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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
New Delhi

O.A. No.2671/1999

New Delhi, this 4<sup>th</sup> day of the January, 2001

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)  
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Kumar Pal (10346/DAP)  
S/o Shri Sewa Ram  
R/o 84/131, Nand Nagri,  
New Delhi.

... Applicant

(By Advocate: Shri Shyam Babu)

Versus

Govt. of NCT of Delhi Through

1. The Chief Secretary  
5, Sham Nath Marg,  
Delhi.
2. Commissioner of Police  
Delhi,  
Police Headquarter,  
I.P.Estate,  
New Delhi.
3. Addl. Commissioner of Police  
(Armed Police) DAP  
Police Headquarter,  
I.P.Estate,  
New Delhi.
4. Dy. Commissiainer of Police  
9th Bn. DAP  
Pitampura,  
New Delhi.

... Respondents

(By Advocate: Mrs. Meera Chhibber)

ORDER

By SHANKER RAJU, MEMBER (J) :

By this application the applicant has raised an important question of law regarding competence of disciplinary authority to initiate a departmental enquiry against a police officer, despite the fact that such a police officer has not been working under his disciplinary control.

2. Brief facts leading to filing of this OA are that the applicant while in 9th Bn. Delhi Armed Police (in short, DAP) was deputed temporarily to perform duties in 'E' Block, Security Lines, Delhi. The applicant absented himself with effect from 12.11.1996 vide DD 33-B dated 12.11.1996. ~~The~~ <sup>he</sup> Absentee notices have been issued from 9th Bn. DAP. The applicant ultimately joined duty at 'E' Block, Security Lines, Delhi on 4.9.1997 and continued to perform the same till the date of his dismissal, i.e., 19.2.1998. A departmental enquiry was ordered against the applicant on 20.8.1997 by Deputy Commissioner of Police (in short, DCP), 9th Bn. DAP. Further the summary of allegation was issued to him by the Enquiry Officer at 'E' Block, Security Lines, Delhi. After holding the enquiry by the Enquiry Officer, the applicant was held guilty of the charge.

3. The DCP 9th Bn. DAP removed the applicant from service ~~by~~ <sup>he</sup> treating the period of absence as dies-non under FR 17 vide an order dated 19.2.1998. The applicant carried this punishment ~~to~~ <sup>he</sup> in an appeal and the appeal was rejected by the Appellate Authority on 30.7.1998. The appellate order was further carried to revisional authority and the revision petition was also rejected on 14.5.1999. All these orders have been impugned by the applicant in this OA.

4. We have heard both the counsel and have carefully perused the record of the enquiry.

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5. The applicant firstly, contended that the punishment imposed upon him is in violation of Rule 16 (xi) of Delhi Police (Punishment and Appeal) Rules, 1980. According to him, the Appellate Authority has taken into consideration his previous bad record without making it a specific charge. Before dealing with this contention, it is necessary to understand the provision of Rule 16 (xi) of Delhi Police (Punishment and Appeal) Rules, 1980, according to which :-

"16 (xi) if it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules."

6. As per Rule in short (ibid), we find that the previous bad record would be made a specific charge only when the disciplinary authority consider the same while awarding a severe punishment to the applicant. In the instant case, we have perused the order of removal and find that the previous bad records have not at all been taken into consideration by the Disciplinary Authority while awarding a severe punishment of removal to the applicant. It is true that the Appellate Authority has taken into consideration the previous bad records of the applicant but with a view to prove his habitual absenteeism and incorrigibility. This has been done with regard to the proportionality of punishment. In our view mere reference to the previous record by the Appellate Authority would not attract the provision of Rules 16 (xi) (ibid). We feel that in absence of any

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consideration of previous bad record by the Disciplinary Authority, the same would not form the basis of definite charge against the applicant. As such the contention of the applicant is rejected.

7. The applicant has also taken a plea that the period of absence of the applicant has been treated as 'no work no pay' under FR 17 by the Disciplinary Authority. According to him, no show cause notice has been issued to him before treating the aforesaid period as 'no work no pay'. The applicant further contented that in the Memoranda attached to the findings dated 17.11.1997, no proposal has been made to treat the period of absence of about 295 days as 'no work no pay'. In this background, the learned counsel for the applicant relied upon FR 17 and OM No. 33011/2(S)-84-Estt.(B) dated 20/23rd May, 1985 and contended that before treating the period of absence under FR 17 as diesnon, a reasonable opportunity should be afforded to a Government servant. In this circular, the Lucknow Bench of Allahabad High Court struck down a similar order observing that the action would be against the principle of natural justice. The learned counsel for the respondents resisted this plea by contending that the applicant has been issued absentee notices where it has been proposed that in case the applicant does not join duty, the period of absence would be treated as break in service under FR 17. We have carefully gone through the record of the departmental enquiry and had come across exhibit PW 1B and absentee notice dated 22.4.1997 which was received

