

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1966/98

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 21st day of November, 2000

Shri Madanlal
s/o Shri Sardarilal
r/o BE-181, Hari Nagar
New Delhi - 110 064.

... Applicant

(By Shri Shyam Babu, Advocate)

Vs.

1. Commissioner of Police
Delhi
Police Headquarters
I.P.Estate
New Delhi - 110 002.

2. Addl. Commissioner of Police
(Now Joint Commissioner of Police)
Rashtrapati Bhawan (Security)
New Delhi.

... Respondent

(By Shri Ajesh Luthra, Advocate)

1. To be referred to the reporter or not - Yes/~~No~~

2. To be circulated to the benches of the
Tribunal.

- ~~Yes~~/No


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

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O R D E R (Oral)

Justice V. Rajagopala Reddy:

The applicant was a Tailor working in the Delhi Police. On 27.3.1996 a show-cause notice was issued alleging that he was unauthorizedly absent from 14.3.1996 till 25.3.1996. He was placed under suspension by order dated 30.3.1996. On 22.4.1996 a departmental enquiry was initiated for unauthorised absence from 14.3.1996 to 25.3.1996 and also alleging that he was causing indiscipline among other tailors and instigating others not to perform their lawful duties. Inspector Hari Bhooshan Sharma has been appointed as an enquiry officer to conduct the enquiry not only against the applicant but also another Tailor, Shri Ashok Kumar and Headconstable (Tailor) Tirath Ram. This order was however withdrawn by order dated 1.5.1996 again ordering departmental enquiry seperately against the tailors, on the same allegations of unauthorised absence and causing

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indiscipline. Inspector Haribhooshan was again appointed as an enquiry officer. On 6.5.1996, the enquiry officer framed the charges. which was stated to have been approved by the DCP, who is the disciplinary authority in this case. The Enquiry Officer, after conducting the enquiry, submitted his findings to the disciplinary authority holding that both the charges were proved. Agreeing with the findings of the enquiry officer, the disciplinary authority passed the impugned order dated 6.8.1996. On appeal the appellate authority confirming the findings of the disciplinary authority but taking a lenient view of the matter, the punishment was reduced to the reduction in pay by three stages for a period of three years but not to earn increments during the period of reduction and on the expiry of the given period the reduction will have cumulative effect on his future increments. The period of absence should be treated as leave kind due. The revision was however rejected. The order of the appellate authority is under challenge in this OA.

2. The learned counsel for the applicant, Shri Shyam Babu submits that once the order dated 24.6.1996 initiating the departmental enquiry has been withdrawn, without reserving the right, for initiation of fresh enquiry, no fresh enquiry was permissible. He also contends that the procedure followed by the respondents in the enquiry is wholly vitiated as the respondents admittedly had not followed the procedure prescribed under the CCS (CCA) Rules as the applicant is a civilian working in the Delhi Police and

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therefore not covered by the Delhi Police (Punishment and Appeal) Rules. The enquiry is liable to be set aside.

3. The learned counsel for the respondents, Shri Ajesh Luthra, however submits that in the enquiry is not vitiated on any ground. He also submits that the charge has been approved by the disciplinary authority though framed by the enquiry officer and rest of the procedure followed was in accordance with the procedure prescribed under CCS (CCA) Rules. No prejudice was caused to the applicant in the enquiry and the applicant had, not at any point of time, raised this objection till the OA was filed.

4. Having given careful consideration to the contentions raised, we are unable to agree with either of the contentions of the learned counsel for the applicant.

5. On 22.4.1996, for the first time, the disciplinary proceedings have been initiated and that an enquiry was sought to be held against HC Tirath Ram, along with the Tailors, namely, Shir Ashok and the applicant, by the enquiry officer, Inspector Haribhooshan. Having realised that the procedure to be followed in so far as Mr. Tirath Ram was concerned, since he was a police officer being Head Constable, was different and the same procedure was not to be followed for the enquiry against the other Tailors who are civilians, the said order has been withdrawn by the order dated 1.5.1996. In that order itself, a separate enquiry was initiated against the

Tailors, namely, Ashok Kumar and the applicant as per the procedure laid down under CCS (CCA) Rules. In this order the same enquiry officer was again appointed. In view of these facts, the earlier order was withdrawn for the purpose of curing the defect of procedure, otherwise the entire enquiry would be vitiated.

