



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

% **Judgment reserved on: 09 September 2022**
Judgment pronounced on: 07 October 2022

+ **W.P.(C) 5837/2003**

ASHOK KUMAR

..... Petitioner

Through: **Mr. Anil Singal, Adv.**

versus

ADDL.C.P. DELHI & ORS.

..... Respondents

Through: **Ms. Avnish Ahlawat, Standing Counsel with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik & Ms. Aliza Alam, Advocates for Respondents.**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. The instant writ petition impugns the order of 20 December 2002 passed by the Central Administrative Tribunal¹ dismissing OA No.2021/1996 which had been preferred by the petitioner aggrieved by the order of dismissal passed by the respondents on culmination of disciplinary proceedings. For the purposes of disposal of the present writ petition, it would be pertinent to notice the following salient facts.

2. The respondents appear to have initiated enquiry proceedings against the petitioner and one constable Jitenderpal Singh based upon the complaint

¹ Tribunal



made by certain individuals alleging that the petitioner and Jitenderpal Singh were guilty of extortion of money and that on another date they had entered the premises of Diplomat Furniture and mercilessly beat one Kanhaiya Lal and snatched Rs. 1800 from them. On the very same night, the two delinquent employees are stated to have entered the house of one Uma Shankar in an inebriated state and snatched his watch and purse containing Rs. 500. In light of the allegations which were made, the petitioners came to be dismissed with the respondents invoking Article 311(2)(b) of the Constitution.

3. Aggrieved by the aforesaid order of 09 November 2022 dismissing them from service, both the delinquent employees preferred appeals. The Appellate Authority allowed the said appeals and remanded the matter with the observation that a regular departmental enquiry may be conducted against them. Pursuant to the order passed by the Appellate Authority, the petitioner and Jitenderpal Singh came to be reinstated in service on 20 October 1993 with effect from 17 September 1993. The department enquiry thereafter ensued and a chargesheet came to be issued against the petitioner here as well as Jitenderpal Singh on 06 March 1994. The Enquiry Officer on culmination of those proceedings submitted a report finding that the employees were guilty of the charges as laid.

4. On a consideration of the report of the Enquiry Officer, the Disciplinary Authority by an order of 03 November 1995 dismissed the petitioner and Jitenderpal Singh. Aggrieved by the aforesaid orders of dismissal, they are stated to have filed an appeal which too came to be rejected by the Appellate Authority on 09 May 1996.

5. Assailing the orders passed by the Disciplinary and Appellate



Authority, Jitenderpal Singh approached the Tribunal by filing OA No.1406/1996. The petitioner also challenged the aforesaid orders passed by the respondents by preferring OA No.2021/1996. The Tribunal by its judgment of 04 December 1998 allowed the OA filed by Jitenderpal Singh on the ground that since the respondents in the course of the departmental enquiry had taken on board the preliminary enquiry report which had been drawn and had failed to provide a copy of the same to Jitenderpal Singh, the enquiry proceedings stood vitiated on account of a failure on the part of the respondents to comply with Rule 15(3) of Delhi Police (Punishment and Appeal) Rules. On arriving at the aforesaid conclusion, the Tribunal proceeded to set aside the order of punishment insofar as the said employee was concerned and remitted the matter for fresh consideration of the respondents with liberty being reserved to recommence the enquiry proceedings, providing the said employee a copy of the preliminary enquiry report, recalling PW-8 (the author of the preliminary enquiry report) and granting the said employee an opportunity to cross-examine the said witness.

6. When the OA of the petitioner came up for consideration before the Tribunal, a similar argument with respect to the introduction of the preliminary enquiry report and the examination of PW-8 appears to have been raised. Dealing with the aforesaid contention, the Tribunal in its order of 02 May 2000 observed as follows: -

“6. Firstly, the contention was that the preliminary enquiry report exhibited by PW-8, was not furnished to the applicant. At this stage, it is necessary to peruse the Enquiry Officer's report. The E.O. extracted the evidence of PW-8 who is Inspector (Vigilance). He stated that he had conducted the preliminary enquiry and found the applicant's guilty of misconduct and he sent the report to the Senior Officer on 27.10.92. The



applicant had not cross-examined the PW-8. In the reply filed by the respondents, it has been also stated that the applicant though given opportunity to cross-examine the PW-8, he did not avail that opportunity. From the evidence PW-B, it is also clear, he had not stated that anything further more than that he had conducted the enquiry. This witness, in our view, is only a formal witness and nothing much turned upon his evidence on the report exhibited.

8. From a reading of Rule 15 (3) of Delhi Police (Punishment & Appeal) Rules, 1980, 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. It also provides that it is open to the Enquiry Officer to bring on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. 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 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)''

7. Rejecting the aforesaid contention and the other challenges which were raised by the petitioner here, the OA came to be dismissed. Aggrieved by the aforesaid order passed by the Tribunal, the petitioner approached this Court by filing W.P.(C) 4246/2000. The principal argument which appears to have been addressed before this Court was of the Tribunal having taken conflicting views emanating from the introduction of the preliminary enquiry report and the judgments rendered by coordinate benches of the Tribunal on 04 December 1998 and 02 May 2000 on the OAs filed by Jitenderpal Singh and the petitioner respectively.



