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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.945/1998

New Delhi, this 29th day of June, 1999

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

Harish Chander Yati  
C-13, P.S. Paharganj  
New Delhi

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.. Applicant

(By Shri M.K. Gupta, Advocate)

versus

1. Commissioner of Police  
Polis Hqrs., MSO Building, New Delhi

2. Shri Y.S. Dadwal  
Addl. CP/ New Delhi Range  
MSO Building, New Delhi

3. Shri S.B.K. Singh  
DCP/North East Dt., Seelampur  
Delhi

4. Shri Parveen Ranjan  
Principal PTS, Jaroda Kalan, Delhi

5. Shri B.K. Mishra  
ACP/P.G.Cell  
Dhaura Kuan, New Delhi

.. Respondents

(By Shri Jog Singh, through proxy Shri S.K.Gupta,  
advocate)

ORDER

Hon'ble Shri S.P. Biswas

Applicant, a Sub-Inspector of Delhi Police, challenges Annexure A, B and C orders dated 21.11.97, 29.11.97 and 22.12.97 respectively. By Annexure A, applicant stands transferred from New Delhi District to North East District. By Annexure B, applicant has been placed under suspension but with retrospective effect from 10.10.94 and by Annexure C, a regular departmental enquiry has been ordered to be conducted against the applicant. Consequently, applicant seeks to quash all three orders at Annexures A, B and C.

21

2. Applicant seeks to challenge the order of departmental enquiry on the basis that the alleged act of misconduct was committed by him in June, 1997 whereas disciplinary action has been taken after a lapse of five months. Initiation of action in the manner resorted to herein is against the stipulations under Section 42 of Police Act and it is also against the law laid down by the apex court in the case of Pritam Singh Vs. State of Haryana 1971(3) SCC 971. In Pritam Singh's case, the apex court was examining the case of a constable in Police Force of Haryana State where under section 42 of the Act, prosecution should have been commenced against the appellant therein within three months of the commission of the act complained of. Prosecution that commenced against the appellant therein was held to be barred by limitation under the said act. 22

3. Applicant alleges that he had to face the wrath of R-2 in that he had filed FIR under Section 51.1(a) of the Wild Life Protection Act at the Police Station, Tilak Nagar, New Delhi. It was because of the alleged illegalities committed by him that he was immediately ordered by R-2 to report for duty at a different Police Station at Seemapuri. The said verbal order is illegal as per the applicant since it was not based on any formal communication. In other words, applicant was asked only informally by R-2 to report for duty to Police Station, Seemapuri which falls under the jurisdiction of North East District. The applicant

23

has also challenged the transfer order at Annexure A on the basis that the same has been managed by R-3 in collusion with R-4 and R-5 only for the purpose of victimising him consequent upon lodging of DD Entry No.3A dated 4.6.97 against R-4 at Seemapuri Police Station. As per the applicant, he had to lodge the complaint against the rude behaviour of R-4. Applicant also alleges discrimination since the other three police officers who were suspended alongwith him by order dated 10.10.97 have since been favoured with orders of revocation but excluding the applicant only. Disciplinary authority has, therefore, acted in a most biased manner.

4. Respondents have come out with details opposing all the claims of the applicant herein.

5. We are required to adjudicate the legality or otherwise of the orders of transfer, suspension and initiation of the departmental proceedings against the applicant.

6. We find that the applicant was placed under suspension vide order dated 29.11.97 for his misconduct and there is no controvention of Rule 14(4) of Delhi Police (Punishment & Appeal) Rules, 1980, since the applicant was performing his duties at Seemapuri Police Station under the overall control of DCP, North-East. Under the Rules, a police officer can be ordered by an appropriate authority to perform duties irrespective of his/her

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place of posting in exigencies of Government work.

In any case, if the applicant was entrusted with the investigation of an offence under Wild Life Protection Act in the area of Tilak Marg Police Station, he was required to hand over the said case-file prior to proceeding to Seemapuri Police Station in North East. The case of Pritam Singh(supra) cited by the applicant is not applicable to the facts and circumstances of the present case since on receipt of a complaint from Smt. Firoza Begum in June, 1997, a fact finding enquiry was ordered immediately. The preliminary enquiry was over by 14.10.97 and that was followed by a suspension order dated 29.11.97 issued by the competent authority. Departmental enquiry was ordered to be conducted by an order dated 22.12.97 and the charge-sheet was also issued on 4.9.98. The details in the present case run contrary to those in Pritam Singh's case and the latter does not render any assistance to the applicant's case herein.

7. We also find that the applicant was only temporarily posted from New Delhi district to PS, Seemapuri, North East District. Both districts fall under the administrative control of R-2 who had issued the order of transfer. Additional Commissioner of Police(R-2) is fully empowered to do so. Being the administrative incharge of the entire zone, the Addl. CP could depute any individual officer to perform duties temporarily irrespective of posting of the individual in any

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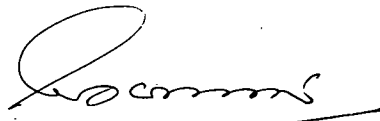
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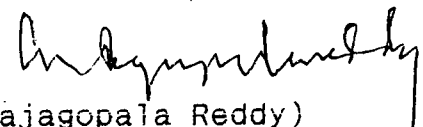
district under his range. The order of transfer, therefore, cannot be vitiated. In any case, applicant has not proved that the order was issued on grounds of malafide or is against statutory provisions or has been vitiated by colourable exercise of power.

8. As regards order of disciplinary authority dated 22.12.97, we find no infirmity. Where the disciplinary authority comes to its own conclusion on the basis of materials available before it for the purpose of initiating an enquiry, its decision cannot be said to be tainted or vitiated only because there are alleged collusions between R-2 to 5. The collusion so alleged has not been established by the applicant. Nor does the case of the applicant stand on the same footing like the three officers against whom orders of revocation have been issued. We find that the charges against the applicant involve serious dereliction of duties, failure to adhere to legal procedures pertaining to conducting raid under NDPS Act and to let off the accused with malafide intentions. It is also not denied that the charge-memo has been issued to the applicant vide order dated 4.9.98. Serious allegations of misconduct have been made against the applicant as brought out in the charge-memo. Interference by The Tribunal with the orders of suspension of the applicant pending enquiry will be unjustified in terms of law laid down by the apex court in the case of State of Orissa Vs. B.K. Mohanty (1994) 4 SCC 126). If

the applicant has any valid plea like respondents' alleged illegality in issuing the order of suspension with retrospective date, that could be brought up legally in course of departmental proceedings. But that would not be a valid ground for the Tribunal to interfere at the threshold of the proceedings. 26

9. In the background of the detailed discussions aforesaid, the OA deserves to be dismissed and we do so accordingly. There shall be no order as to costs.

  
(S.P. Biswas)  
Member(A)

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

/gtv/