

CASE NO.:
Appeal (civil) 7212 of 2005

PETITIONER:
Vijay Singh

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 23/02/2007

BENCH:
H.K. SEMA & B.SUDERSHAN REDDY

JUDGMENT:
J U D G M E N T

H.K.SEMA, J.

The appellant was head constable in Delhi Police. He was served with the charge, substance of which reads:-

"On 29.3.95 a case FIR No.236/95 u/s 325/34 IPC PS Sultanpuri was registered by HC Vijay Singh No.310/NW after the receipt of MLC report of Sh. Nand Kishore. In the FIR, the HC showed the name of Sh. Ram Raj as an accused including the other persons. The HC also mentioned that he recorded the statement of Sh. Nand Kishore on 4.3.95. On scrutiny it was found that there was overwriting in DD No.10, dated 4.3.95 which was written by the HC on 4.3.95 and is very much visible. As per procedure HC Vijay Singh, was supposed to enter the statement of Sh. Nand Kishore in the daily diary on the same day to avoid doubt, but the HC failed to do so and did not follow the procedure and also made some over writing in daily diary with ulterior motive."

Admittedly, the charge was framed after a preliminary enquiry was conducted by PW-4 Sh.Bhairo Singh, ACP Kamla Market, Delhi. An enquiry was conducted by PW-4 and its report was submitted to DCP/North-West Distt.Delhi on 21.8.95 which was marked as Exhibit PW-4/A.

Many grounds have been urged before us. The principle contention of Mr. Krishnamani, learned senior counsel is, however, rested on the question of violation of Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 (in short 'the Rules'). It is contended by the counsel that Rule 15(2) mandates that in a case in which a preliminary enquiry discloses the commission of a cognizable offence, 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. He would further contend that in the present case a departmental enquiry was held preceded by a preliminary enquiry conducted by PW-4 but no prior approval was obtained from the Additional Commissioner of Police, therefore, the entire

enquiry vitiates. This being the pure question of law, we have directed the respondent to produce the record as to whether prior approval of the Additional Commissioner of Police was obtained or not. Mr.Dutta, learned ASG fairly submitted that the record does not disclose that prior approval of the Additional Commissioner of Police was obtained. A supplementary affidavit was, however, filed by one Mr.Ajay Kumar, Deputy Commissioner of Police, Police Control Room, Delhi. It is averred in paragraph 2 of the supplementary affidavit that no preliminary enquiry was ordered, hence the prior approval of the Additional Commissioner of Police as required under Rule 15(2) of the Rules for conducting departmental enquiry was neither required nor the same was taken. To say the least, this averment is contrary to the statement of PW-4. A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter(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 the present case, a preliminary enquiry was conducted by PW-4 himself and a report was submitted by him, marked as Exhibit PW-4/A during the enquiry.

Sub-rule 2 of Rule 15 reads:

"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".

A cursory reading of sub-rule 2 would clearly show that the said Rule is mandatory. It has to be followed strictly in letter and spirit.

To appreciate the present controversy in proper perspective Rule 15(1) & (2) of the Rules are reproduced:

"15.Preliminary enquiries \026(1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter(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)\005\005\005\005\005.."

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.

This takes us to consider as to what relief the appellant is entitled to. The appellant was dismissed on 21.1.1998 and since then he is out of service till date. The appellant would be attaining the age of superannuation on March 31, 2012.

Having regards the facts and circumstances of this case and the nature of misconduct that is alleged to have been committed by the appellant as a police officer and applying the principle of 'no work no pay' he shall not be entitled to back wages from 21.1.1998 till re-instatement. Also keeping in view the nature of misconduct said to have been committed by the appellant, as a police officer, this order would not preclude the disciplinary authority to initiate a fresh proceeding from the stage of obtaining prior approval of the Additional Commissioner of Police, if so advised. In the event of the authority so decide to hold fresh enquiry from the stage of obtaining prior approval from Additional Commissioner of Police, they may resort to the principle laid down by this Court in paragraph 31 in Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors. (1993) 4 SCC 727. Subject to the aforesaid observation, this appeal is allowed. No costs.