

(11)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A. NO. 3308/2001  
M.A. NO. 2744/2001  
M.A. NO. 2745/2001**

New Delhi this the 22nd day of November, 2002.

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

**HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)**

1. Mohinder Singh  
Constable No.-1726/A (Old No.1236/C)  
S/o Sh.Sant Lal  
R/o 304, Police Colony, Ashok Vihar  
Delhi-52.
2. Ravinder Singh  
Constable No.1950/A (Old No.877/C)  
S/o Shri Babu Ram  
R/o Kuri Khera  
Gautam Budh Nagar  
New Delhi. ....Applicants

( By Shri Jitendra Kumar Singh, Advocate)

-versus-

- (1) Union of India through  
the Secretary  
Ministry of Home Affairs  
North Block  
New Delhi-110001.
- (2) The Commissioner of Police  
M.S.O.Building, Police Head Quarters  
I.P.Estate, New Delhi.
- (3) The Joint Commissionerr of Police  
Operation, I.G.I. Airport  
New Delhi. .... Respondents

( By Shri Harvir Singh, Advocate)

O R D E R (ORAL)

**Justice V.S. Aggarwal:-**

M.A. No. 2744/2001

MA No.2744/2001 for joining together in OA  
No.3308/2001 is allowed.



MA No.2745/2001

2. We are satisfied with the grounds mentioned in MA No.2745/2001 seeking condonation of delay in filing OA No.3308/2001. MA No.2745/2001 is allowed.

OA No.3308/2001

3. Applicants Mohinder Singh and Ravinder Singh had been enrolled as Constables in Delhi Police. Vide an order dated 13.1.1995, a joint departmental enquiry was ordered by the Additional Commissioner of Police, Central District on a complaint made by S/Shri Deeraj Tiwari and Shanker Dayal. S/Sh. Deeraj Tiwari and Shanker Dayal were the deliverymen of M/s Karol Bagh Gas Service, Delhi. In the complaint, it had been alleged that while distributing gas on 26.12.1994 with 20 cylinders on the tempo, they were intercepted by applicant No.1, Constable Mohinder Singh and applicant No.2 Constable Ravinder Singh in Gali No.1, Sant Nagar, Karol Bagh, New Delhi. Both the applicants had demanded Rs.5000/- from them and threatened that failing which they would be implicated in a serious case. The complainants showed their inability to fulfil the said demand. They were brought to Desh Bandu Gupta Road Police Station and handed over to Assistant Sub Inspector

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Iswar Singh. He also demanded Rs.5000/- and threatened that they would be implicated in a case. It is also alleged that one empty cylinder and one filled cylinder were removed from the tempo. Some of the gas from the filled cylinder was converted into empty cylinder by the applicants and the complainants were implicated in a false case registered vide First Information Report No.440/1994 for offences punishable under sections 379/411/34 Indian Penal Code. The sale proceeds of Rs.838/- were snatched from the deliverymen. Rs.808/- were dishonestly misappropriated and Rs.30/- was shown as recovered from 'Jama Talashi'.

4. Departmental enquiry was conducted by Shri Prem Chand, Assistant Commissioner of Police with respect to the charges levelled against the applicants. It was reported by the enquiry officer that the charges had been partly proved. However, the charge of demand of Rs.5000/- had not been substantiated. The Additional Deputy Commissioner of Police, Central District awarded the punishment of withholding of three increments with cumulative effect upon the applicants. Both the applicants had preferred an appeal to the appellate authority which was dismissed. They preferred a revision petition before the Commissioner of Police, who had set aside the punishment order and remanded the matter back to the present disciplinary authority,

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namely Deputy Commissioner of Police/Indira Gandhi International Airport. The disciplinary authority went through the records of the departmental enquiry. He found no specific fault attributed to the applicants and felt that the charge was not fully proved. The disciplinary proceedings against the applicants were dropped by an order dated 16.7.1999. Suspension period of the applicants was ordered to be treated as period spent on duty.

5. The Joint Commissioner of Police suo moto issued a show cause notice raising certain points. The applicants replied to the show cause notice and the Joint Commissioner of Police awarded two punishments to the applicants i.e. forfeiture of 4 years approved service and reduction of pay by four stages for four years. He also passed an order to treat the suspension period of the applicants as not spent on duty.

