

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.169/99

(12)

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 1st day of November, 2000

Ex. Const. Narender Singh
s/o Shri Sher Singh
r/o Vill. & P.O. Basant Pur
P.S.Sadar, Rohtak
(Haryana).

... Applicant

(By Shri S.K.Gupta, Advocate)

Vs.

1. Govt. of NCT of Delhi
through Chief Secretary
5, Sham Nath Marg
Delhi.
2. Commissioner of Police, Delhi
Police Headquarters
I.P.Estate
New Delhi.
3. Senior Addl. Commissioner of Police
(AP & T)
Police Headquarters
I.P.Estate
New Delhi.
4. Deputy Commissioner of Police
IIIRD Bn. DAP
Vikas Puri
New Delhi.
5. Shri Ramesh Pal Singh
(Enquiry Officer)
C/o D.C.P., IIIRD Bn.
D.A.P.
Delhi.

... Respondents

(By Shri Rajinder Pandita, Advocate with Shri
H.C.Ramesh, Departmental Representative on behalf of
the respondents)

O R D E R (Oral)

Justice V. Rajagopala Reddy:

The applicant while working as Constable in
Delhi Police, a summary of allegations ^{has} ~~have~~ been
served upon him on 26.9.1996, alleging that, when
posted to Escort duty over Under Trial Prisoner (for
short, 'UTP') Ram Nath Devender, who was to be
produced in the Court, he allowed the relatives of the

(Q)

UTP to meet him (the UTP) after taking Rs.100/- from the relatives of the UTP and placed it in the left side pocket of his pants (trousers). As the allegations were denied by him, an enquiry was conducted in which the charge was found established. The disciplinary authority, accepting the findings of the enquiry officer, imposed ^{on him} the punishment of removal from service by the impugned order dated 21.3.1997 which has been confirmed by the appellate authority dated 18.8.1997. These orders are under challenge in this OA.

2. The learned counsel for the applicant contends that as the approval of the Additional Commissioner of Police concerned was not taken before ordering the departmental enquiry. Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980, is violated and the absence of proper sanction contemplated under the Rules, the enquiry is wholly vitiated. It is not in the controversy that such approval was not taken in this case. This averment was met by the respondents in the counter stating that that it was not necessary to obtain the permission of the ACP under Rule 15(2) as at the very first stage, sufficient evidence/proof was found against the applicant and therefore departmental enquiry was ordered against the applicant. As there was a preliminary enquiry then the permission would have definitely obtained.

3. In order to appreciate this contention, it is necessary to reproduce Rule 15(2) of the Rules.

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"15. Preliminary enquiries:-

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(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."

4. A plain reading of the above Rule shows that, if the commission of a cognizable offence by a police officer in his official relations with the public was disclosed, then a departmental enquiry shall be ordered only after obtaining the prior approval of the Additional Commissioner of Police concerned. Thus, *in a nutshell*, before ordering a departmental enquiry a sanction from the Additional Commissioner of Police concerned should be obtained. taken. In the present case, the applicant was alleged to have committed a cognizable offence of taking bribe from a member of the public who happens the relative of the UTP for which he was liable to be proceeded against either in the criminal court or in the departmental proceedings. It is therefore incumbent upon the authorities to have obtained the approval of the Additional Commissioner of Police before proceeding with the departmental enquiry. The explanation given by the respondents is not tenable. It is not intendment of the Rule that only when there is no *prima-facie* proof for ordering departmental enquiry and when there is a preliminary enquiry, the sanction should be obtained. The purpose behind the rule is salutary. The department has to take a decision that it was not a fit case to proceed against him in a criminal court, in the interests of public.

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Once a departmental enquiry is ordered, it may not again order a criminal complaint. The approval of sanction is therefore mandatory and in Mahabir Singh Vs. Union of India and Others, OA No.2343/96 decided on 27.1.1998, the coordinate bench of the Tribunal, taking a similar view, quashed the order of dismissal of the Constable. In the circumstances, as the respondents had not obtained the sanction as required under Rule 15(2), the impugned order has to be set-aside.

5. The OA succeeds and the impugned order is quashed. The respondents are directed to reinstate the applicant in service within a period of three months from the date of the receipt of the copy of this order with all consequential benefits. It is, however, open to the respondents to hold a fresh enquiry on the same allegations after complying with the Rule 15(2) of the Rules. The OA is accordingly allowed. No costs.

(GOVINDAN S. TAMPI)
MEMBER(A)

(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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