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by the applicant on 28.4.1997. There, it has been made clear that if the applicant does not resume duty his unauthorised period of absence would be treated as break in service under FR 17. In our view, the applicant has been afforded a reasonable opportunity to show cause against the proposed treatment of absence period as not spent on duty under FR 17. Furthermore, the applicant has not responded to the absentee notices. In our view, the respondents have complied with OM dated 23.5.1995 and also complied with the principle of natural justice of affording a reasonable opportunity to the applicant against the proposed action of treating the absence period as no work no pay under FR 17 before treating the same accordingly. The contention of the applicant lacks merit and is rejected.

8. It has been next contended by the counsel for the applicant that order of initiation of enquiry dated 20.8.1997 passed without jurisdiction and in violation of Rule 14 (4) of Delhi Police (Punishment and Appeal) Rules, 1980. On 20.8.1997, according to the applicant, he was working under the disciplinary control of DCP/Security. The applicant contends that he was posted as a Security Officer with Shri Maqbool Dhar. According to him, when he resumed duty on 24.09.1997, he was attached as a personal Security Officer with Shri Umar Farooq Abdullah and was working under the disciplinary control of DCP, Security till 19.2.1998. According to the applicant, the DCP 9 Bn. DAP has no jurisdiction to initiate disciplinary action against

him on 20.8.1997 as he was not working under his disciplinary control. To propagate his plea, the applicant relied upon the Judgement of this Tribunal in OA 1317/1993 in the case of Kishori Lal Dogra Vs. Commissioner of Police and Ors., (1994 26 ATC 319) where the following observations have been made as under:-

"7. We may now again consider Rule 14(4). The crucial words in the Rule for the purpose of this case are "disciplinary control" and "working". Admittedly, the petitioner took leave from Shri Dadwal after 21.1.1993. He could not have applied to Shri Dadwal for leave and Shri Dadwal could not have granted him leave if he was not under the disciplinary control of Shri Dadwal. A member of the police force has got to be under the disciplinary control of some officer all the time during the tenure of his service. There can be no vacuum or hiatus so far as the disciplinary control is concerned. The Rule makes it clear that there should be a nexus between the work of a police officer and the officer who has disciplinary control over such as officer. It cannot be said that during the period of his leave, the petitioner ceased to be a member of the police force. Also, it cannot be said that during the said period he was not working within the meaning of the Rule. Notionally and in the eye of law, a police officer on leave would be deemed to be working. Otherwise, the Rule will become inapplicable thereby leading to an anomalous situation. The situation would be that a police officer on leave would be immune from the operation of the Rule insofar as no officer will be competent to initiate disciplinary proceedings against him during the period when he is on leave. It follows that, for the efficient working of the Rule, it should be held that during the period when the petitioner was on leave, he was working under the disciplinary control of Shri Dadwal.

8. The clarification issued by the Home Department, Delhi Administration based upon which reliance is placed by the learned counsel for the petitioner does not advance the petitioner's case. The substance of the alleged clarification is that the competent authority under whose disciplinary control the employee has been transferred alone would be competent to take action and the authority from whose control he has gone out would have nothing to do with him any longer in future. We have already

indicated that the order of transfer become effective only on 9.4.1993 and the petitioner did not cease to be under the disciplinary control of Shri Dadwal on 17.2.1993."

9. According to him, as the applicant has resumed his duty after alleged absence in the Office of DCP/Security, the enquiry should have been initiated by the DCP/Security. The applicant relied upon Rule 14 (4) of Delhi Police (Punishment and Appeal) Rules, 1980, which ~~is~~<sup>he</sup> stipulates as under:-

"14 (4) The disciplinary action shall be initiated by the competent authority under whose disciplinary control the police officer concerned is working at the time it is decided to initiate disciplinary action."