8. The Court by its order of 17 September 2001 disposed of the said writ petition observing: -

“We have examined both orders and we find that Tribunal had drawn distinction in petitioner's OA 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 the 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.

Petition 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.”

9. Pursuant to the liberty so granted by the Court, the petitioner approached the Tribunal for reopening the judgment rendered by it on 02 May 2000 by way of a review application. Taking note of the judgment rendered by the Court on the writ petition aforementioned, the review application [RA no.377/2001] which was filed by the petitioner here was allowed and the order of 02 May 2000 was recalled.

10. The Tribunal thereafter proceeded to consider the matter afresh and on merits. Upon hearing counsels for respective sides, the Tribunal this time around on 20 December 2002 returned the following findings: -

“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 OA No.1406/1996 in the proceedings held on 7.3.1996, 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, Shri 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 OA, 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 OA 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 judgements 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 2.6.2000 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)."

11. The Tribunal while proceeding to hold against the petitioner essentially held that the conclusions that were ultimately arrived at by the Enquiry Officer neither rested on the evidence of PW-8 nor were they based on the findings recorded in the course of the preliminary enquiry. They also took into consideration the significant fact that unlike Jitenderpal Singh, the petitioner here had admitted to his guilt in the course of the departmental enquiry. On an overall consideration of the aforesaid conclusions, it



proceeded to hold and observe that the case of the petitioner could not be said to be similar or identical to that of Jitenderpal Singh. It is in the aforesaid backdrop that the instant writ petition came to be preferred before this Court.

12. Learned counsel for the petitioner has principally submitted that once a coordinate bench of the Tribunal had found that the inclusion of the preliminary enquiry report in the disciplinary proceedings had vitiated the result thereof, no occasion arose for it to distinguish the case of the petitioner here. According to learned counsel, in view of the evident conflict in the two judgments which came to be rendered, it was incumbent upon the Tribunal to have referred the matter to a larger Bench.

13. The aforesaid submissions were controverted by Ms. Ahlawat, learned counsel appearing for the respondents, who submitted that the contention as addressed proceeds in ignorance of the fact that pursuant to the order of remand which was made by the Tribunal in the case of Jitenderpal Singh, disciplinary proceedings were reinitiated. After due enquiry, Jitenderpal Singh again came to be dismissed by the Disciplinary Authority in terms of its order of 01 January 2002. Ms. Ahlawat pointed out that the appeal which came to be preferred by the said delinquent employee also came to be rejected on 01 October 2002. Learned counsel pointed out that Jitenderpal Singh chose not to assail the aforesaid orders any further and they consequently attained finality. In view of the above, Ms. Ahlawat would contend that the challenge raised to the order of the Tribunal at the behest of the petitioner on the lines noticed above is liable to be negated.



14. Having considered the rival submissions, this Court is of the considered opinion that the petitioner has failed to establish before this Court that the preliminary enquiry report constituted the foundation for the ultimate conclusions that came to be recorded by the Enquiry Officer on the merits of the charge. The Court bears in mind the pertinent observations which were recorded by the Tribunal in the order of 20 December 2002 where it observed that PW-8 who was the author of the preliminary enquiry report had in the course of enquiry proceedings only deposed to the fact that he had conducted the preliminary enquiry. The Tribunal had also found that the recordal of the statement of PW-8 was merely formal and nothing substantial turned upon the same. It further pertinently observed that the Enquiry Officer had only alluded to the fact that a preliminary enquiry is stated to have been conducted. However, the veracity of the charges which were leveled against the petitioner were tried and found to be proved on the basis of independent evidence which was led in the course of disciplinary proceedings.

15. Learned counsel for the petitioner has woefully failed to establish any perversity or inaccuracy in the aforesaid findings which have come to be recorded by the Tribunal. In any event, the Court notes that the petitioner has not been discriminated by the respondents bearing in mind the fact that in the case of Jitenderpal Singh also ultimately orders of dismissal came to be passed. While parting the Court bears in mind the well settled principle that a failure to supply a copy of a preliminary enquiry report can be recognized to be prejudicial only if it be found that it constituted material on the basis of which a finding of guilt may have come



to be recorded or formed the basis for the formation of the opinion ultimately framed by the Disciplinary Authority to record a finding of guilt against the delinquent employee. This, as noted above, has clearly not been established in the facts of the present case.

16. In view of the aforesaid, the challenge to the order of the Tribunal fails. The writ petition shall consequently stand dismissed.

SATISH CHANDRA SHARMA, C.J.

YASHWANT VARMA, J.

OCTOBER 07, 2022

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