

Central Administrative Tribunal
Principal Bench

O.A. 2363/98

New Delhi this the 3rd day of November, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.P. Biswas, Member(A).

Sub-Inspector Ranvir Singh No. D-901,
S/o late Shri Khajan Singh,
R/o 15, Ashoka Police Lines,
Kotalya Marg, Chakakya Puri,
New Delhi.

Applicant.

By Advocate Shri Shanker Raju.

Versus

1. Union of India through
its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Lt. Governor,
5, Raj Niwas Marg,
Delhi-54.
3. Chief Secretary,
Government of NCTD,
Delhi-54.
4. Commissioner of Police,
Police Headquarters, IP Estate,
MSO Building,
New Delhi.

Respondents.

By Advocate Shri Rajinder Pandita.

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant, who was working as Sub-Inspector in Delhi Police, is aggrieved by the order passed by the respondents after holding a departmental inquiry which was initiated by the Chief Secretary, Government of NCT, dated 16.2.1995 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the '1965 Rules') and the penalty order of dismissal from service dated 12.11.1998.

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2. The relevant facts of the case are that the applicant was appointed directly as Sub-Inspector in Delhi Police on 23.10.1969. One undertrial in a criminal case, Dayal Singh, had died while in ~~the~~ police custody. According to the respondents, Dayal Singh had died because of torture, by causing bodily injuries to him while he was in police custody which was stated in the Post-mortem Report dated 20.9.1986 allegedly in the hands of the applicant. On this basis a case FIR No. RC 17/87-CBI SCB/DLI was registered against the applicant u/s 302 IPC. The Lt. Governor had given sanction for prosecution of the applicant in the criminal case and the case was proceeded in the criminal court. Finally, the Addl. Sessions Judge in his order dated 17.12.1994 acquitted the applicant from the charge. According to the applicant, nowhere in the judgement, the judge has stated that the offence was committed by the applicant. The respondents have filed appeal against this judgement which is pending before the Delhi High Court and the applicant was released on bail. He had remained under suspension from 23.9.1986 to 4.1.1988 and 23.2.1989 to 13.6.1995..

3. The applicant was proceeded departmentally by the respondents under Rule 14 of the 1965 Rules by order of the Chief Secretary, Govt. of NCT on 16.2.1995. The learned counsel for the applicant has submitted that this order is vitiated because it has not been passed by the Administrator, i.e. the Lt. Governor nor the initiation of departmental proceedings has been sanctioned by him which is required under Rule 17-A of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the Rules'). The applicant submits that he was constrained to participate in the departmental inquiry and the charges were held to be proved on

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which the impugned penalty order of dismissal had been passed against him. He has assailed the orders passed in this case on a number of grounds.

4. The main ground taken by the applicant is that it is only the Administrator exercising powers under Rule 17-A of the Rules who can entrust the inquiry under it to be conducted in accordance with the provisions of the 1965 Rules. Shri Shanker Raju, learned counsel, has very vehemently submitted that this has not been done nor the Administrator has delegated this power to any other authority under Section 147 of the Delhi Police Act, 1978. He has also submitted that the Administrator i.e. the Lt. Governor has also assumed the power of the disciplinary authority against the applicant and has illegally imposed the extreme punishment of dismissal from service. He has submitted that there were no administrative exigencies under Rule 17-A of the Rules to require the Administrator to order the disciplinary proceedings and he has, therefore, contended that the exercise of the power is illegal. He has submitted that the applicant has been acquitted in the criminal proceedings by the competent court by order dated 17.12.1994 and after that the Inquiry Officer has been appointed on 16.2.1995, followed by the impugned dismissal order. He has also submitted that there was no common proceeding in the present case against him and one Shri Ranbir Singh, then SHO, PS S.N. Puri. He has, therefore, submitted that the impugned order initiating disciplinary proceedings dated 16.2.1995 and the dismissal order dated 12.11.1998 be quashed and set aside with all consequential benefits.