10. According to him, as provided in the aforesaid Rule, his disciplinary control would be determined in the context of the working at the place when it was decided to hold a departmental enquiry against him. The applicant contended that he has not been called back from Security to 9th Bn. DAP by any order passed by the DCP, 9th Bn. DAP. According to him, the applicant was under the disciplinary control of DCP/Security as the nature of duty and work has been controlled by the DCP/ Security. According to him, mere issuance of absentee notice and disbursement of salary would not determine the factum of disciplinary control. According to him, the working would be judged from the actual working of a police official. According to him as the applicant has been working in the Security Line, he would be under the disciplinary control of DCP/Security who regulates the manner of

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working and posting. The applicant further contended that the departmental enquiry was also conducted at Security Branch of Delhi Police. The learned counsel for the applicant also refers to the testimony of PW2 Constable, Jai Pal who was working as a Absentee Record Clerk, 'E' Block, Security Lines. He further contended that said witness has produced the previous absentee record of Constable and contended that his record was kept at the Security Branch. The applicant further contended that though temporarily attached to Security Lines, DCP 9th Bn. DAP has no disciplinary control over him with regard to initiation of Departmental Enquiry as he was not working under him. The applicant contended that if such a construction and interpretation is not given to Rule 14 (4) (ibid), the rule would become redundant. The applicant contended that as initiation of departmental enquiry by an incompetent authority, the resultant orders of removal, appeal and revision have also become illegal and are liable to be set aside. Lastly, the learned counsel for the applicant contended that mere perpetuity of orders issued without jurisdiction in the past would not confer any right upon the respondents to pass any further illegal order.

11. The learned counsel for the respondents resisted the plea of the applicant on the ground that the applicant was temporarily attached to Security Unit and the disciplinary control remained with DCP, 9th Bn. DAP. To propagate this plea, the respondents have submitted the personal file and departmental record.

It has been contended that the applicant was transferred from East Dist. to 9th Bn. DAP vide an order dated 19.6.1995 and since then, he has been posted in disciplinary/administrative control of DCP, 9th Bn. DAP. According to her, the applicant has been getting his pay from 9th Bn. DAP, and his leave account has also been maintained in the same Bn. The respondents have also referred to an order dated 3.12.1996 where the applicant was awarded a minor penalty of censure and his absence was treated as leave without pay. The respondents have also contended that the ACRs of the applicant have been maintained at 9th Bn. DAP and reviewing authority is Asst. Commissioner of Police of the same Bn. Counsel for the respondents also referred to the absentee notices issued to the applicant and contended that the same have been issued from 9th Bn. DAP, directing the applicant to undergo second medical examination and its report was to be sent to the 9th Bn. DAP. According to the respondents, the absence of the applicant, although recorded vide DD 33-B as on 12.11.1996, the orders have been sent to 9th Bn. DAP. The learned counsel for the respondents lastly contended that for all purposes the DCP, 9th Bn. DAP was having the disciplinary control over the applicant and the applicant was also working under him. The respondents counsel also referred to Rule 14 (3) of Delhi Police (Punishment and Appeal) Rules, 1980 and contended that all Dy. Commissioner of Police shall exercise control over all subordinate police officers irrespective of the fact that they have been actually appointed the concerned officer or not as

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well as irrespective of the fact the he was actually working under him or not. In this background, the respondents counsel retreated that as applicant was not transferred from 9th Bn. DAP to Security and was only temporarily performing duties as it is common practice among the Bn. deputed in Delhi, the DCP, 9th Bn. DAP was the competent authority to initiate the departmental action against the applicant. According to her, DCP/Security has sent the absentee report for taking the disciplinary action against the applicant. The respondents further contended that the applicant was working in Security under the direct control of DCP, 9th Bn. DAP. The respondents further contended that the Judgement relied upon by the applicant in Kishori Lal Dogra's case (Supra) is not applicable in the facts and circumstances of the present case as there was no valid transfer order, transferring the applicant from 9th Bn. DAP to Security.

12. We have carefully considered the rival contentions of the parties with regard to provision of Rule 14 (4) of Delhi Police (Punishment and Appeal) Rules, 1980 and with regard to competence of disciplinary authority initiating the departmental action against the applicant. We have also perused the relevant record in this regard.

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13. In our view rule 14 (4) of Delhi Police (Punishment and Appeal) Rules, 1980 authorises initiation of disciplinary action by the competent authority. Initiation of disciplinary action has been

defined in Rule 5 (iii) of Delhi Police (Punishment and Appeal) Rules, 1980, there departmental enquiry is deemed to have been initiated after the summary of allegations have been served. Rule 14 (4) of Delhi Police (Punishment and Appeal) Rules, 1980 (ibid) defines disciplinary authority as authority competent to pass punishment as prescribed in the Delhi Police Act, 1978. Section 21 of the Delhi Police Act, 1978 inter alia includes Deputy Commissioner of Police as a competent authority to award punishment to a Constable as being the appointing authority of the same under Rule 4 (i) of Delhi Police (Appointment and Recruitment) Rules, 1980.

