

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-1161/98

New Delhi this the 7<sup>th</sup> day of October, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)  
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Jai Kishan (1520/D)  
S/o late Shri Amar Singh  
R/o Qr. No.220, Police Quarters,  
Ahata Kaidara,  
Delhi.

...Applicant

(By Advocate Shri Shyam Babu)

-Versus-

1. Commissioner of Police, Delhi,  
Police Headquarters,  
I.P. Estate,  
New Delhi.
2. Dy. Commissioner of Police,  
(Prov. & Lines),  
Old Police Lines,  
Delhi.
3. Sh. K.L. Dogra,  
Asstt. Commissioner of Police,  
(Enquiry Officer),  
(Prov. & Lines),  
Delhi.

...Respondents

(By Advocate Shri Vijay Pandita)

ORDER

By Reddy, J.-

The OA is filed questioning the order of the Deputy Commissioner of Police, Delhi (Prov. & Lines), directing departmental enquiry to be conducted against the applicant who is a Sub Inspector in the Delhi Police.

2. The facts of the case are as under:

2.1 A departmental enquiry was ordered by an order dated 4.7.89 against the applicant under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980, on the allegations that the applicant had accepted illegal gratification of Rs.4900/-. An enquiry officer was

appointed and he issued the summary of allegations to the applicant.

2.2 Aggrieved by the initiation of the above proceedings the applicant filed OA-3087/91 before the Principal Bench of the Tribunal. The OA was disposed of by the judgement dated 5.5.97, inter alia, directing the respondents to start departmental enquiry de novo after the matter had been enquired into, by way of a preliminary enquiry and only if any sufficient substance was found in the said preliminary enquiry against the applicant. Action was taken in accordance with the directions of the Tribunal and by an order dated 3.12.97 the respondents ordered the departmental enquiry against the applicant. The order dated 3.12.97 was, however, cancelled by the subsequent order dated 24.12.97. Again on the same date another order was passed holding a departmental enquiry against the applicant on day-to-day basis by an officer to be nominated by the DCP/DE Cell. Again by the impugned order dated 6.3.98 the order dated 24.12.97 has been superseded, directing that the departmental enquiry against the applicant will now be conducted by Sh. K.L. Dogra, ACP/HQ (P&L) instead of DE Cell/Vig. Challenging the order dated 6.3.98 the OA is filed.

3. It is firstly contended that the order dated 3.12.97 ordering departmental enquiry, having been cancelled by order dated 24.12.97 without reserving a right to proceed afresh with the enquiry, it was not permissible to the respondents to proceed against the applicant with the present enquiry.

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4. It was lastly contended that by virtue of the orders of cancellation and supersession the departmental proceedings having been withdrawn against the applicant it was not permissible to the respondents to initiate a fresh enquiry on the same allegations against the applicant.

5. The learned counsel for the respondents, however, submits that the order dated 3.12.97 was cancelled by the order dated 24.12.97 and modified orders were issued by the subsequent order on the same date because one of the prosecution witnesses Mohan Lal had expired and the fact of his death could not be mentioned in the order dated 3.12.97 and hence the necessity of modified/revised orders. It was, therefore, contended that the disciplinary proceedings against the applicant have not been dropped at any time.

6. The only question that arises is whether the departmental enquiry now sought to be proceeded with against the applicant is valid. The facts are not in dispute. In the earlier OA filed by the applicant the Tribunal directed to hold a fresh enquiry by another officer and if any substance was found in the preliminary enquiry a fresh enquiry could be initiated against the applicant. Accordingly, a preliminary enquiry was conducted and on the basis of the findings of the preliminary enquiry the respondents directed to hold a regular enquiry against the applicant vide order dated 3.12.97. In the said order a direction was issued to hold a fresh departmental enquiry by an officer nominated by the DE Cell on two articles of charge. One pertains to Universal Automobiles Engineerings, New Delhi and the second pertains to O.K. Motors. Both the charges relate to accepting illegal

