

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA. No.2456 of 1994

Dated New Delhi, this 16th day of January, 1995

Hon'ble Shri J. P. Sharma, Member(J)

Hon'ble Shri B. K. Singh, Member(A)

Shri S. C. Dhawan
R/o N-27, Vijay Vihar
Uttam Nagar
NEW DELHI

... Applicant

By Advocate: Shri G. D. Gupta

Versus

1. Union of India through
the Secretary to the Govt. of India
Ministry of Home Affairs
North Block
NEW DELHI - 110 001
2. The Lt. Governor
National Capital Territory of Delhi
Raj Bhawan
DELHI - 110 054
3. The Commissioner of Police
Police Headquarters
M.S.O. Building, I.P. Estate
NEW DELHI - 110 002
4. The Addl. Commissioner of Police, C.I.D.
Police Headquarters
M.S.O. Building, I.P. Estate
NEW DELHI - 110 002
5. The Deputy Commissioner of Police
D.E. Cell (Vig.)
P.S. Defence Colony
NEW DELHI - 110 003

... Respondents

JUDGEMENT

Shri B. K. Singh, M(A)

On the basis of an order issued by Additional Commissioner of Police(CID) Delhi, a departmental enquiry was conducted against Inspector Subhash Chander Dhawan, No.D/1126 in regard to gross misconduct and negligence in the discharge of his official duties.

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This enquiry was based on the complaint of Shri Sunil Kumar Verma that his scooter No.DBS-3160 along with Driving Licence was seized by the applicant. The order at Annexure A-5 mentions that a preliminary enquiry had been conducted by Vigilance Branch wherein it was established that Inspector Shri Subhash Chander Dhawan managed to obtain a Notice Book from Traffic staff of D.P.L. in contravention of instructions, rules/orders regarding use of notice books as it is meant only for C.Os. of Delhi Police. It was further stated in the chargesheet that he misused the notice book and made cuttings in the serial number of the notice book. An enquiry was conducted against him and the findings of the Enquiry Officer are at Annexure A-17 and the Enquiry Officer in the concluding paragraph of his report proposed to drop the departmental enquiry against the applicant S.I. S. C. Dhawan as no charge is framed. Accepting the report of the Enquiry Officer, Shri G. C. Dvivedi, A.C.P., the competent authority exonerated the applicant. The Additional Commissioner of Police exercising his powers as reviewing officer under newly added provision 25.B of Delhi Police (Punishment & Appeal Amendment) Rules, 1994 vide Annexure A-1 called for the enquiry file and passed an order after going through the departmental enquiry file, exoneration order and other relevant materials available on record and taking into consideration the facts and circumstances of the case, remanded the same for further enquiry on the ground that the misconduct based on unauthorisedly procuring the notice book and acting beyond the instructions by the S.I. was apparent on the face of the

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record and therefore the order of exoneration of the S.I. in the departmental enquiry was not found to be in order and accordingly in exercise of the powers conferred upon him by rule 25.B of Delhi Police(Punishment & Appeal)Amendment Rules,1994, he quashed the exoneration order issued by the disciplinary authority and ordered that a regular departmental enquiry would be conducted from the prosecution stage against the S.I. on day-to-day basis by D.E. Cell(Vigilance Branch).

2. Aggrieved by the aforesaid order at Annexure A-1 by the Additional Commissioner of Police, Special Branch,Delhi, the applicant has filed this OA on 8.12.94. The reliefs prayed for are:

"(A) allow this Original Application of the applicant with costs;

(b) issue appropriate direction or directions, order or orders

(i) quashing the impugned Order dated 14th November,1994 and consequent proceedings/orders;

(ii) declaring that the case of the applicant is not liable to be re-opened agains when it had already been inquired into twice whereby the then Disciplinary Authorities have exonerated the applicant and it was ordered that the file be consigned to record;

(iii) directing the respondents not to re-open and review the case of the applicant third time and not to proceed further in holding the departmental inquiry again in the incident relating to the year 1986 when the very said incident had already been inquired into twice by the Disciplinary Authority of the applicant and found both the times that the case was not having any substance and had ordered to consign the case to record and exonerated the applicant of the charges levelled against him;..."

