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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 121/98

New Delhi, this the 1st day of March, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

Ravinder Singh, Sub-Inspector (No.D/614)
s/o Rattan Singh,
r/o village & PO Bawli,
Distt. Meerut (UP)

.....Applicant

(By Advocate: Shri Shyam Babu)

Vs.

1. Additional Commissioner of Police,
North District,
PS: Civil Lines,
Delhi.
2. Shri Anurag Kumar, IPS,
(Enquiry Officer),
Asstt. Commissioner of Police,
Sadar Bazar, Delhi.Respondents

(By Advocate: Shri Rajinder Pandita)

O R D E R

Hon'ble Shri T.N. Bhat, Member (J)

In this OA the applicant, who is working as a Sub-Inspector in Delhi Police, has assailed the Charge Memo dated 2.1.1996 (Annexure -B) served on him by respondent no. 2 as also the order dated 24.11.1997 (Annexure -A) issued by the Additional Commissioner of Police, North District, Delhi by which the departmental enquiry against the applicant has been directed to be completed exparte.

2. Briefly stated, the allegation against the applicant is two fold. The first charge is that the applicant after registration of a case under Section 457/380 approached the complainant, one Shri Rajesh Kumar,

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and told him that the applicant would have to incur some expenses during the investigation of the case and that the said expenses will have to be met by the complainant and that thereby the applicant put an illegal demand before the complainant which involves moral turpitude on the part of the applicant. The second charge is that on registration of FIR 384/97 dated 19.9.1997 under Section 379 IPC at Police Station, Civil Lines the applicant prepared two different seizure-memos relating to the recovery of the stolen car showing seizure of the vehicle from two different persons and that he also prepared two personal search memos relating to one Bijender thereby creating suspicion that the intention of the applicant was "doubtful" and that he had started the investigation with ulterior motives. According to the contents of the charge memo the acts committed by the applicant amounted to gross misconduct, negligence and dereliction in the performance of the applicant's duties as also an act unbecoming of a member of the disciplined force.

3. The charge memo was issued on 30.10.1997. The applicant immediately thereafter made a written request for furnishing of the copies of the documents relied upon by the prosecution against him. The Grievance of the applicant is that the disciplinary authority on the one hand refused to give some of the copies of the documents to the applicant and on the other hand passed the order dated 24.11.1997 for holding of exparte enquiry against the applicant. In the said impugned order it is stated that the applicant had refused to attend the departmental enquiry and had also not co-operated with the enquiry officer. The applicant points out that on the

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same day another order had been passed by the disciplinary authority, a copy of which is annexed as Annexure-K to the OA, by which the applicant was informed that some of the documents, copies of which have been demanded by the applicant, were not relevant to the departmental enquiry and that the applicant should join the DE proceedings as and when called by the enquiry officer to do so. Thus the applicant was clearly given the liberty to join the DE proceedings after 24.11.1997 but simultaneously another order was passed on the same day setting the applicant *exparte*.

4. Another ground agitated by the applicant is that while ordering *exparte* enquiry to be held against the applicant the provisions contained in Rule 18(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 were given a go bye and the disciplinary authority further contravened the provisions of Rule 15.

5. The respondents have contested the applicant's claim and have averred in their counter that it was only when the applicant refused to co-operate with the enquiry officer that the order setting him *exparte* was passed. It is further averred that the documents, the copies of which were asked for by the applicant, are not relevant to the departmental enquiry and the applicant were accordingly informed.

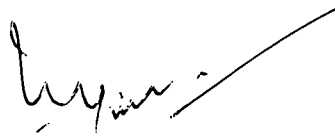
6. We have heard the learned counsel for the parties at some length and have perused the material on record.

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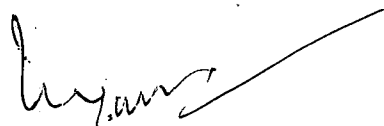
7. We may state at the very outset that disciplinary proceedings should not ordinarily be interfered with at the interlocutory stage. It is only when the disciplinary proceedings reach their conclusion that the charged officer can work out his remedy against the order passed by the disciplinary authority. In this view of the matter this OA is liable to be dismissed on this ground alone.

8. However, learned counsel for the applicant has vehemently argued that if the illegal orders passed by the disciplinary authority and the enquiry officer are allowed to stand the result of the enquiry would certainly be adverse to the applicant. We do find some merit in this contention. In this regard, we find ourselves in agreement with the contention of the applicant that the order dated 24.11.1997 by which the Additional Dy. Commissioner of Police has directed that the department enquiry should be completed exparte is contradictory to the order passed on the same day by the same authority by which the applicant has been informed that the copies of the documents asked for by the applicant cannot be supplied to him and that he should accordingly attend the department enquiry proceedings as and when called upon to do so. Having given the applicant the option to participate in the proceedings in future the Additional Dy. Commissioner of Police could not have passed the impugned order dated 24.11.1997 by which the enquiry was directed not only to proceed exparte but also to be completed exparte. This order, apart from being contradictory to the other order already referred to hereinabove, also contravenes Rule 18 of the Delhi Police



(Punishment & Appeal) Rules. In subrule (2) of that Rule it is expressly provided that if the accused officer subsequently appears or wants to take part in the disciplinary proceedings at any stage during the course of the proceedings he shall be permitted to do so. Therefore, the direction of the Additional Deputy Commissioner of Police that the departmental enquiry should be completed *ex parte* is clearly illegal. Furthermore this action of the Additional D.C.P. also appears to be hasty and against the principles of natural justice.

9. Coming to the question as to whether the applicant was entitled to the copies of the documents claimed by him we find that according to the disciplinary authority and the enquiry officer the copies of the Report in the preliminary enquiry held against the applicant as also the depositions made by the witnesses during that enquiry could not be given to the applicant, for the reason that the enquiry was only a fact finding enquiry. In this regard the provision contained in Rule 15 of the aforesaid Rules is quite clear as it specifically provides that a preliminary enquiry is a fact finding enquiry. Therefore, whatever be the name given by the competent authority to the enquiry it is a preliminary enquiry and copy of the Report in such an enquiry as also the depositions made by the witnesses who are later cited as witnesses in the departmental enquiry also have to be furnished to the charged official. Without making such copies available to the applicant the applicant could not have been compelled to participate in the departmental enquiry.

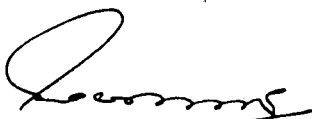




10. We are told that as many as 6 witnesses were examined exparte by the enquiry officer without giving any opportunity to the applicant to cross examine them. This action on the part of the enquiry officer cannot be sustained.

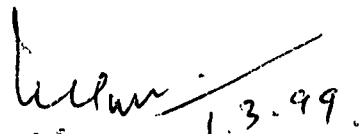
11. However, as already mentioned, the charged officer cannot approach this Tribunal at an interlocutory stage of the departmental proceedings nor would this Tribunal interfere at such a stage. The O.A., in our considered view, is not maintainable on the above ground. The O.A. is accordingly dismissed. We would, however, advise the disciplinary authority and the enquiry officer to act in the proceedings strictly according to the principles of natural justice and proceed in accordance with the observations made by us hereinabove even if it involves ordering denovo enquiry. This is so because the order that may eventually be passed on the conclusion of the disciplinary enquiry is likely to be quashed if the enquiry does not proceed in accordance with the Rules and the principles of natural justice.

12. With these observations the OA is dismissed. No costs.



(S.P. Biswas)
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