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5. The respondents in their reply have taken a preliminary objection that the O.A. is not maintainable as the applicant has not exhausted the departmental remedies under the provisions of Sections 19, 20 and 21 of the Administrative Tribunals Act, 1985. According to them, the applicant has been correctly proceeded under Rule 14 of the 1965 Rules for major penalty. Shri Rajinder Pandita, learned counsel, relies on the Full Bench Judgement of the Tribunal in **B. Parameshwara Rao Vs. The Divisional Engineer, Telecommunications, Eluru and Anr.** (FB (1989-1991) CAT (Vol. II) 250); and **S.S. Rathore Vs. State of M.P.** (AIR 1990 SC 10). He has submitted that the CBI had dealt with applicant's case and had recommended that departmental action should be taken against him. He has submitted that as the charge memo was issued by the Chief Secretary, Delhi on 28.5.1990, he could have challenged it if he had wanted to, at that time but had failed to do. Learned counsel has submitted that the applicant having participated in the inquiry cannot now challenge the final order passed by the Lt. Governor, Delhi on the ground that the Chief Secretary was not competent to do so. He has, therefore, submitted that there is no infirmity in the dismissal order passed by the competent authority and has prayed that the order may be dismissed.

6. In the rejoinder filed by the applicant, he has reiterated his arguments. He has also submitted that he has been dismissed by an authority, who is not competent to do so, as he is outside the provisions of the Delhi Police Act and the Rules. He has contended that hence, there is no statutory remedy of appeal available to the applicant. He has also submitted that despite the acquittal of the applicant in the criminal case, they have proceeded against him in the departmental inquiry. He has submitted that even though the

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applicant might have participated in the inquiry since the order initiating the inquiry was not issued by the Lt. Governor, as required under Rule 17-A of the Rules, it is not legally tenable and there is no question of waiver of his right. He has also very vehemently contended that the dismissal order has not been passed by the competent authority i.e. The Lt. Governor but has been passed by the Joint Secretary, Vigilance.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. The respondents have also submitted the relevant Departmental records.

8. On perusal of the relevant departmental records, it is noted that two memoranda were issued on the same date i.e. on 28.5.1990, one against Shri Ranbir Singh, ACP, then SHO PS S.N. Puri and another against Shri Ranvir Singh, SI, applicant, for taking departmental proceedings. The relevant portion of the articles of charges issued against the applicant reads as follows:

"That Shri Ranvir Singh, Sub-Inspector, Delhi Police while posted at Police Station, Srinivaspuri, New Delhi detailed and arrested one Shri Dayal Singh S/o Shri Kalyan Singh on 19.9.86 at 5.30 A.M., the suspect in the case FIR No. 365/86 U/S 380 IPC. The said Shri Dayal Singh remained all through in his custody till his death. The said Shri Dayal Singh (Deceased) had died in Police custody of Shri Ranvir Singh, SI on 19/20.9.86 because of torture causing bodily injuries both internal & external as shown in the Postmortem Report dated 20.9.86 of Dr. R.K. Sharma of Department of Forensic Medicine, All India Institute of Medical Sciences, New Delhi. The death of Shri Dayal Singh (Deceased) occurred due to police torture allegedly at the hands of Shri Ranvir Singh, Sub-Inspector.

The said Shri Ranvir Singh, SI thereby exhibited an act of highly unbecoming of a Govt. servant and thus violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964".

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The charge against Shri Ranbir Singh, ACP who was also charged for major penalty under Rule 14 of the 1965 Rules, reads as under:

"Shri Ranbir Singh while posted as SHO, P.S. Srinivaspuri in September 1986 wrote a confidential note to the then DCP (South) casting serious aspersions on Dr. R.K. Sharma of the Department of Forensic Sciences, AIIMS, unnecessarily and maliciously with regard to the post-mortem conducted by him on 20.09.1986 on the body of Shri Dayal Singh who had died because of physical torture in the custody of S.I. Ranvir Singh obviously to shield S.I. Ranvir Singh from punishment".

