

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.904/99

New Delhi this the 4th day of May, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

Shri Mange Ram (1842A),
S/o Shri Ganga Dass,
R/o Village & P.O. Bhatauna,
P.S. Gulabathi,
District Bulandshahar (U.P.) ...Applicant

(By Advocate Shri Shyam Babu)

-Versus-

1. Govt. of NCT Delhi through
Chief Secretary, 5, Sham Nath Marg,
Delhi-110 054.
2. Jt. Commissioner of Police (Operations),
Police Headquarters,
I.P. Estate,
New Delhi-110 002.
3. Dy. Commissioner of Police,
I.G.I. Airport,
New Delhi. ...Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R

By Reddy, J.-

The applicant challenges the impugned order of dismissal from service and seeks re-instatement with all consequential benefits.

2. The applicant was a Sub Inspector in the Delhi Police. It was alleged that while he was posted at I.G.I. Airport on 14.7.97, he along with other Police Officers helped one Constable to enter the Airport building upto Emirates Check-in-counter, in an unauthorised manner. The said Constable was accompanied by two persons, one of whom, was to travel to Dubai. When one of the passengers was carrying foreign currency notes he was caught by the Custom Officials and was arrested. On the allegation of gross negligence, the applicant and others were tried in a



(2)

departmental enquiry under the Delhi Police (Punishment and Appeal) Rules, 1980. Agreeing with the findings of the enquiry officer the disciplinary authority passed the impugned order, dismissing the applicant from service, which has been upheld by the appellate authority.

3. The learned counsel for the applicant contends that the disciplinary authority who passed the impugned order has no jurisdiction to pass the order. He submits that as the applicant was transferred from the disciplinary control of respondent No.3, DCP, I.G.I. Airport, New Delhi on 2.1.96 and was relieved on 12.11.97, R-3 has no jurisdiction or authority to initiate disciplinary action against him when he ceased to have any disciplinary control over him. The order of R-3 is, therefore, in flagrant violation of Rule 14 (1) of Delhi Police (Punishment & Appeal) Rules, 1980 as well as the circulars issued by the department.

4. It is next contended that as the show cause notice dated 18.7.97 was withdrawn on 31.7.97 without reserving any right to issue fresh show cause notice, the departmental action against the applicant on the basis of fresh charge on the same allegations was without jurisdiction.

5. The learned counsel for the respondents, however, submits that the applicant was relieved from the IGI Airport only on 12.11.97 and the departmental action was initiated against the applicant on 13.11.97 on which date, he was on leave, hence the applicant continued to be under the control of R-3. It is next contended that the show



(b)

cause notice and the charge were withdrawn to hold regular enquiry against the applicant. Hence the enquiry was not vitiated.

6. The first question that has to be considered is whether R-3 has got jurisdiction to conduct the disciplinary enquiry. This will depend upon the fact whether the applicant was under ^{the} ~~his~~ administrative and disciplinary control of R-3. Under Rule 14 (4) of Delhi Police (Punishment & Appeal) Rules, 1980 only the authority under whose control the delinquent works, is entitled to initiate the disciplinary action. The explanation given by the respondent appears to be quite acceptable. It is clearly stated in the reply that though the applicant was relieved on 12.11.97, he proceeded on 8 days casual leave with three days permission w.e.f. 13.11.97. Thus, when the disciplinary action was taken on 13.11.97 he was still under the jurisdiction, both administrative as well as disciplinary, of R-3. The learned counsel has not brought to our notice any material that the applicant joined in his transferred place of 5th Bn. D.A.P. Delhi on 12-11-99 itself, except stating that the applicant was relieved on 12.11.97. Even after his relief, as the applicant is stated to be on leave, it cannot be said that R-3 has lost his disciplinary control on the applicant. This contention of the applicant is, therefore, devoid of any merit.

7. The next contention as regards the withdrawal of the first show cause notice, without giving liberty for reviving the same later on, has no merit either. The first show cause notice dated 18.7.97 was issued stating that the misconduct against the applicant amounts to censure and the



applicant was called upon to show cause as to why his conduct should not be censured. This notice has been vacated "on administrative grounds" by order dated 31.7.97 (Annexure E). Therefore, it is not correct to say that no grounds have been assigned for vacating the show cause notice. The case of the respondents is that it was vacated only for the purpose of initiating regular departmental enquiry. Subsequently, the memo dated 7-8-97 to conduct disciplinary enquiry in accordance with Rule 16 of Delhi Police (Punishment & Appeal) Rules, 1980 was issued. However, this order was again withdrawn by the order dated 8.8.97 again, on administrative grounds. Subsequently, the regular proceedings holding enquiry against the applicant under the rules were initiated by order dated 13.11.97. The learned counsel places reliance upon Annexure 'F' circular issued by the DCP (Vigilance), the operative portion of which reads as under:-

"It is, therefore, emphasised upon all the disciplinary authorities to take care that clear and appropriate reasons are mentioned in the orders withdrawing/or dropping action in a disciplinary matter of show cause notice. Such orders must also clearly mention that the disciplinary proceedings or show cause notice is being dropped without any prejudice to further disciplinary action which could be subsequently taken in the matter."

8. He also relies upon the decision of the Principal Bench in Inspector Harbans Singh v. Commissioner of Police & Others.

9. From a close reading of the circular as well as the judgement, it is manifest that unless reasons are communicated for withdrawal of the show cause notice, the fresh disciplinary proceedings cannot be initiated. In the



above case it is clear from the facts that no reasons were assigned for withdrawal of the show cause notice. But in the instant case reasons have been assigned. The two orders of withdrawal state that they were withdrawn on "administrative grounds", clearly indicating that it would not preclude the respondents from reviving the charge memos. The counter does not however, help us to find out what are the administrative reasons. But, at the same time, it cannot be said that no reasons have been accorded for withdrawal. It should be noticed that though the charges have been initiated, no enquiry has been conducted on those charges. Before the applicant gave his explanation on the charge memo or show cause notice they were withdrawn and fresh charge memo has been served giving full details of the misconduct. In the earlier show cause notice it is clear that all the details of the misconduct which were shown in the present chargesheet were not mentioned. It may be for that reason the respondents had decided to withdraw the same and issued fresh chargesheet. No prejudice was however shown by the respondents for withdrawing and issuing fresh chargesheet. It should be noticed that the first show cause notice was issued on 18.7.97 and it was vacated on 20.7.97 within two days. Again the order containing the chargesheet was given on 7.8.97 and it was withdrawn on administrative grounds on the next date, i.e., 8.8.97 and finally the present chargesheet has been given. In the circumstances, we do not find any prejudice to the applicant. On the basis of the present chargesheet the applicant had submitted his explanation. He has not made any protest that the charge in question should not have been revived. He had no grievance to the chargesheet, as he has submitted his explanation to



(6)

the same and participated in the enquiry. After he was dismissed from service, it is now too late to raise any objection regarding the issue of the fresh chargesheet.

10. In the circumstances we do not find any merit in the above two contentions.

11. No other contention has been advanced.

12. The O.A., therefore, fails and is dismissed.

No costs.

Shanta Shastray
(Smt. Shanta Shastray)
Member (Admnv)

'San.'

Arayagopal Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)