14. Now we proceed to decide the issue of competent authority and the disciplinary control as well as working of a police officer under the disciplinary control, when it is decided to initiate the disciplinary action. In our view the disciplinary action was initiated with the issuance of order of departmental enquiry on 20.8.1997 as well as of issuance of summary of allegation on 1.9.1997 as per the rules. The applicant was unauthorisedly absent with effect from 12.11.1996 to 4.9.1997. As in Kishori Lal Dogra's case (Supra) a police officer under leave has been held to be a police officer and working under the disciplinary control likewise a police officer unauthorisedly absent would also remain under the disciplinary control of an officer and would be deemed to be working under his control. If not so this would lead to an anomalous situation as during absence no

officer will be competent to initiate the disciplinary proceedings. As such we hold that even during absence a police officer is working under the disciplinary control of a competent authority.

15. As far as disciplinary control is concerned, the same would not be read in isolation with working of a police officer. The same would be read co-jointly & harmoniously while giving effect to the provisions of Rule 14 (4) of Delhi Police (Punishment and Appeal) Rules, 1980. In our view, it would connote actual working of a police officer when it was decided to initiate disciplinary action against him. Admittedly, the applicant was allowed to resume duty at Security Branch, where he worked till the date of his dismissal. We have perused the absentee notices and DD 33-B and find that no directions have been issued therein directing the applicant to join back at 9th Bn. DAP. The applicant was allowed to work at Security Branch by the respondents. It is also pertinent to mention that after joining duty the applicant's work etc., has been regulated by the orders of DCP Security. As we have hold (ibid) that even during absence the applicant would not cease to work at Security Branch and would remain under his disciplinary control. We are of the considered opinion that at the time, it was decided to initiate the disciplinary action against the applicant i.e. either on 20.8.1997 or on 4.9.1997, the applicant who was yet to resume duty at DCP/Security remained under the disciplinary control of DCP/Security and was working under his disciplinary control. We also find

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that the absentee record of the applicant was maintained at Security Lines and he was also dealt departmentally there. We also find from the record that Circular issued by the Joint Secretary of Delhi Administration on 5.4.1989 whereby the awaiting of move to amend Rule 14 (4) (ibid) turned down ~~the same~~ <sup>he he</sup> on the ground that on transfer, the disciplinary control would lay with transferring authority and authority under whose disciplinary control the police officer has been transferred would be entitled to take disciplinary action and whose disciplinary control the police officer has gone away will have nothing to do with him any longer. The Tribunal in Kishori Lal Dogra's case (Supra) has also relied upon the circular and comes to ~~an~~ <sup>the</sup> conclusion that there should be a nexus between the working of the police officer and the officer who hold disciplinary control over him. In view of this we hold that the applicant was working under the disciplinary control of DCP/Security, at the time when it was decided to initiate disciplinary action against the applicant. We disagree with the contention of the respondents that the personal file of the applicant was maintained at 9th Bn. DAP previously and he was also punished for a minor punishment of censure of the officers of 9th Bn. DAP, as such, he would have alone the disciplinary control over the applicant. Had it been so the applicant would have been called back from the Security Branch to 9th Bn. DAP and would not have been allowed to resume and perform his duties there.

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16. In view of the above discussion we hold that in the instant case the provision of Rule 14 (4) have been violated by the respondents. The applicant was working under the disciplinary control of DCP/Security and who could have alone initiated the disciplinary action against the applicant. Mere working of a police officer would not be judged from the disbursement of salary, grant of leave and it would be directly related to actual work performed by him. In the instant case the applicant was performing his duties at Security Lines under the disciplinary control of DCP/Security.

17. From the foregoing discussion we are of the view that the impugned order dated 20.8.1997 passed by DCP 9th Bn. DAP initiating departmental enquiry against the applicant has been passed without jurisdiction as per Rule 14 (4) (ibid) and the same is not legally sustainable. We, therefore, quash and set aside the impugned order dated 20.8.1997 at Annex-(D). As a result the consequent orders of dismissal dated 19.2.1998 at Annex-(A), the appellate order dated 30.7.1998 at Annex-(B) and the order of revisional authority dated 14.5.1999 are accordingly quashed and set aside. The respondents are directed to reinstate the applicant in service with effect from 19.2.1998 with all consequential benefits. However, as we have decided the present OA on a technical plea, the respondents are at liberty to take further action in accordance with law and rules. There would be no order as to costs.

S. Raju  
 (SHANKER RAJU)  
 MEMBER (J)

V.K. Majotra  
 (V.K. MAJOTRA)  
 MEMBER (A)

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