&S) 675 : AIR 2010 SC 3131] .)*

25. In *Lakshman Exports Ltd. v. CCE* [(2005) 10 SCC 634] , this Court, while dealing with a case under the Central Excise Act, 1944, considered a similar issue i.e. permission with respect to the cross-examination of a witness. In the said case, the assessee had specifically asked to be allowed to cross-examine the representatives of the firms concerned, to establish that the goods in question had been accounted for in their books of accounts, and that excise duty had been paid. The Court held that such a request could not be turned down, as the denial of the right to cross-examine, would amount to a denial of the right to be heard i.e. audi alteram partem.

26. In *New India Assurance Co. Ltd. v. Nusli Neville Wadia* [(2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850 : AIR 2008 SC 876] , this Court considered a case under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and held as follows: (SCC p. 295, para 45)

“45. If some facts are to be proved by the landlord, indisputably the occupant should get an opportunity to cross-examine. The witness who intends to prove the said fact has the **right to cross-examine** the witness. This may not be provided by under the statute, but it being a part of the principles of natural justice should be held to be infeasible right.”

(emphasis added)

In view of the above, we are of the considered opinion that the right of cross-examination is an integral part of the principles of natural justice.

27. In *K.L. Tripathi v. SBI* [(1984) 1 SCC 43 : 1984 SCC (L&S) 62 : AIR 1984 SC 273] , this Court held that, in order to sustain a complaint of the

violation of the principles of natural justice on the ground of absence of opportunity of cross-examination, it must be established that some prejudice has been caused to the appellant by the procedure followed. A party, who does not want to controvert the veracity of the evidence on record, or of the testimony gathered behind his back, cannot expect to succeed in any subsequent grievance raised by him, stating that no opportunity of cross-examination was provided to him, specially when the same was not requested, and there was no dispute regarding the veracity of the statement. (See also Union of India v. P.K. Roy [AIR 1968 SC 850] and Channabasappa Basappa Happali v. State of Mysore [(1971) 1 SCC 1 : AIR 1972 SC 32] .) In Transmission Corpn. of A.P. Ltd. v. Sri Rama Krishna Rice Mill [(2006) 3 SCC 74 : 2006 SCC (L&S) 467 : AIR 2006 SC 1445] , this Court held: (SCC p. 80, para 9)

“9. In order to establish that the cross-examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilised for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross-examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. In that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the appellate authority as to how he has been prejudiced by the refusal to grant an opportunity to cross-examine any official.”

28. The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the Government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so only when he is told what the charges against him are. He can, therefore, do so by cross-examining the witnesses produced against him. The object of supplying statements is that, the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against him. Unless the said statements are provided to the government servant, he will not be able to conduct an effective and useful cross-examination.

29. In Rajiv Arora v. Union of India [(2008) 15 SCC 306 : (2009) 3 SCC (Cri) 977 : AIR 2009 SC 1100] this Court held: (SCC p. 310, paras 13-

14)

“13. ... Effective cross-examination could have been done as regards the correctness or otherwise of the report, if the contents of them were proved. The principles analogous to the provisions of the Evidence Act as also the principles of natural justice demand that the maker of the report should be examined, save and except in cases where the facts are admitted or the witnesses are not available for cross-examination or similar situation. ...

14. The High Court in its impugned judgment proceeded to consider the issue on a technical plea, namely, no prejudice has been caused to the appellant by such non-examination. If the basic principles of law have not been complied with or there has been a gross violation of the principles of natural justice, the High Court should have exercised its jurisdiction of judicial review.”

30. The aforesaid discussion makes it evident that, not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice.”

(Emphasis Supplied)

10. The Supreme Court had included cross-examination within the concept of reasonable opportunity as far back as 1957 in ***Khem Chand v. Union of India (UOI) & Ors.***, the relevant para of which reads as under:

“24. To summarise : the reasonable opportunity envisaged by the provision under consideration includes -

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the presupposed punishment should not be inflicted on him, which he can only do if the

competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.”

(Emphasis Supplied)

11. Further the Supreme Court in ***Union of India v. Y.S. Sandhu***, (2008) 12 SCC 30 has held that if departmental proceedings are to be vitiated due to non-compliance with principles of natural justice, the proceedings must be set-aside and be directed to be conducted in accordance with law from the stage the vulnerabilities surfaced.

12. In the present case, in our view neither the principles of natural justice were complied with by the Inquiry Officer nor the rules of the Delhi Police (Punishment & Appeal) Rules, 1980 were followed. Resultantly, the writ petition is allowed, the orders dated 07.11.2012, 18.09.2013 passed by the respondents and order dated 29.07.2015 passed by the Tribunal are hereby quashed/set aside. The matter is remanded back to the Inquiry Officer at the stage of cross-examination of the witnesses. The Inquiry Officer is expected to follow the principles of natural justice and the rules in letter and spirit.

13. Writ petition stands disposed of in the above terms.

G.S.SISTANI
(JUDGE)

I.S. MEHTA
(JUDGE)

SEPTEMBER 07, 2016
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