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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A. No. 1935/98

New Delhi: this the 15th day of April, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MRS. LAKSHMI, SWAMINATHAN MEMBER (J)

Harish Chander,
S/o Shri Atam Chand,
R/o 218, Police Colony,
Ashok Vihar,
Delhi -052

..... Applicant.

(By Advocate: Shri A. K. Bajpai)

Versus

1. Commissioner of Police,
MSO Building,
I.P. Estate,
New Delhi.

2. Addl. Commissioner of Police (HQ),
MSO Building,
I.P. Estate,
New Delhi.

3. Dy. Commissioner of Police,
Spl. Riot Cell,
PTS Complex,
Malviya Nagar,
New Delhi.

4. Spl. Commissioner of Police (Int.),
MSO Building,
I.P. Estate,
New Delhi.

..... Respondents

(By Advocate: Shri Ajesh Luthra proxy for
Mrs. Jyotsana Kaushik)

ORDER

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A)

Applicant impugns respondents' orders dated 23.3.98 (Annexure-A) and 15.6.98 (Annexure-G) and prays for stay of DE initiated against him vide order dated 28.4.98 (Annexure-D) and to relieve

him from service w.e.f. 31.3.98 granting voluntary retirement, with consequential benefits.

2. We have heard both sides.

3. In so far as challenge to the order dated 28.4.98 is concerned, Hon'ble Supreme Court in UOI Vs. Upendra Singh 1994(27) ATC 200 have held as follows:

"In the case of charges framed in a disciplinary inquiry the Tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out, or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges."

4. Under the Delhi Police (P & A) Rules, 1980 the charges are no doubt drawn up and communicated to the delinquent upon the establishment of prima facie case, but it is manifest that the ratio extracted above would apply mutatis mutandis where the summary of allegations have been communicated to the delinquent as has been done in the present case. The acts of alleged misconduct are serious and are not contrary to any law.

5. Applicant has also assailed order dated 28.4.98 as being violative of I.G.P. Delhi's Circular dated

30.8.71 (Annexure-A1 to rejoinder) based upon Rule 16.38 Punjab Police Rules on the ground of having been initiated after a period of three months from the date of the alleged incident.

6. In this connection, respondents' counsel Shri Luthra has invited our attention to the Tribunal's order dated 29.4.98 in O.A. No. 1873/97 Inspector Ran Singh Vs. L.G. Delhi & others. In that order, it has been clearly held that the bar to suits and prosecutions contained in Section 140 Delhi Police Act does not cover departmental proceedings and secondly the bar to departmental proceedings being initiated beyond a period of 3 months from the date of the alleged incident contained in Circular issued pursuant to Rule 16.38 Punjab Police Rules, is not saved by proviso (i) to Section 149 Delhi Police Act as not being consistent with the provisions of that Act. Nothing has been shown to us to suggest that the aforesaid order has been stayed, modified or set aside and we as a Coordinate Bench are bound by the same.

7. Respondents have stated that during the year 1997 applicant was a member of Recruitment Party which had gone to Tonk (Rajasthan) and as a member of Recruitment Party he was found indulging in undesirable activities by the then Addl. DCP who also submitted a report dated 17.11.97 indicating gross misconduct on the part of applicant and recommended departmental action against him. Before the initiation of

departmental action applicant came to know about the aforesaid action and immediately filed an application for voluntary retirement. Since the departmental action on the recommendation of the then Addl. DCP was contemplated against him, his prayer seeking voluntary retirement was rejected vide order dated 23.3.98 and thereafter a regular departmental enquiry was ordered against him vide order dated 28.4.98.

8. On the basis of the available materials on record prima facie we have no reasons to doubt the aforesaid sequence of events, and under the circumstance, respondents cannot be said to have acted illegally, irregularly or improperly in rejecting applicant's prayer for voluntary retirement w.e.f. 31.3.98.

9. The OA is dismissed. No costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)

MEMBER(J).

Antide
(S. R. ADIGE)
VICE CHAIRMAN (A).

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