9. Rule 17-A of the Rules reads as follows:

"17-A. Notwithstanding anything contained in Rules 13 and 16, if the administrative exigencies so require, the administrator may entrust the enquiry under any of the provisions of these Rules to an officer other than a Police Officer for conducting enquiries into the charge or charges of misconduct, dereliction of duty or corruption, as the case may be, and in the event of such an appointment having been made the enquiry shall be conducted in accordance with the procedure laid down under these Rules, and where officers of different grades are involved in a joint enquiry to whom different disciplinary Rules are applicable, the enquiry shall be conducted in accordance with the procedure laid down under the Central Civil Services (Classification, Control & Appeal) Rules, 1955".

10. It is seen from the above charge-sheets that the inquiry against the applicant and Shri Ranbir Singh, Inspector/SHO are connected with the ^{same is} incident of custodial death of the accused Dayal Singh. In the circumstances of the case, the contention of the learned counsel for the applicant that no common proceeding could have been taken, is baseless. His further contention that because the Lt. Government had passed separate penalty orders, ^{it is} cannot also be taken to mean that no common proceedings have been held against them, taking into account the nature of the charges and the subsequent proceedings held against them. The other submissions that there were no administrative exigencies or the fact that a witness had deposed against the applicant will also not mean that the Administrator, acting under the powers vested in him

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under Rule 17-A of the Rules, could not have ordered a common inquiry to be held by an officer other than a police officer. We, therefore, find no force in the arguments of the learned counsel to the effect that no common proceedings could have been held in the present case and it is accordingly rejected.

11. Both the applicant Shri Ranvir Singh, SI and Shri Ranbir Singh, Inspector were proceeded against departmentally for major penalty under Rule 14 of the 1965 Rules. Rule 17-A provides that where officers of different grades are involved in a joint inquiry to whom different disciplinary rules are applicable, the inquiry shall be conducted in accordance with the procedure laid down under the 1965 Rules. In the present case, both the persons against whom departmental proceedings had been initiated under Rule 14 of the 1965 Rules belong to different grades. It is noted that the Inquiry Officer, who had inquired into the charges against both the officers, was the same i.e. O.Kedia, Commissioner for Departmental Inquiries, who has submitted his report in the departmental inquiry against the applicant on 29.1.1998 and against Shri Ranbir Singh, Inspector on 2.2.1998. The findings of the Inquiry Officer in his report against the applicant are that the charge is proved. Taking into account these facts and circumstances of the case, the contentions of Shri Shanker Raju, learned counsel that there was no common proceeding held against the applicant and any other officer under Rule 17-A of the Rules read with the provisions of the 1965 Rules in accordance with law is untenable.

12. The other main contention of the learned counsel for the applicant was that the order for taking disciplinary action in the common proceedings has not been made by the

competent authority i.e. the Lt. Governor of Delhi who had subsequently passed the penalty order which has been impugned in this O.A. In other words, he has contended that the initiation of disciplinary proceedings against the applicant by the Chief Secretary, Delhi by Memorandum dated 28.5.1990, is not in accordance with the Rules. He has also very vehemently submitted that once the initiation of the departmental proceedings has been done by an authority not competent to do so, the whole proceedings are vitiated and cannot be saved by the fact that the penalty order itself had been passed by the competent authority i.e. the Lt. Governor. On perusal of the relevant records submitted by the respondents, it is seen from the notes signed by the Chief Secretary, Delhi Administration, dated 11.2.1990 and 11.5.1990 that he had approved the proposal to take regular departmental proceedings against the applicant which was followed by the impugned memo dated 28.5.1990. While the sanction for taking departmental proceedings had been obtained from the Chief Secretary, it is further noticed from the records that the then Lt. Governor of Delhi by his order dated 27.3.1990 had accorded sanction u/s 197(3) of the Cr.P.C. for prosecution of the applicant in the competent criminal court.

13. Rule 18(1) and the note below ^{18.}the sub-rule of the 1965 Rules provides as follows:

"(1) Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

NOTE.-If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others".

