

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(9)

O.A. NO.2747/2001

New Delhi this the 23rd day of September, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI M.P. SINGH, MEMBER (A)

Constable (Driver) Jagat Singh
Presently posted at Prov & Lines
Old Police, Delhi
S/o Shri Ram Path, aged 40 years
R/o Vill & P.O. Asan, P.S. - Shatra
Distt. Rohtak, Haryana Applicant

(By Shri Sachin Chauhan, Advocate)

-versus-

1. Union of India
Through Its Secretary
Ministry of Home Affairs,
North Block
New Delhi.
2. Addl. Commissioner of Police,
P.C.R. & Communication,
Police Headquarters, I.P.Estate,
M.S.O. Building
New Delhi.
3. Addl. Dy. Commissioner of Police,
Police Control Room
Sarai Rohilla, Delhi Respondents

(By Shri Harvir Singh, Advocate)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

Applicant is a Constable (Driver) in Delhi Police. The charge against him was that while posted in North West Zone on 6.3.2000 at about 1.30 PM, one Ravinder Kumar was stopped while he was learning car driving. The car belonged to a friend of Ravinder Kumar. Applicant was on the Police

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Control Room duty. The Police Control Room staff asked the driver for the papers of the car. They were complete. Head Constable Bal Singh, Constable Suresh and the applicant asked for the driving licence and the driver of the vehicle informed him that he was learning driving. Head Constable Bal Singh slapped him and asked for illegal gratification along with the applicant and others. Rs.200/- was said to have been accepted for settlement of the matter.

2. A preliminary enquiry had been conducted followed by a regular enquiry. The Additional Commissioner of Police passed an order dismissing the applicant from service. His appeal was allowed and the punishment of dismissal was set aside and a punishment of forfeiture of ten years approved service entailing subsequent reduction in his pay with cumulative effect. The applicant was not to earn increments of pay during the period of reduction and on the expiry of that reduction, the reduction was to have the effect of postponing his future increments of pay. The intervening period of the applicant between the date of dismissal and the date of joining the duty was to be treated as leave of the kind due.

3. By virtue of the present application, applicant seeks setting aside of the punishment

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order and that of the appellate order. As a necessary corollary, a prayer has been made to restore the applicant his withheld pay and increment and to treat the suspension period as if spent on duty.

4. The application as such has been contested.

5. Amongst other pleas, the learned counsel for the applicant contended that in the present case sub-rule (2) to Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 (for short, "the Rules") has been violated. No approval of the Additional Commissioner of Police as to whether a criminal case should be registered and investigated or a departmental enquiry should be held had been taken and, therefore, the impugned order should be quashed.

6. Perusal of Rule 15 of the Rules clearly shows that a preliminary enquiry is a fact finding enquiry. Its purpose is to establish the nature of default and identify the defaulters. It has also to collect the evidence. Where specific information covering the points exists, a preliminary enquiry need not be held and a departmental enquiry can be started straightaway. However, sub-rule (2) to Rule 15 of Rules is as under:-

"(2) In cases in which a preliminary

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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 same shows that it makes a departure from sub-rule (1) to Rule 15 and where a preliminary enquiry is held and it discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, in that event, prior approval of the Additional Commissioner of Police is necessary to decide as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.

7. There is no plea that prior approval of the Additional Commissioner of Police was taken in this regard. Perusal of the impugned orders clearly show that a preliminary enquiry had been held. Once a preliminary enquiry had been held and it had disclosed the commission of a cognizable offence, departmental enquiry should have been ordered after obtaining prior approval of the Additional Commissioner of Police as to whether a criminal case should have been registered and investigated or a departmental enquiry should have been held. But in the absence of the prior approval of the Additional Commissioner of Police, we have no hesitation in concluding that the



departmental enquiry that had been initiated was not valid.

8. The law is well-settled that if a particular thing has to be done in a particular manner then it should be so adhered to. The said rule has been ignored. Necessarily, prior approval of the Additional Commissioner should have been taken and was sine qua non before initiating the departmental enquiry. Almost similar were the facts before this Tribunal in the case of **Head Constable Guru Dutt v. Union of India & Ors.** in OA No.2187/2001 decided on 29.1.2001. The order so passed had been quashed. We find ourselves in complete agreement with that view.

9. For these reasons, the present application is allowed and the impugned order is quashed. The respondents, if deemed appropriate, may act in accordance with law to initiate fresh proceedings. Other necessary orders which would be corollary to the setting aside of the impugned order should also be passed within two weeks from today. In the circumstances of the case, we make no order as to costs.

Announced.


(M.P. Singh)
Member (A)

/sns/


(V.S. Aggarwal)
Chairman