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gratification by the applicant. Subsequently it came to light that Sh. Mohan Lal, Proprietor of Universal Automobiles Engineers had expired and the allegation concerning this firm remained unverified. Thus the respondents could proceed against the applicant only with regard to the allegation pertaining to M/s O.K. Motors, New Delhi. Since the fact of the death of Mohan Lal was not mentioned in the order dated 3.12.97 the said order was cancelled by order dated 24.12.97. Subsequently another order on the same date (24.12.97) in the proceedings 8663-86 have been issued stating that only one charge pertaining to OK Motors could be substantiated and the enquiry was directed to be proceeded against the applicant with regard to the said charge. In this order an officer to be nominated<sup>new</sup> by the DCP/DE Cell was directed to hold the enquiry. This order was modified to the extent of appointing Sh. K.L. Dogra, ACP/HQ (P&L) to conduct the enquiry instead of the enquiry officer DE Cell/Vigilance. The above facts, therefore, clearly reveal that the respondents had not at any time decided to drop the proceedings against the applicant. These orders in succession had to be passed only in view of the facts stated supra. We, therefore, hold that the contentions raised by the counsel have no substance.

7. It is next contended by the learned counsel for the applicant that the applicant is entitled to be supplied with the statements made by the witnesses in the preliminary enquiry and the preliminary enquiry report. It is contended that the statements are essential for the effective defence of the applicant in the disciplinary enquiry. The learned counsel for the applicant, however, submits, relying upon Rule 15 (3) of the Delhi Police

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(Punishment & Appeal) Rules, 1980 that unless the statements of the witnesses who have been examined in the preliminary enquiry are sought to be relied upon in the disciplinary enquiry it was not incumbent upon the enquiry officer to supply them or the documents marked in the preliminary enquiry. It is no doubt true that the law is well settled that the statements made and the documents marked in the preliminary enquiry need not be supplied to the delinquent unless they are relied upon in the disciplinary enquiry against the delinquent. But in cases where the witnesses who have been examined in the preliminary enquiry are sought to be examined in the disciplinary enquiry against the delinquent and also in cases where it is found as a matter of fact that prejudice would be caused to the delinquent in defending himself in the enquiry, it is not only essential to supply them but also it would be violative of the principles of natural justice vide JT 1987 (4) SC 398 Chandrama Tewari v. Union of India and AIR 1986 SC 2118 Kashinath Dikshita v. Union of India & Ors.

8. It should be kept in mind that the Tribunal in its earlier order directed the respondents to conduct a fresh enquiry only in case a prima facie case was found against the applicant in the preliminary enquiry to be held by a different enquiry officer. It is, therefore, necessary for the applicant to ascertain himself whether any such prima facie case was found against him in the preliminary enquiry. Moreover, alongwith the summary of allegations six witnesses have been cited and three documents have been listed to prove the case against the applicant. In case these witnesses have been examined during the PE it would be necessary for the enquiry officer to have supplied their

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statements. ~~not~~ It is needless to say that it is necessary in the present case to supply the report of the enquiry officer in the PE to the applicant. In the circumstances, in view of the facts of the present case we direct the enquiry officer to supply the statements of witnesses who have been examined in the PE as also the documents marked therein along with preliminary enquiry report before the commencement of the enquiry.

9. The last contention raised by the learned counsel for the applicant is that the enquiry cannot be conducted against the applicant on the charge pertaining to M/s Universal Automobiles Engineers, New Delhi, as it was stated in the order dated 24.12.97 (Annexure A-1) that the allegations concerning the said charge remained unverified and that only the allegation pertaining to M/s OK Motors was substantiated during the course of the PE. It is, therefore, contended that the enquiry should be restricted only to the charge against the OK Motors. This contention appears to have sufficient force. In the earlier OA the Tribunal directed the respondents to conduct an enquiry only if any substance was found against the applicant in the PE. Since it is now brought to light that the charge against the Universal Automobiles Engineers was found unsubstantiated, no enquiry could be conducted against the applicant on the said charge. In the circumstances we direct that the respondents to conduct enquiry only on the charge pertaining to the allegation of accepting Rs.2100/- as illegal gratification from M/s O.K. Motors, Delhi.



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10. In view of the foregoing discussion, we direct that the the enquiry <sup>on</sup> to be held day-to-day basis and to completed the same within three months from the date of receipt of a copy of this order, (i) after supplying the statements of witnesses who were examined in the PE as well as the P.E. report. and (ii) on the sole charge relating to the allegation of accepting Rs.2100/- as illegal gratification pertaining to M/s O.K. Motors, Delhi.

11. O.A. partly allowed. No costs.

*Shanta*  
(Smt. Shanta Shastry)  
Member (A)

*V. Rajagopala Reddy*  
(V. Rajagopala Reddy)  
Vice-Chairman(A)

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