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In this case, the Lt. Governor, Delhi has imposed the punishment of dismissal from service against the applicant as the disciplinary authority. As a common proceeding has been held against two officers, it cannot be disputed that he is the competent authority to do so and applicant's submissions to the contrary are rejected. However, as noted above from the records, the order directing the disciplinary action against the applicant and the other officer has not been approved or ordered by the Lt. Governor in 1990. The approval for initiating the departmental proceedings has been taken only at the level of the Chief Secretary who had also issued the impugned order dated 28.5.1990.

14. Shri Rajinder Pandita, learned counsel, had contended that under Section 147 of the Delhi Police Act, 1978 the Administrator could make Rules for carrying out the purposes of the Act as provided therein. The Tribunal in its order dated 20.9.1999 had directed the respondents to bring on record, the relevant Rules, either general or special, under which the Administrator had exercised his power, to support his argument that the Administrator has empowered the Chief Secretary, in the present case to exercise the power under Rule 17-A of the Rules read with Rule 18 of the 1965 Rules. This has, however, not been done. Shri Shanker Raju, learned counsel has, therefore, vehemently contended that as the order directing the disciplinary action against the applicant and Shri Ranbir Singh, Inspector, have not been issued by the competent authority, i.e. the Administrator, the whole proceedings have been vitiated. Here it may be mentioned that it is also not the contention of the respondents that the competent authority to impose the penalty order of dismissal is the Chief Secretary and not the Lt. Governor of Delhi. Shri Rajinder Pandita, learned counsel has, however, submitted

that the applicant having not objected to the memorandum dated 28.5.1990 at any time earlier and having taken part in the disciplinary proceedings has waived his right to take this plea after the penalty order has been passed by the competent authority. This question will have to be looked into in the context of the provisions of Rule 17-A of the Rules and Rule 18 of the 1965 Rules reproduced in Paragraphs 9 and 13 above.

15. Rule 17-A of the Rules provides that notwithstanding anything contained in Rules 13 and 16, if the administrative exigencies so require, the Administrator may entrust the inquiry to an officer other than a police officer for conducting inquiries into the charges of misconduct, dereliction of duty or corruption, as the case may be and in such a case the inquiry is to be conducted in accordance with the procedure laid down under the Rules. Similarly, where officers of different grades are involved in a joint inquiry to whom different disciplinary Rules are applicable, the inquiry shall be conducted in accordance with the procedure laid down under the the 1965 Rules. The rules for holding a common proceeding/joint proceeding under the 1965 Rules is provided under Rule 18. Therefore, reading these Rules together, it is seen that what has been laid down is the procedure to be followed in such cases of a joint inquiry. In the present case, no doubt, the respondents have committed an error in not following the procedure laid down under Rule 18 of the 1965 Rules by not obtaining the sanction of the Lt. Governor for proceeding in a common disciplinary action. Here we have to consider whether this procedure has vitiated the whole proceedings, including the penalty order which has been passed by the competent authority.

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16. The Supreme Court in **State Bank of Patiala and Ors. Vs. S.K. Sharma** (JT 1996(3) SC 722) has dealt with the relevant questions raised in the present case, including waiver of certain provisions which were conceived in the interest of the delinquent officer. The Supreme Court has held that an order passed imposing a punishment on an employee consequent upon a disciplinary/departmental inquiry in violation of the Rules/Regulations/Statutory provisions governing such inquiries should not be set aside "automatically" and in the case of violation of a procedural provision, it cannot be said that it would "automatically vitiate the inquiry held or order passed, excepting certain cases of "no notice", "no opportunity" and "no hearing" categories, which are not applicable to the facts of the present case. The Apex Court has held that in the case of a complaint of violation of a procedural provision, it should be examined from the point of view of prejudice viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. It has been further held that if it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the inquiry and/or the order of punishment. However, if no prejudice is established to have resulted therefrom, it is obvious that no interference is called for. In this connection, the Apex Court has held that "it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases". Further, it was held as follows:

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"..In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former,

then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in **B. Karunakar (Managing Director, E.C.I.L. Vs. B. Karunakar** (JT 1993 (6) SC 1). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called".

