

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2070/99

New Delhi, this the 13th day of October, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

S.I. Surya Prakash, S/O Shri Ramji Lal,
R/O A-I/4, Type-III, Pitam Pura Police
Lines, Delhi.Applicant.

(By Advocate: Sh. Ajesh Luthra)

VERSUS

1. Union of India through Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. The Commissioner of Police, Police Head Quarters, M.S.O. Building, I.P. Estate, New Delhi.
3. The Jt. Commissioner of Police (Intelligence), PHQ, MSO Building, I.P. Estate, New Delhi.

....Respondents.

(By Advocate: Sh. Ram Kanwar)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (J):

The applicant has assailed the order dated 21.1.98 (Annexure A-1) as well as the order dated 5.6.98 (Annexure A-2) passed in pursuance of Annexure A-1. The applicant also assails the order dated 4.6.99 (Annexure A-3) which has been passed on appeal preferred by the applicant against the order Annexure A-2. The applicant also assails the findings of the Enquiry Officer (Annexure A-4) which has ^{been arranged} ~~made~~ in pursuance of the order Annexure A-1.

2. The facts in brief are that the applicant during the course of his service as Sub Inspector on 10.12.97 was censured by the Assistant Commissioner of Police, South-West Zone on the allegations of

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having remained absent vide DD No.47 dated 26.11.97. He was alleged to be absent from the duty from 26.11.97 to 27.11.97 (13 hours and 10 minutes). Thereafter, the respondent No.3, i.e., The Joint Commissioner of Police on 2.1.98 reviewed the aforesaid order and directed a departmental enquiry to be initiated against the applicant which was later initiated by ^{Issue of} ~~the~~ SCN. However, learned ACP, vide Annexure A-1, had directed to initiate the disciplinary proceedings against the applicant in exercise of powers under Rule 25 (B) of the Delhi Police (Punishment & Appeal) Amendment Rules, 1994 and in pursuance to the said order for departmental enquiry, the applicant preferred an appeal which was disposed of vide Annexure A-3.

3. The learned counsel appearing for the applicant has submitted that since the order on the basis of which the enquiry had been initiated has been passed by the Joint Commissioner of Police in exercise of his power under Rule 25-B of the Delhi Police (Punishment & Appeal) Rules, 1980 and that order itself is null and void since Rule 25-B has already been held to be ultra vires of the Delhi Police Act, 1978 in view of the judgment delivered by the Full Bench in the case of HC Rajpal Singh V. U.O.I. & Others (OA 77/97 with other connected cases) decided on 14.9.2000 wherein the Hon'ble Full Bench had held that Rule 25-B is ultra vires of the Delhi Police Act, 1978. Under the circumstances, the learned counsel

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for the applicant further submitted that all actions taken in exercise of the powers under Rule 25-B are void ab initio, since the quashing of the Rule 25-B being ultra vires, has an effect as if Rule 25-B does not exist on the Statute Book. In view of this, possibly no action could have been initiated by the Joint Commissioner of Police in exercise of powers under Rule 25-B of the Delhi Police (Punishment & Appeal) Rules, 1980.

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4. The learned counsel for the respondents could not advance any arguments against the Full Bench judgment.

5. Keeping in view all the contentions raised by the counsel for the applicant, we are of the considered view that the action of the Joint Commissioner of Police in exercise of his powers under Rule 25-B of the Delhi Police (Punishment & Appeal) Rules, 1980 is altogether null and void since Rule 25-B has already been held to be ultra vires of the Delhi Police Act, 1978 as per the Full Bench judgment referred to above.

6. Consequently, all the proceedings taken thereafter e.g. initiating the D.E. and passing of the impugned order of punishment are also void ab initio and cannot be sustained.

7. In the circumstances, we allow the OA by

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overruling and setting aside the impugned orders at Annexure A-1, Annexure A-2 and Annexure A-3. The OA is, therefore, allowed with all consequential benefits. No costs.

S.A.T.Rizvi

(S.A.T.Rizvi)
Member (A)

Kuldeep Singh

(Kuldeep Singh)
Member (J)

/Rakesh/