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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1448/98

New Delhi, this the 10th, day of March, 1999

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

In the matter of:

Inspector Rajender Singh Tyagi No. D/1875
S/o Late S.S.Tyagi, aged about 45 years.
presently posted in East District Lines,
R/o. B-2/237, Yamuna Vihar.

Delhi-53. Applicant
(By Advocate: Sh. Shankar Raju)

Vs.

1. Union of India through
its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Joint Commissioner of Police,
New Delhi Range, I.P.Estate,
Police Head Quarters,
I.P.Estate,
New Delhi.
3. Sr. Addl. Commissioner of Police,
Operations.
Police Head Quarters, I.P.Estate,
New Delhi. Respondents
(By Advocate: Sh. S.K.Gupta proxy for
Sh. B.S.Gupta)

ORDER

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

The applicant who is working as Inspector in Delhi Police is aggrieved by the order dated 17.7.98 issued by respondent No.2, namely, the Joint Commissioner of Police, New Delhi Range directing that a regular Departmental Enquiry be held against the applicant on the charge mentioned in the memo annexed to the impugned order.

2. The main ground agitated in the OA is that Resp. No.3, namely, the Sr. Additional Commissioner of

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Police had already passed an order absolving the applicant of the charge on the ground that the applicant's conduct in the matter could not be found fault with, as his conduct was "proper, appropriate and genuine". The aforesaid order was later set aside by the higher authority, namely, the Commissioner of Police (CP, for short). The applicant's contention is that before exercising the powers of review the CP ought to have afforded the applicant an opportunity of being heard.

3. Another point raised by the applicant in the OA is that since a preliminary enquiry had been held in this case the departmental enquiry could not have been initiated beyond a period of one year from the date of submission of the preliminary enquiry report. In this regard the applicant has cited the instances of S.I. Bharat Singh and S.I. Sunder Dev in whose cases the Disciplinary Proceedings initiated after the lapse of one year from the dates of submission of the preliminary enquiry reports had later been dropped.

4. The aforesaid points raised in the pleadings by the applicant were, however, not pressed at the time of final hearing of the matter. The learned counsel for the applicant raised a new point at the time of final hearing. His contention is that under the unamended Delhi Police (Punishment and Appeal) Rules the Commissioner of Police had no power of review. It is only by way of amendment of the said rules that a provision regarding review has been inserted by adding Rule 25-B. This amendment (insertion of a new provision), according to the learned counsel, would not apply unless and until

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the said amendment, is placed before the Parliament and is approved by it. In support of this plea Mr. Shankar Raju cites Section 148 of Delhi Police which provides that all amendments made to the Act or the Rules made thereunder shall be got approved by the Parliament.

5. In reply, the learned counsel for the respondents rightly raised the plea that this contention not having been made either in the OA or the rejoinder the same cannot be allowed to be urged at the time of hearing. We find ourselves in agreement with the respondent's counsel. There is not even a whisper in the pleadings regarding the validity of the amendment. The applicant's counsel, however, refers to page 9 of the rejoinder. But on a careful perusal of the rejoinder we find that there is no such specific place raised in page 9. All that is stated in Para 4.8 of the rejoinder at page 9 is that the principles of natural justice are required to be followed while exercising the power of review under Rule 25-B.

6. We do, however, find a half-hearted attempt on the part of the applicant to raise the above plea in MA-2678 of 1998 which was filed by the applicant only for the purpose of seeking an order of stay. Taking of the aforesaid plea in a Miscellaneous Application would, in our considered view, not provide to the applicant's counsel any justification for raising this plea as a ground of attack in the main OA.

7. That apart, the applicant has not succeeded in establishing that the Sr. Addl. C.P. who passed the order "absolving" the applicant of the allegations that

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had been levelled against him, was the Disciplinary Authority in this case. A perusal of the departmental notings clearly reveals that the C.P. intervened in the matter mainly on the ground that the Sr. Addl. C.P. was not the Disciplinary Authority of the applicant. It was also incidentally mentioned that the Sr. Addl. C.P.'s order appeared to have been passed in "great hurry". It is, therefore, a highly doubtful proposition as to whether the C.P. was exercising the powers of review. The more reasonable view would be that he acted as the overall supervisory authority under Section 15 of the Act.

No other point was pressed by the learned counsel for the applicant.

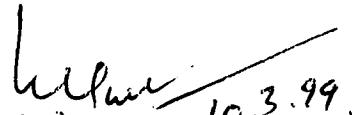
8. As already indicated, there is no merit in the point canvassed at the time of hearing. This OA must therefore fail, and the applicant would be well-advised to face the enquiry and cooperate in its proceedings so that there is an early end to the ordeal.

9. In the result, this OA is dismissed, but without any order as to costs.


(S. E. BISWAS)

Member (A)

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(T. N. BHAT)
Member (J)

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