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3. It is admitted by the learned counsel for the applicant in the OA that the Delhi Police(Punishment & Appeal)Rules,1980 were amended vide notification dated 29.6.94 whereby, inter-alia, a provision was made for review of certain orders by inserting rule 25.B in the aforesaid Rule of 1980. By that notification/^{amendment to} Delhi Police(Punishment & Appeal) Rules,1994 was promulgated. A copy of the said notification dated 29.6.94 has been filed as Annexure A-22 of the paper book. Rule 25.B stipulates that the Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police, Additional Deputy Commissioner of Police, Principal/PTS or College or any other officer of equivalent rank may at any time call for the records of awards made by any of his subordinate either on his own motion or otherwise and confirm, enhance, modify or annul the same or make further investigation or direct such to be made before passing orders. The proviso of these rules adds that no action shall be initiated more than six months after the date of the order sought to be reviewed except with the prior approval of the Lt. Governor of Delhi. This amendment, more or less, is in line with Chapter-8 of the CCS(CCA)Rules,1965 which deals ^{with} revision and review. Rule 29() lays down that an appellate authority may, at any time, either on his own motion or otherwise call for the records of any enquiry and revise any order made under these rules. This provision was also added by DoPT vide notification No.11012/6/85-Est.(A) dated 6.8.85 and the appellate

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authority may:

- "(a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit."

The limitation period of six months is prescribed here and in case of imposing punishment or enhancing any penalty a proviso has been added to these rules which lays down that revising or reviewing authority will impose or enhance any penalty only after giving the government servant concerned a reasonable opportunity of making representation against the penalty proposed. It further lays down that where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if a departmental enquiry has not been held in the case no such penalty shall be imposed except after an inquiry as laid down in Rule 14. 29-A is also power of review of the President or his delegate in the same manner.

4. A careful perusal of the new amendment rule 25.B inserted in the Delhi Police (Punishment & Appeal) Rules, 1980 corresponds with the provisions in the CCS (CCA) Rules, 1965 as stated above. A reviewing

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✓ authority on his own motion is fully competent to call for the records and he has been given the authority to impose any penalty, reduce it or set aside that penalty and enhance the same. But all these orders can be passed after recording cogent reasons. No such obligation is cast upon the reviewing authority to record elaborate reasons while remitting a case for further enquiry and the order is clear that it should be from the prosecution stage. What is barred in a catena of judgements is a de-novo or a re-enquiry and there is no bar regarding further enquiry if the appellate or reviewing officer is convinced that departmental enquiry has not been properly conducted and that the orders of punishment or exoneraton are not in conformity with the facts and circumstances of the case. The procedure regarding recording of reasons is only when the appellate/reviewing officer disagrees with the findings of the disciplinary authority and wants to impose punishment or to enhance punishment. The same procedure is not required to be followed in case of remission or remand of a case for further enquiry.

5. In case of M. A. Waheed Vs State AIR 1957 Nagpur p.29 it has been held that unless a proper departmental enquiry is held, there can be no material on which the Government or the competent authority can assess the misconduct of the civil servant concerned and determine an action to be taken against him. The object of the departmental enquiry is that the Enquiry Officer should properly and effectively discharge the duties of coming

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to a conclusion as to the guilt of the employee concerned which can properly be performed only by evaluation or assessment of the evidence. ^{On} a finding by the Enquiry Officer not based on evidence the disciplinary authority is required to record cogent reasons for his orders whether the Enquiry Officer has effectively and properly discharged his duties or not and pass the final orders taking a synoptic view of all the facts and circumstances of the case. A second enquiry in the form of a further enquiry is not barred as has been held in the case of UOI Vs M. B. Patnaik AIR 1981 SC p.860. The Hon'ble Supreme Court in this case has gone to the extent of saying that even when an earlier order is quashed and set aside either by the court or by the appellate authority, the second enquiry is not barred. In the instant case, the Additional Commissioner of Police has not ordered a de-novo or a but has ordered only a further enquiry from the stage of prosecution witnesses. Where a misconduct is alleged on grounds of non-observance of standing orders or instructions, the departmental enquiry has to be "duly carried out" according to misconduct alleged observing the principles of natural justice and acting strictly according to rules in good faith and honest. The grounds of misconduct, misdemeanour or delinquency will vary from situation to situation. Where a person belongs to a disciplined and professional force like Delhi Police it is necessary for him (applicant) to observe the rules, regulations and standing instructions consistent with the requirements and dignity of the

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professional and disciplined force. Mere negligence may not amount to misconduct. Misconduct implies failure to act honestly and reasonably according to the professional standards prescribed by the superior officers. The rule is that where a person has entered into the post of a civil servant if he does anything incompatible with the duties and faithful discharge of his duties, he can be charged of misconduct. If the act or omission is such that it reflects on the reputation of the officer or his integrity or good faith, there is no reason why disciplinary proceedings should not be initiated against him for such activities. Any breach of express or implied duty on the part of the civil servant unless it be of a trifling nature affords justification for launching a departmental enquiry resulting in minor or major penalties.

