

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No.2584/2001

New Delhi this the 14th day of March, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

ASI Jasbir Singh, No. 370/D
(Min) S/o Shri Late Lal Singh,
R/o H.No. 89, South Ganesh
Nagar, Delhi-92.

-Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Commissioner of Police
PHQ, I.P. Estate, MSO
Building, ITO, New Delhi.
2. Jt. Commissioner of Police,
Special Branch, PHQ, I.P.
Estate, MSO Building, ITO
New Delhi.
3. D.C.P. Special Branch,
PHQ, I.P. Estate, MSO
Building, ITO, New Delhi..
4. The Enquiry Officer,
G.C.Kapur, ACP, Special
Branch, PHQ, I.P. Estate,
MSO Building, ITO, New Delhi.

-Respondents

(By Advocate: Shri George Paracken)

ORDER (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

In this application the applicant's main prayer is that a direction may be given to the respondents to transfer the pending disciplinary proceedings against him from the Special Branch, Delhi, to departmental enquiry (DE) Cell, New Delhi and to quash the order dated 9.4.2001.

2. We have heard Shri Sachin Chauhan, learned counsel for applicant and Shri George Paracken, learned counsel for respondents and perused the relevant documents on record as pointed out by them.

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3. During the hearing, Shri Sachin Chauhan, learned counsel has submitted at the Bar that as far as the initiation of departmental proceedings vide impugned order dated 9.4.2001 is concerned, he does not press for quashing that order. His main contention is that respondents 3 & 4, namely, the Disciplinary Authority and the Enquiry officer are biased against him in the conduct of the disciplinary proceedings initiated by order dated 9.4.2001 and hence, the pending disciplinary proceeding should be directed to be transferred from the Special Branch, Delhi to D.E. Cell which is a specialised Cell for holding disciplinary proceedings.

4. We note that in the Memorandum of parties, ~~it is noted~~ ⁸ that only respondent No.4, i.e., the Enquiry Officer has been impleaded by name but not Respondent No.3, i.e., D.C.P. Special Branch/Disciplinary Authority who has only been impleaded by designation and not the person himself, against whom allegations of bias have been made by the applicant in the conduct of the departmental enquiry initiated against him. During the hearing Shri Sachin Chauhan, learned counsel has submitted that according to his information Shri Balaji Srivastava, DCP, Special Branch who had initiated the departmental enquiry and entrusted the same to Shri G.C. Kapur, ACP-HQrs/Respondent No.4 has been transferred from that post. In the circumstances, learned counsel for applicant has submitted that he does not press the charge of bias against Shri Balaji Srivastava, DCP, Special Branch. He has, however, submitted that during the relevant time this officer was posted as DCP, Special Branch under whom the Enquiry

Officer was working. The Enquiry Officer himself has acted in a manner detrimental to his interest. He has drawn our attention to the letter submitted by the applicant dated 17.9.2001 (Annexure-F). According to him, on 12.9.2001 and 14.9.2001, two witnesses, namely, Shri Girish Kumar, Head Constable and Woman Head Constable Ms. Sushila Ekka were examined as prosecution witnesses when the applicant's defence assistant was not present and hence, he could not cross examine these witnesses. He has submitted that on 12.9.2001, the applicant had made a request to the Enquiry Officer verbally as well as ⁱⁿ writing not to proceed with the D.E. because his defence assistant was not available. Similarly, he has submitted that on 17.9.2001, he had received a letter from the Enquiry officer dated 14.9.2001 to attend the enquiry at 3.30 PM and notice was received at 12 Noon on 17.9.2001, when again his defence assistant was not available. However, it is relevant to note that the applicant does not say whether the Enquiry Officer held any proceeding on that date or not. This will be a matter for the respondents to verify from their record. Learned counsel has contended that as the applicant had submitted a letter dated 17.9.2001 to respondent No.2 to hold in abeyance the DE proceedings till the decision is ~~not~~ communicated to him, to which he got a reply on 1.8.2001, he should be given an opportunity to cross-examine the aforesaid two witnesses namely Shri Girish Kumar, HC and W/HC Ms. Sushila EKka. Learned counsel has submitted that if that is done, the applicant has no objection to continue with the aforesaid departmental proceeding which presumably will be held in accordance with rules and instructions.

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5. We have heard Shri George Paracken, learned counsel and perused the reply filed by the respondents. The respondents had not denied that a request has been received by them from the applicant in writing dated 12.9.2001 and another letter dated 17.9.2001 to hold in abeyance the departmental proceedings till he got a reply to his request. The reply to the letter dated 17.9.2001 has been communicated to the applicant on 1.8.2001. The respondents have not denied the fact that on 12.9.2001 and 14.9.2001, they have examined the two witnesses mentioned above as prosecution witnesses.

6. We note from what has been submitted by the learned counsel for applicant, referred to above, that at this stage the applicant has no objection to the Special Branch, Delhi continuing with the pending departmental proceeding against him which has been initiated vide order dated 9.4.2001. However, in the facts and circumstances of the case we see force in the submissions made by the learned counsel for the applicant that the applicant should be given a reasonable opportunity to cross-examine the witnesses examined on 12.9.2001, 14.9.2001 and 17.9.2001, if any, examined by the respondents as prosecution witnesses. If that has been done, the respondents shall furnish the copies of the statements given by the witnesses to the applicant which were recorded on those dates in the departmental proceeding. They shall also provide a reasonable opportunity to the applicant to cross-examine the witnesses who were examined on the aforesaid dates, to ensure compliance with the principles of natural justice.

Yours / Liberty is granted to the respondents to continue and

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complete the departmental proceedings initiated by order dated 17.9.2001 in accordance with relevant law, rules and instructions.

7. With the above directions, the OA is disposed of.
No order as to costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

cc.