6. But it has to be seen whether the order of withdrawal without reserving liberty would bar initiating fresh enquiry. In *Mange Ram Vs. Govt. of NCT Delhi and Others*, OA 904/99 (decided on 4.5.2000) we held that circular dated 28.4.1993 would not render the initiation of fresh proceedings after withdrawal of the earlier disciplinary proceedings. The learned counsel for the applicant relies upon the circular and the decision in OA No.2176/98 in *Amar Chand and others Vs. Joint Commissioner of Police & Others*, The operative part of the circular 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 or 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."

7. A close reading of the Circular ~~is~~ only shows that the disciplinary authorities are ~~instructed~~ ^{instructed} to mention that the dropping of the proceedings was without prejudice to initiate fresh disciplinary proceedings. But that would not mean that an order passed without reserving specific liberty to do so would render the enquiry proceedings invalid. Considering this aspect of the matter we held in *Mange Ram's case (Supra)* that it would not render the

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enquiry invalid. However, in Amar Chand's case (supra) the facts are entirely different. It was held that initiation of fresh disciplinary proceedings after withdrawal on administrative grounds, was not justified on any ground and that no such liberty was reserved. Mange Ram's case was also considered in Amar Chand's case and it was stated that the same was decided on 'different set of facts'. We are of the view that we are governed by the factual situation as in Mange Ram's case. We are further of the view that mere violation of the departmental instructions which were meant to follow by the officers concerned would not vitiate the enquiry under the CCS (CCA) Rules. Unless there is breach of the said rules the enquiry cannot be held as vitiated. In the circumstances, the contention of the learned counsel for the applicant is rejected.

8. That takes us to the second objection regarding violation of the procedure that was followed in the enquiry. It is no doubt true, and indeed it has been admitted by the respondents that the applicant in this case is governed by Rule 14 of CCS (CCA) Rules (for short 'Rules') as he is a civilian working in Police Department. Under Rule 14(3) the disciplinary authority himself shall draft the substance of the imputation of misconduct into a definite charge. The statement of imputations of the misconduct should also accompany the charge and thereafter the enquiry officer has to be appointed if he deems it proper. The delinquent should be given time for filing written statement and on receipt of the same, the disciplinary authority itself enquire

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into or if it is considered necessary to do so appoint the enquiry authority for the purpose of enquiry, and the enquiry shall be conducted in accordance with the other provisions of Rule 14. Under Rule 16(1) of the Delhi Police (Punishment and Appeal) Rules the disciplinary authority may appoint an enquiry officer and the enquiry officer should prepare the summary of misconduct and serve upon the delinquent. Under this provision also the delinquent was entitled to file his written statement against the summary of allegations. Thereafter the prosecution witnesses have to be examined and on the basis of the evidence the charge has to be framed by the enquiry officer which has to be approved by the disciplinary authority. The delinquent was again asked to give defence statement against the evidence led by the prosecution witnesses and produce his defence witnesses. Thus under CCS (CCA) Rules, the disciplinary authority frames the charge whereas under the latter Rules the enquiry officer frames the charge after examining the witnesses.

9. In the instant case, however, it appears that the disciplinary authority after initiating the enquiry, appointed an enquiry officer who framed the charge and served upon the applicant. The procedure that was stipulated in the Delhi Police (Punishment and Appeal) Rules was adopted, in so far as the initiation of the enquiry. The objection now raised by the applicant in the OA, in this regard, has not been raised before the disciplinary or appellate authorities or for that matter before the revision authority. For the first time, it is raised in this

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OA. It is therefore necessary to see whether the breach of rules in framing the charge by the enquiry officer any substantial prejudice was caused to the applicant in defending himself in the enquiry.

10. It is stated in the reply that the charge was served upon the delinquent after the same was duly approved by the disciplinary authority. It is also seen from the copy of the charge filed by the applicant that an endorsement was made to the effect that the same was approved by the disciplinary authority. Thus, we find that there is a substantial compliance of the procedure as stipulated in the CCS (CCA) Rules as regards the framing of the charge. The rest of the procedure we find was followed strictly in accordance with the procedure that was stipulated in the CCS (CCA) Rules. Moreover it is clear that the applicant was asked to file his defence statement and thereafter the enquiry was conducted in accordance with the CCS (CCA) Rules. We do not therefore find any prejudice having been caused to the applicant. Except stating that there is a procedural lacuna nothing was mentioned in the OA nor was stated by the learned counsel for the applicant as regards any prejudice being caused to the applicant.

11. In view of the foregoing, we find that the enquiry is not vitiated in this case. No further arguments are advanced on the merits of the impugned orders. We do not therefore see any warrant to interfere in the impugned orders. The OA fails and is accordingly dismissed.

(GOVINDAN S. TAMPI)
MEMBER(A)

(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)