6. It is admitted that the applicant was appointed as a Stenographer in Delhi Police in May, 1969 and was subsequently promoted as A.S.I.(Stenographer) with effect from 7.11.69. He was made quasi permanent as A.S.I.(Stenographer) with effect from 22.2.73. The applicant was subsequently promoted to the rank of Sub Inspector(Stenographer) with effect from 17.8.76. It is clear that the instructions issued by the Commissioner of Police for checking vehicles is not for those people who only carry the designation but whose functions and duties are clearly defined. These Stenographers even on /promotion function

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as Readers according to their status. A perusal of the file clearly shows that the applicant is not a regular constable nor is he a regular Sub Inspector and it is none of his jobs to check the vehicles as he has done in case of the vehicles whose numbers are contained in Annexure A-2 & A-3.

7. The circular of the Commissioner of Police, Delhi filed at Annexure A-4 authorises the Delhi Police in addition to the traffic constabulary to take cognizance of violation of traffic rules and regulations. A careful perusal of the circular No.19932/20032/CCT-AC-II dated 30.9.85 from Commissioner of Police shows that it authorises only Constable, A.S.I., S.I. & INspectors of Delhi Police and Traffic constabulary. It is none of the duties of Sub Inspector(Stenographer) to do this job. The language of the circular is clear and unambiguous. It is clear that the applicant has acted beyond his authority to check these vehicles.

8. When test of controlling the manner of doing a specified work by a specialised force i.e. traffic constabulary is prescribed the Police Commissioner as head of this force of Delhi Police has gone a step further and has authorised the constables of Delhi Police as per instructions mentioned above to take note of such violations. It does not include

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within its ambit a Sub Inspector(Stenographer) and he is not expected to do this job. He is neither entrusted with the job of enforcement of law and order duties nor is he entrusted with the job of checking traffic violations. In this case, the Police Commissioner exercises the right of controlling the manner of doing a work by a set of officers and the language of the instructions is plain and clear and it excludes clearly the Sub Inspector(Stenographer) from its purview. The specific work assigned to a constable of Delhi Police and Traffic should be done by them and not by others. It is not a part of the duties of the present applicant since he is not entrusted with those duties. He is required to take dictations as a Reader or to maintain confidential files, documents or to maintain engagement diaries of the officer concerned. Since it was not a part of his duties, he had no authority to obtain notice books or to use the same or to make cutting in the serial numbers. All this is not a part of his job. He might have received commendation from D.C.P. or he might have received awards for doing this job, but this work is not a part of the duties assigned to him and he is acting against the instructions of the Commissioner of Police because no authority has been vested in him of seizure of licences/vehicles of those who are indulging in the violation of traffic rules. By doing so, he brings in his own reputaion under a cloud. He might have reported a few cases, but who knows he might not have reported many others to

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those who are competent to impose fines in regard to the traffic violance. The order passed by the Additional Commisssioner of Police is in conformity with the new rule 25.B and also in conformity with the rule 29 CCS(CCA)Rules,1965. clauses (v) & (vi) of/No grievance can arise from an interlocutory order as laid down in the case of M. A. Waheed(supra), a second enquiry or further enquiry is not barred even when orders in a disciplinary proceedings are quashed and set aside. The Additional Commissioner of Police has not set aside the order nor has he imposed any punishment. He has simply remitted the case for further enquiry and this is permissible in the light of the new amendment of 29.6.94 29.Band also under rule 29 of caluses (v) & (vi) of the CCS(CCA) Rules,1965.

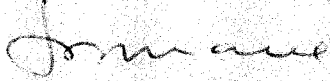
9. In the latest judgement of the Hon'ble Supreme Court in the case of Govt. of Tamil Nadu and Anr Vs A. Raja Pandiyan JT 1994 7 SC p.492, it has been held that Administrative Tribunals have no jurisdiction to sit in as an appellate authority nor the findings of the disciplinary authority and they have no jurisdiction to reappreciate the evidence recorded by the Enquiry Officer. It is not the function of the Tribunals to review such findings and reach a different finding. In this, the Hon'ble Supreme Court has also cited the case of UOI Vs Parmanand JT 1989(2) SC 132 and UOI Vs Sunder Bahadur 1972(2) SCR p.218. In all these judgements the Tribunals have been restrained from appreciating evidence or to sit in as an appellate court over the findings of the enquiry authority or the disciplinary

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✓ authority or the reviewing authority.

10. In view of the above facts and circumstances of the case, we find that the case has no merit and the same is dismissed in limni at the admission stage itself.


(B. K. SINGH)
Member(A)


(J. P. SHARMA)
Member(J)

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