

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA-7/98  
MA-1/98

New Delhi this the 29th day of July, 1998.

Hon'ble Shri T.N. Bhat, Member(J)  
Hon'ble Shri S.P. Biswas, Member(A)

1. Sh. Rajbir Singh,  
S/o Sh. Ram Dayal,  
R/o Room No.33,  
P.S. Kamla Market,  
Delhi.
2. Sh. Dashrath Singh,  
S/o Sh. Vimal Singh,  
R/o Room No.31,  
P.S. kamla Market,  
Delhi.
3. Sh. Riaz Siddiqui,  
S/o Sh. Roshal Ali,  
R/o Qtr. No.55, Type-II,  
P.S. Preet Vihar,  
Delhi.

..... Applicants

(through Sh. Shankar Raju, advocate)

versus

1. Union of India,  
through its Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi.
2. Addl. Commissioner of Police,  
Northern Range, Police  
Headquarters, I.P. Estate,  
New Delhi.
3. Addl. Dy. Commissioner of Police,  
Central District,  
Darya Ganj, Delhi.

..... Respondents

(through Sh. Anil Singhal for Sh. Anoop Bagai)

ORDER(ORAL)

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

Heard the learned counsel for the parties. With  
their consent, the O.A. is being finally disposed of at  
the admission stage itself.

*By* 29.7.98

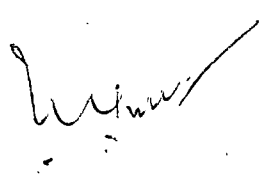
8

2. The three applicants in this O.A. were working as Constables in Delhi Police. A complaint was received against them for having allegedly beaten up one Sh. Chander Mohan and also snatching away his gold chain and currency notes amounting to Rs. 2800/-. The incident related to 4.7.95. In pursuance to the departmental enquiry held against the applicants, the Addl. Deputy Commissioner of Police, Central District, New Delhi has imposed punishment of with-holding of increment for a period of two years with cumulative effect on each of the applicants. The appeal filed by the applicants to the Addl. Commissioner of Police, Delhi was rejected by the order dated 18.9.97.

3. Aggrieved by the aforesaid two orders, the applicants have come to the Tribunal seeking the following reliefs:-

(i) To set aside the impugned order of punishment at Annexure A-1 and direct the respondents to restore to the applicants their with-held increments and also treat the period of suspension as spent on duty for all purposes.

(ii) To set aside the impugned order at Annexure A-2 and finding of the enquiry officer at Annexure A-3 as well as the order of suspension at Annexure A-4.



9

4. Although a number of grounds have been taken in the O.A., the learned counsel for the applicants restricted his arguments to only one ground which relates to Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980. This sub-rule provides that in cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held. According to the learned counsel for the applicants in the instant case, although a preliminary enquiry was held, the matter was never referred to the concerned Addl. Commissioner of Police for his approval.

5. The respondents have resisted the applicants O.A. by filing a detailed reply. On going through the contents of the reply, we find that admittedly no approval was taken from the Addl. Commissioner of Police. The respondents have taken the plea that since only a "formal enquiry" was conducted, permission of the Addl. Commissioner of Police was not necessary. This contention of the respondents cannot be accepted, for the simple reason that the fact that some sort of preliminary enquiry was held through A.S.I. Hari Parkash, as averred by the applicant in the O.A., cannot be denied by the respondents. The respondents have sought to make it out that it was only a "formal enquiry", whatever this

*[Signature]*

10

expression may mean. But in our opinion, the enquiry held by the A.S.I. Hari Parkash would certainly be a preliminary enquiry, as it was later followed by a regular enquiry which culminated in the punishment order against the applicants and the rejection of the appeal. The learned counsel for the respondents also argues that the enquiry conducted by A.S.I. Hari Prakash was not ordered with a view to find out whether a regular departmental enquiry should be held or not and, therefore, this cannot be termed as a preliminary enquiry. We are afraid, this contention is also devoid of force. On a perusal of the chargesheet and the accompanying documents, we find that the witnesses examined by A.S.I. Hari Prakash have also been cited as witnesses in the main enquiry. Furthermore, a perusal of the report of the enquiry officer also clearly mentions the fact that the preliminary enquiry was held by A.S.I. Hari Prakash.

6. As regards the contention relating to Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 reliance has been placed by the learned counsel for the applicants upon the judgement of this Tribunal in OA-402/92 decided on 19.2.97. We have gone through the copy of the judgement furnished to us by the learned counsel for the applicants today during the course of hearing and we find that this objection raised in that O.A. also was upheld and punishment of forfeiture of 5 years approved service and reduction of pay awarded to the applicant in that O.A. was quashed on the ground

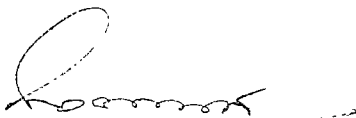
*by*

(11)

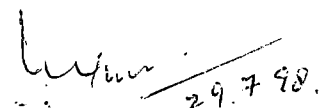
that no prior approval had been obtained from the concerned Additional Commissioner of Police. The learned proxy counsel for the respondents states that some instructions had been issued by the Commissioner of Police for conducting enquiry against the applicant, but no such record has been produced before us nor a copy thereof annexed to the court.

7. For the foregoing reasons, the impugned orders cannot be allowed to stand. We accordingly, allow this O.A. and quash the impugned orders of punishment as well as the Appellate order on the ground that no prior approval of the Additional Commissioner of Police had been taken. However, it shall be open to the respondents to conduct a fresh enquiry after obtaining the necessary approval and in the meantime to keep the applicants under deemed suspension in which case they shall be entitled to payment of subsistence allowance at the admissible rates. The fresh enquiry so conducted shall be from the date of service of the chargesheet after the approval of Additional Commissioner of Police is obtained.

8. In view of the above, the O.A. is disposed of, leaving the parties to bear their own costs.



(S.P. Biswas)  
Member(A)

  
29.7.98.

(T.N. Bhat)  
Member(J)