

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.339/99

New Delhi, this the 12th day of August, 1999

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN(J)
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

In the matter of:

1. ASI Sukh Ram No.3227/D
R/o H.No.229/28, C-1
Mandawli Fazalpur,
Gali No.3, Railway Colony,
(Opp. Gauri Shankar Mandir)
Delhi.
2. ASI Harpal, No.2764/D
R/o H.No. D-970, Bhajanpura,
(Near Jan Kalyan School)
Shahdara, Delhi-110053.
3. H.C. Ravinder Kumar, No.120/PCR
R/o H.No.70, Gali No.4,
Karawal Nagar Ext.,
Shahdara, Delhi-110094.
4. H.C. Mukesh Kumar No. 1475/PCR
R/o Quarter No.11-B,
Police Station Vivek Vihar,
Delhi.
4. Ct. Chander Sekhar, No.2804/PCR
R/o H.No.1/7133, Shivaji Park,
Gali No.4,
Shahdara, Delhi-110032.
5. Ct. Raj Kumar, No. 2994/PCR
R/o Barrack PCR
Office P.S. Vivek Vihar,
Shahdara, Delhi-110032.

All posted in P.C.R. (Delhi). Applicants
(By Advocate: Sh. Pawan Sharma)

Vs.

1. Govt. of N.C.T. Delhi
through Secretary,
5, Sham Nath Marg, Delhi.
2. Commissioner of Police, Delhi
Police Headquarters,
MSO Building,
I.P.Estate,
New Delhi.
3. Dy. Commissioner of Police/P.C.R.
Police Line,
Delhi. Respondents
(By Advocate: Sh. Raj Singh)

VRS

ORDER (ORAL)

By REDDY. J.

Heard counsel for the applicants and the respondents.

2. On certain allegations of misconduct against the applicants, a departmental enquiry has been ordered by the Additional C.P. by order dated 27.8.96. A show cause notice has been issued to the applicants why a penalty of censure should not be awarded against them. The applicants challenged the initiation of the departmental enquiry before the Sr. Addl. C.P. and prayed for dropping the departmental enquiry proceedings. The Sr. ACP accordingly dropped the proceedings by his order dated 27.11.97. Thereafter the Commissioner of Police issued a show cause notice dated 30.4.98 calling upon the applicants as to why the order dated 27.11.97 passed by the Sr. ACP should not be quashed. The applicants submitted their representations. After considering the representations the Commissioner of Police by his order dated 20.11.98 filed as Annexure 'A' purported to act under Rule 25(B) of Delhi Police (Punishment and Appeal) Amendment Rules 1994 (for short, rules), directed that the departmental enquiry proceedings should continue from the stage where they were dropped. It is also directed that the ACP should complete the departmental enquiry against all the applicants and submit his findings to the disciplinary authority. This order is challenged in this OA.

3. Learned counsel for the applicant submits that the impugned order is initiated on the ground that the order was hit on grounds of limitation, prescribed in Rule 25(B) of the rules. He contents that under the above rule the reviewing authority could invoke its power only within the period of 6 months from the date of order under review and as the impugned order was passed long thereafter the impugned order is invalid. Learned counsel for the applicant, however, submits that the period of limitation prescribed in the proviso is not applicable in the facts and circumstances of the case and it is contended that the Commissioner of Police can review the order at any time and there was no period of limitation for invoking its power.

4. Rule 25(B) reads as follows:-

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(i) "The Commissioner of Police, an Addl. Commissioner of Police, Dy. Commissioners of Police and Addl. Dy. Commissioners of Police, Principal, Police Training School or College; or any other officer of equivalent rank may at any time call for the records of awards made by any of his subordinate either on his own motion or otherwise and confirm, enhance, modify or annul the same or make further investigation or direct such to be made before passing orders:

(A.P)

Provided that no action under this sub-rule shall be initiated more than 6 months after the date of the order sought to be reviewed except with the prior approval of the Lt. Governor, Delhi.

(ii) If an award of dismissal or removal from service is annulled, the officer annuling it shall state whether it is to be recorded as suspension followed by re-instatement or not. The order shall also state whether service previous to dismissal or removal shall count for pension or not.

(iii) In all cases in which an officer proposes to enhance punishment he shall, before passing final orders give the defaulter concerned an opportunity of showing cases, in writing, including personal hearing, if asked for, why his punishment should be enhanced."

Under this Rule the authorised officer, may at any time enhance, modify or annul the order made by any of his subordinates. The proviso, however, prescribes the period of limitation as 6 months to initiate the proceedings. It is, therefore, clear that the period of limitation is referable only to the initiation of the proceedings of review. In this case the order was passed by the Sr. A.C.P. on 25.11.97, the show cause notice was issued

Chh

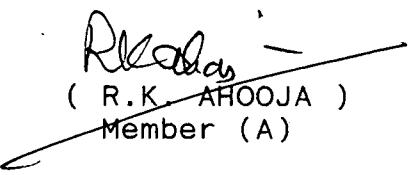
(5)

under this rule for reviewing the order in its notice dated 30.4.98. Thereafter, after considering the representations made by the applicant and examining the facts and circumstances of the case the impugned order was passed on 20.11.98. It is true that this order was passed more than after the expiry of 6 months but what is necessary to be seen is whether the action under this rule was initiated within the period of limitation. Since the show cause notice was issued on 30.4.98 it cannot be said that the order of review was not initiated within the period of limitation. We however do not accept the contention of the learned counsel for the respondents that the power of review can be taken at any time and that there is no limitation^{as}. The proviso to sub-rule 1 prescribes the period of limitation to take ~~any~~ action under the rule. It is true that in the body of the rule the expression "at any time" was mentioned but the proviso, however, limits the powers of the reviewing authority. Since the action, as stated above, was initiated within the period of limitation it cannot be said that the impugned order is hit by limitation.

5. The next contention is that reviewing authority has not applied its mind in passing the impugned order. We do not agree. A perusal of the impugned order makes it clear that the Commissioner of Police has closely examined the records in the case and also considered in detail grounds raised by the applicants in the representation and thereafter, having found that the dropping of the proceedings was not proper, the Commissioner of Police

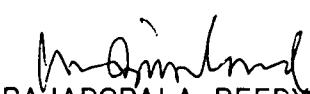
ordered further enquiry into the matter. It cannot, therefore, he said that the order was initiated with application of mind.

6. We do not find any merits in the case. The OA is, therefore, dismissed. No costs.


(R.K. AHOOJA)

Member (A)

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(V.RAJADOPALA REEDY)
Vice Chairman (J)