

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2549/1999

New Delhi, this 14th day of January, 2001

Hon'ble Shri V.K. Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Bal Kishan Sharma
H.No.2086/37, Naiwala
Karol Bagh, New Delhi

.. Applicant

(By Shri M.K.Gupta, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home
North Block, New Delhi
 2. Joint Commissioner of Police (Operation)
Delhi Police Hqrs.
IP Estate, New Delhi
 3. Commissioner of Police
Delhi Police, Police Hqrs,
MSO Building, New Delhi
- .. Respondents

(By Shri Harvir Singh, Advocate)

ORDER

By Shri Shanker Raju

The applicant, working in the Delhi Police, has challenged the order dated 27.9.99 whereby a departmental enquiry (DE, for short) has been initiated against him on the ground that when posted at Police Station, Bhajanpura on 10.1.93, he alongwith Jai Singh arrested one Shri Bhabuti Singh, his brothers and son under section 107/151 Cr.PC. It has been further alleged that he had dispossessed the complainant from their land Khasra No.404 despite stay order passed by the court of Sub-Judge, Delhi and also demolished their tin shed at the said property. The applicant contends that the allegations levelled against him had been considered a misconduct due to malafides of the department. It has also been alleged that no irregularity can be made out from the allegation and that the charges are contrary to law.

2. In order to understand the controversy, the facts in brief are that the applicant was in the year 1992 working as SHO, Police Station, Bhajanpura. On 17.1.92, the Nayab Tehsildar, New Lease Branch, DDA came for demarcation of the land. It has been stated that the land at Khasra No.404 does not form part of the property of the complainants. The applicant contends that letters dated 22.1.92 and 25.1.92 were received from DDA by the complainant for unauthorised construction taken up in their land. JE of DDA on 29.1.92 made a complaint against Bhabuti Singh and others regarding land encroachment and putting building material on the land etc. The learned counsel for the applicant also has drawn our attention to the letter dated 14.1.93 saying that a complaint was made to the SHO by an officer of DDA regarding encroachment of their land. Applicant has also drawn our attention to the various irregularities regarding enquiry conducted by ASI Rajpal, stating that no material was found lying on the relevant property. Admittedly, suit No.57/92 has been filed before the Senior Sub-Judge by Bhabhuti Singh and others against the DDA for perpetual injunction and by interim order dated 29.1.92 the DDA was directed to maintain status-quo. Subsequently, contempt petition was filed by the complainant alleging disobedience of the order of the Court contending that on 10.1.93 the applicant alongwith other police officers came to the suit property, demolished the shop and tin-shed and looted the property.

3. It was also alleged that the applicant had also thrashed the complainants and others and brought them to the police station. The aforesaid contempt proceedings were taken cognisance by Civil Judge vide order dated 16.10.99. It has been decided to adjourn it for framing of issues on contempt petition for 14.2.2000 and recording evidence, thereof.

4. The applicant contends that till the civil suit pending before the court is not decided, it would not be proper for the respondents to come to a conclusion that the property belongs to the complainants and to hold DE against him. According to him the entire process hangs upon the decision of the ownership of the land. In the event the land is not held to be in possession of the complainant, then the action taken by the applicant would be justified. Applicant further contended that the allegation pertains to 1993 and DE has been initiated after a delay of more than 6 years without any justification and reasons by the respondents.

5. Respondents in their reply refuted the contentions of the applicant by stating that the enquiry report was gone into and it has been referred to DCP/Vigilance. According to them enquiry was ordered by the Lt. Governor to be conducted by ADM(North-East) and that the delay was not malafide but on account of administrative reasons and also on account of appointment of EO. Respondents have further contended that there is no proximity of action taken by the applicant by arresting the complainants and others on 10.1.93 as after 29.1.92,

no complaint was made by the DDA. According to them, the civil suit has no relevancy to the allegations against the applicant in the DE.

6. The counsel for the respondents further objected to the OA on the ground that the same is pre-mature as enquiry is yet to be conducted against the applicant. According to them if the applicant has anything to say in his defence the same should be adduced in the enquiry. It is also contended that the proceedings u/s 107/151 Cr.CP by the applicant was not warranted in the circumstances.

7. Applicant has also filed rejoinder reiterating the facts stated in the OA.

8. We have carefully gone through the arguments advanced and perused the DE records produced by the respondents' counsel in order to adjudicate the power of judicial review by this Tribunal regarding the said charge. The material relied upon against the applicant to establish the charge is also relevant. The applicant has approached this Tribunal without receiving a copy of summary of allegation and enclosed documents. We have perused the documents from the file of the respondents. We find that alongwith summary of allegation, the report of ADM is enclosed as well Kalandar 107/151 Cr.PC. There are 14 witnesses cited to prove the charge. We find that the report of ADM was received on 23.10.96 and thereafter it has been referred to Lt. Governor and ultimately to the disciplinary authority. In our view, there is no inordinate or unexplained delay in issuing charge-sheet to the applicant. Further process was

taken up with the administration and the order of DE has been issued on 27.9.99. The applicant has yet to be supplied with a copy of the charge-sheet and the same has now been seen by us provided by counsel of respondents during the hearing of the OA. Apart from this, every delay would not vitiate the charge-sheet or the enquiry unless it is inordinate or unexplained. In our view the delay in the case of the applicant is neither unreasonable nor inordinate. This plea of the applicant is not legally sustainable and liable to be rejected.

9. As regards judicial review of the charge-sheet, interference of the Tribunal at interlocutory stage is very limited. The Tribunal can interfere only if on the charge-sheet framed (if read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or if the charges framed are contrary to any law, there can no interference by the Tribunal. It cannot take over the functions of the disciplinary authority and go into the correctness or so of the proved charge. Truth or otherwise of the charges is a matter for the disciplinary authority to go into. In this view of ours we are fortified by the ratio laid down in the case of UOI & Ors., Vs. Upendra Singh 1994(L&S)SCC 768.

10. Applying the aforesaid dictum, in the facts and circumstances of the present case and after going through the counter and departmental records, we are of the considered opinion that there is sufficient material in support of the charge in the form of documentary evidence including enquiry report as well as kalandar

u/s 101/157 Cr.CP. We are not expressing any opinion on the merits of the case or going into the gravaman of the charge but from the material existing on DE proceedings, we feel that it is not a case where there is no evidence or that any irregularity has been made out in the DE order. Applicant would be given reasonable opportunity to adduce his defence against the material to be used against him by the respondents during the course of DE. In the event final order is passed in the DE, applicant has every right to approach this Tribunal assailing the same, if so advised.

11. Having regard to the claims advanced by the applicant, we are of the considered view that the OA is bereft of any merit and the same is dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member(A) 19.01.2001

/gtv/