6. By virtue of the present application, the said order passed by the Joint Commissioner of Police is being assailed, the relevant extracts of which read:-

"Why the disciplinary authority did not give any reasons as to what evidence led him to drop the DE. His decision is not in speaking order and lacks logical reasoning. It was rather a subjective decision. The undersigned after examining the DE file with reference to the final order passed by

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DCP/IGIA vide No.3984-4007/HAP/IGIA(P-I), dated 16.7.99 had set aside the same under rule 25(b) of Delhi Police (Punishment & Appeal) Amendment Rules 1994 as the order of DCP/IGIA was not based on the evidence on record as well as on the basis of finding of the E.O. Hence a show cause notice for forfeiture of 5 years approved service permanently was issued to ASI Ishwar Singh, No.5037/C, Ct.Mohinder Singh, No.1726/C and Ct.Ravinder Singh, No.1950/A. In response to which all the three delinquents have submitted their replies on 23.12.99, 29.11.99 and 29.11.99 respectively and requested for personal hearing. Accordingly all the 3 delinquents appeared before the undersigned on 7.1.2000. They had nothing to say except that they requested for pardon this time. In the absence of any exonerating evidence, I therefore confirm the show cause notice and award them each a punishment of forfeiture of 4 years approved service permanently for this gross misconduct, harassment to the public persons, registering a false case and attempted misappropriation of jama talashi money."

7. The application has been contested. It was pointed that the applicants had been awarded the punishment before Rule 25 B of the Delhi Police (Punishment and Appeal) Rules, 1980 (for short, "the Rules") had been declared to be ultra vires. It has further been asserted that the Joint Commissioner of Police had the authority and in exercise of the same, the said order had been passed which is legal and valid.

8. As is apparent from the order passed by the Joint Commissioner of Police, it is patent that the same has been passed in exercise of the power conferred upon him under Rule 25B of the Rules. The said rule permits the Commissioner of Police and other certain Police Officers to call for

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records of awards made by any of his subordinates either on his own motion or otherwise and confirm, enhance, modify or annul the same or make further investigation.

9. During the course of submissions, it was not disputed that a Full Bench of this Tribunal in OA No.77/1997 (**Head Constable Rajpal Singh v. Union of India & Ors.**) and batch of cases decided on 14.9.2000 had held that Rule 25B of the Rules is ultra vires of the provisions of the Delhi Police Act. Keeping in view the said fact, we have no hesitation in concluding that such an order could not have been passed in exercise of any such power.

10. Confronted with this position on behalf of the respondents, it was pointed that in any case, the appellate authority can, in exercise of the powers under Rule 25 of the Rules, pass the said order and in face of the said fact, the order cannot be held to be without jurisdiction. The objection on behalf of the applicants was that the order had not been passed under Rule 25 of the Rules.

11. At the outset, the applicants' plea to that effect deserves to be rejected. The reason being that the label given to the order passed is not material. If an order as such can be passed in

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pursuance of and in exercise of certain powers conferred on the authority then irrespective of the rule that is mentioned, it must follow that the order is within jurisdiction.

12. Rule 25 of the Rules reads as under:-

"25. Orders on appeal.- (1) On appeal, the appellate authority may,

- (a) confirm the impugned order, or
- (b) accept the appeal and set aside punishment order, or
- (c) reduce the punishment, or
- (d) disagree with the disciplinary authority and enhance the punishment after issue of a fresh show cause notice to the appellant and affording him a reasonable opportunity (including personal hearing if asked for) against the proposed enhancement.
- (e) remit the case to the authority which made the order or to any other authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- (f) pass such other orders as it may deem fit.

(2) Every order passed on appeal shall contain the reasons therefor. A copy of every appellate order shall be given free of cost to the appellant."

On behalf of the respondents, it was pointed that such an order could be passed under Rule 25 (a) of the Rules.

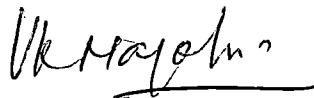
13. However, this contention of the respondents must be rejected. Rule 25 opens with

the words "on appeal, the appellate authority may". Necessarily the key to the exercise of the power by the appellate authority is filing of an appeal by either side before it. The power can be exercised by the appellate authority only if an appeal is filed. If no appeal is filed in that event, under Rule 25, the appellate authority does not have any suo moto power to exercise.

14. Admittedly, the respondents had not preferred any appeal. The applicants had been exonerated and, there was no appeal before the appellate authority. Resultantly, the appellate authority could not have exercised the said power. Our attention has not been drawn to any other provision under which such a power could be exercised.

15. Resultantly, the present application is allowed and the impugned order is quashed and set aside. No costs.

Announced.



(V.K. Majotra)  
Member (A)



(V.S. Aggarwal)  
Chairman

/sns/