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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2375 of 1996
M.A.No. 772 of 1997

25 New Delhi, this the 14th day of January, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A. Vedavalli, Member (J)

Sub-Inspector Dharambir Singh (No.D/2942,
Delhi Police), S/o Shri Nomi Nath, R/o C-8,
Indra Enclave, Joharpur, Delhi -110 094.

(X) -APPLICANT

(By Advocate - Mrs. Avnish Ahlawat)

Versus

1. Union of India through Lt. Governor of Delhi through Commissioner of Police, Delhi, Police Headquarters, M.S.O. Building, I.P. Estate, New Delhi - 110 002
2. Shri Vijay Kashyap, Deputy Commissioner of Police, Central District, Delhi Police, Darya Ganj, New Delhi.
3. Shri S.B.S. Tyagi, Assistant Commissioner of Police (Enquiry Officer) to be served through the Deputy Commissioner of Police (HQ/I), Police Headquarters, M.S.O. Building, I.P. Estate, New Delhi - 110 002 -RESPONDENTS

(By Advocate - Shri Vijay Pandita)

JUDGMENT

By Mr. N. Sahu, Member (Admnv) -

In this Original Application the applicant seeks a direction to respondent no.2 not to pass final order in his case and declare that the whole enquiry proceedings are vitiated being in contravention of OM dated 8.1.1971 and S.O.290 and also declare that the findings of the enquiry officer are perverse. The O.M. fixes a time limit of three months in cases which do not require consultation with the C.V.C. for completion of disciplinary proceedings. In the instant case the enquiry was initiated in February, 1995 and the defence statement was recorded on 14.2.1996. Thus, on the ground of delay the applicant impugns the above

forwards

proceedings. He also cites standing order no.290 under which departmental proceedings should be completed within six months. These instructions were issued by the Commissioner of Police. He states that even these instructions were violated.

2. A brief background of the dispute by way of admitted facts can be highlighted. The applicant and a Head Constabale Rishi Raj were accused of stopping a car and robbing the inmates of their cash and other valuables on 24.1.1995. They were placed under suspension by an order dated 27.1.1995. A departmental enquiry was initiated on 17.2.1995 and a copy of the enquiry report was served on the applicant on 21.6.1996. They have submitted their reply to the findings of the E.O. already. The disciplinary authority had heard on 15.7.96 and 26.7.96 and wanted to examine more witnesses but later on this proposal was withdrawn. Subsequently only the Head Constable was heard on 20.9.1996. The proceedings were concluded and he was dismissed from the Force by an order dated 1.10.1996. The applicant was called for hearing on 18.10.1996, 30.10.1996 and 1.11.1996 but he reported sick. He filed this case and initially secured an interim stay against further proceedings on 7.11.1996 which continued upto 11.3.1997. The interim order was vacated with the observation that fresh application for stay of any punishment order could be moved. MA 772/97 was filed on 18.3.1997 for restraining the respondents from passing any final punishment order till the disposal of the petition. A

reply and rejoinder are already on record on this M.A.

The M.A. was kept for disposal along with the O.A.

3. The ground raised by the applicant is that the relevant documents were not supplied to him to defend himself effectively. He also alleged that he was not given opportunity to cross-examine the witnesses to prove his case. It is finally alleged that the enquiry officer was influenced by the senior officers and his report was vitiated by this extraneous factor.

4. The respondents vehemently contend that this Court has no power to interfere when a show cause notice is issued. A final decision will be taken by the competent authority after the applicant files his reply. The show cause notice indicating a proposed punishment cannot be quashed and even if a punishment is imposed, there is a provision of filing an appeal. It is only after exhausting statutory remedies that the aggrieved applicant can move this Tribunal. The learned counsel for the respondents relied on the following decisions of the Hon'ble Supreme Court in the cases of **State of U.P. Vs. Brahmdev Sharma**, 1987 JT (1) SC 571 and **Kumari Madhuri Patil Vs. Addl. Commissioner**, 1994 SCC(L&S) 1349. He further cited the case of **B.C. Chaturvedi Vs. Union of India**, (1995)6 SCC 749 wherein their Lordships held that adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court or the Tribunal. The disciplinary proceedings are framed under the rules. They contained a time tested

procedure of examination of witnesses, conduct of enquiry, submission of the enquiry report, obtaining the reply from the applicant which the disciplinary authority shall consider and pass an appropriate order under the rules. He will award the punishment only after properly and objectively considering the material evidence before him and this Court shouldnot interdict the disciplinary authority at an interlocutory stage from passing the final order. By this O.A. the applicant does not allow the disciplinary authority to discharge his judicial function as a disciplinary authority. The granting of stay in a disciplinary proceeding at an interlocutory stage has been disapproved by the Supreme Court in the case of **Union of India Vs. A.N.Saxena**, 1992(4) SLR 11. The Supreme Court expressly disapproved the action of the Tribunal which without considering whether the memo of charges deserve to be enquired into or not granted a stay. This action of the Tribunal was set aside. In **Union of India Vs. Upendra Singh**, (1994)3 SCC 357 the Hon'ble Supreme Court disapproved the efforts of the Tribunal made to examine the correctness of the charges against the respondents on the basis of the material produced by him. Such an action was held to be beyond the jurisdiction of the Tribunal. If staying the hand of the disciplinary authority when the charges were issued has been disapproved, there is all the more justification to restrain ourselves from staying the hands of the Tribunal in a case where enquiries were complete and the show cause notice was issued. We have

no power, according to the Apex Court, to go into the merits of the case at an interlocutory stage. In this case our action would amount to depriving the disciplinary authority of independently examining the applicant's defence in this regard. It is not necessary that simply because the Head Constable was dismissed the applicant would also be ipso facto dismissed. All the contentions raised in this O.A., namely, non-furnishing of copies of documents relied upon and not giving opportunity to cross-examine certain witnesses can be raised in the reply to be furnished to the disciplinary authority, who we are sure, will carefully examine the same and shall in his discretion and in accordance with the principles of natural justice consider affording the applicant all facilities with regard to inspection of documents as well as cross-examination of witnesses. That apart he will also consider examining the other claims of the applicant in the reply already filed. With regard to the delay, the period of three months or six months are administrative guidelines issued to impart a certain urgency. Even instructions themselves do not command their compliance as a categorical imperative. One cannot over-emphasise the need to observe these guidelines but these cannot be equated to a statutory rule whose alleged infraction, because it suits the applicant's case, would render void the proceedings themselves. The time taken in each disciplinary proceeding depends upon the particular facts and circumstances of that case. We do not think this ground has any substance.

5. In the result, the O.A. is dismissed. We direct the disciplinary authority to dispose of the proceedings as he had already received a reply within a period of four months from the date of receipt of a copy of this order. Needless to state the disciplinary authority shall consider all the submissions made in the right spirit. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

N. Sahu

(N. Sahu) 14.1.98,
Member (Admnv)

rkv.