17. In this case, the applicant had been issued the impugned memorandum initiating the departmental proceedings against him as far back as 28.5.1990 which was under the signature of Shri V.K. Kapoor, the then Chief Secretary, Delhi, and incidentally the present Lt. Governor of Delhi. As held by the Supreme Court in **S.K. Sharma's case** (supra), the violation of the procedural provision contained in Rule 18 of the 1965 Rules, which is of a mandatory character, appears to have been made in the public interest and not exclusively in the particular interest of the delinquent official. It is also relevant to note that the applicant himself had not raised any objection ~~either~~ to the memorandum dated 28.5.1990 and had taken part in the departmental proceedings. He has, in fact, raised the issue of competency of the Chief Secretary to issue the order directing common disciplinary proceedings against him and the other officer after several years, as one of the grounds to impugn the penalty order passed by the Lt. Governor. Taking into account his conduct, the procedural provisions which are alleged to have been violated by the respondents and the observations of the Apex Court, the conclusion is inevitable that the applicant is deemed to have waived his right of protest against the order issued by the Chief Secretary directing taking disciplinary action against him. In any case, in the particular facts and circumstances, we are also unable to come to the conclusion that any

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prejudice has been caused to the applicant or the circumstances warrant automatic setting aside of the punishment order on this ground. The observations of the Tribunal in **Shashi Bhushan Sharma Vs. Lt. Governor of Delhi & Ors.** (with connected case) (O.A. 702/90 with O.A. 704/90), decided on 28.10.1994 (Para 10, copy placed on record) relied upon by the respondents are also relevant.

18. Therefore, taking into account the facts of the case, including the fact that reasonable opportunity has been granted to the applicant to defend his case and the interest of justice, we are of the view that the violation of the procedural provision in Rule 18(1) of the 1965 Rules, in the disciplinary action being directed to be taken by an officer who was not competent to do so cannot result in automatic setting aside ^{of B.} the punishment order. In the present case, in case the applicant's contention is upheld that the impugned penalty order of dismissal is vitiated because the initiation of the departmental proceedings has not been done by the competent authority, one alternative would be to quash the order and remit the case to the respondents to proceed from the beginning in accordance with law. Their Lordships of the Supreme Court in **S.K. Sharma's case** (supra) have dealt with this issue also and held as follows:

"...would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice..."

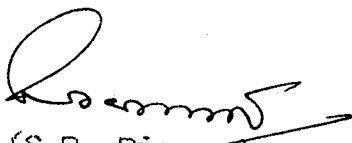
The question, therefore, arises whether in this case justice has or has not been done to the parties? In the facts and circumstances of the case, we answer this in the positive.

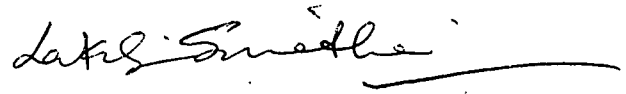
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We are unable to agree with the contention of the learned counsel for the applicant that prejudice has been caused to the applicant because the sanction to hold the departmental inquiry had been given by the Chief Secretary and not by the Lt. Governor, Delhi, who has passed the punishment order as the disciplinary authority.

19. We also find from the official records that a detailed and speaking order has been passed by the Lt. Governor, Delhi on 29.10.1998 imposing the penalty of dismissal on the applicant. This order has been conveyed to the applicant by the impugned order dated 12.11.1998 by the Joint Secretary (Vigilance). In the order, it has been clearly stated that it has been done by the Joint Secretary (Vig.) for an on behalf of the Lt. Governor, Delhi. In the facts and circumstances, the contention of Shri Shanker Raju, learned counsel, that the dismissal order has not been passed by the competent authority, i.e. the Lt. Governor but has been passed by the Joint Secretary (Vig.), is baseless and without any merit and it is accordingly rejected. We also do not find any merit in the other contentions raised by the learned counsel for the applicant to warrant any interference in the matter.

20. In the result, for the reasons given above, the application fails and is dismissed. No order as to costs.


(S.P. Biswas)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

"SRD"