

Central Administrative Tribunal
Principal Bench

OA No.1380/2002

with

OA No.1399/2002

New Delhi this the 31st day of March, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri V.K. Majotra, Member (A)

OA No.1380/2002

Constable Mahipal Singh No.4518/PCR,
S/o Shri Roop Chand
R/o H.No. 37, Village & P.O.-Siras Pur,
Delhi-42.

(By Advocate: Shri Sachin Chauhan)

-Applicant

Versus

1. Union of India,
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. Addl. Commissioner of Police,
PCR & Communication,
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.

3. Dy. Commissioner of Police,
Police Control Room,
Sarai Rohilla, Delhi.

(By Advocate: Mrs. Jasmine Ahmed)

-Respondents

OA-1399/2002
Head Constable Paras Ram No.382/PCR,
S/o Late Shri Tej Ram,
R/o H.No.48, Village & P.O.-Naya Bans,
Delhi-82.

(By Advocate: Shri Sachin Chauhan)

-Applicant

Versus

1. Union of India,
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. Addl. Commissioner of Police,
PCR & Communication,
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.

3. Dy. Commissioner of Police,
Police Control Room,
Sarai Rohilla, Delhi.

(By Advocate: Mrs. Rashmi Chopra)

-Respondents

ORDER (Oral)

Hon'ble Shri Justice V.S. Aggarwal, Chairman

By this common order, both the OAs 1380/2002 and 1399/2002 can conveniently be disposed of.

2. Applicants had jointly been dealt with in the disciplinary proceedings. The gist of the assertions against the applicants was that alongwith others while deployed on duty from 8.00 a.m. to 8.00 p.m. near Gurudwara Road Samasipur, they tried to extort some food items, i.e., Dal and Rice from the shopkeepers on the pretext to help the Gujarat earth-quake victims.

3. It is on these broad facts that the disciplinary proceedings proceeded and the disciplinary authority on perusal of the report of the enquiry officer imposed the penalty of dismissing the applicant from service.

4. During the course of submissions, our attention has been drawn to a plea which in our opinion should prevail and, therefore, there is no dwelling into the other controversy in the present matter which may be embarrassing on either side and there is no expression of any opinion in this regard.

5. It was contended on behalf of the applicant

Ag

that there was a preliminary enquiry that had been conducted and ^{on} _{in} the assertions had drawn a cognizable offence, no permission of the Additional Commissioner of Police before starting the departmental proceedings had been taken and, therefore, the action so taken violates sub Rule (2) of Rule-15 of Delhi Police (Punishment and Appeal) Rules, 1980.

6. Sub-rule (2) of Rule-15 of the Rules referred to above recites in following words:-

"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".

Perusal of the aforesaid Rule clearly shows that sub-rule (2) of Rule-15 would come into play in case :

- a) there should have been a preliminary enquiry;
- b) it should disclose the commission of a cognizable offence by a police officer of subordinate rank;
- c) it should be in relation to his official duties with public; and
- d) departmental enquiry should only be ordered with 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.

7. In the present case in hand, respondents' learned counsel did not dispute the fact that permission of the Additional Commissioner of Police has not been taken. However, they urge that no

Ms Ag

preliminary enquiry had been held in the facts of the present case and further that no permission of the Additional Commissioner of Police in any case was required.

8. Perusal of the record reveals that in the list of witnesses supplied to the applicant, respondents had cited Inspector Radhey Shyam so as to prove the Preliminary Enquiry report. Inspector Khazan Singh has been cited to prove his initial enquiry report. Therefore, the contention of the respondents that no preliminary enquiry had been held has simply to be rejected.

9. In fact, in the counter reply, filed also in an umambiguous terms, it has not been stated that no preliminary enquiry had been held. Therefore, it is too late in the day to urge such a plea.

10. Extortion is a cognizable offence which pertained to the applicant's relation with public. Therefore, in the backdrop of these facts, we have no hesitation in concluding that in the peculiar facts before starting departmental enquiry, permission of the Additional Commissioner of Police was required.

11. Sub-Rule(2) of Rule 15 has been incorporated in the rule referred to above with the object that the senior officer should apply his mind whether the concerned person should be dealt with departmentally and a criminal case should be registered. Once the

As Ag

mandatory provision has been ignored, we accept the present applications and quash the impugned orders and, therefore, direct:

- a) impugned orders are quashed;
- b) the other controversies are not being adjudicated upon;
- c) if the department so decides, they may take further action in accordance with law and nothing said herein shall debar them therefrom.

(V. K. Majotra)
Member (A)

(V. S. Aggarwal)
Chairman

cc.