

3

3

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 1448 of 1994

New Delhi this the 26th day of August, 1994

Mr. Justice S.K. Dhaon, Acting Chairman  
Mr. P.T. Thiruvengadam, Member

Shri Sri Krishna Giri  
R/o 1049, Sector VIII,  
R.K. Puram,  
New Delhi.

...Applicant

By Advocate Shri Pradeep Mishra

Versus

1. Commissioner of Police, Delhi,  
Police Headquarters,  
Vikas Marg,  
New Delhi.
2. Additional Commissioner of Police (Range),  
New Delhi - Police Head Quarter,  
Vikas Marg,  
New Delhi.
3. Deputy Commissioner of Police,  
New Delhi,  
District New Delhi,  
D.C.P. Office,  
Parliament Street Police Station,  
New Delhi. ...Respondents

By Advocate Shri Jog Singh

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Acting Chairman

The applicant, an Inspector in the Delhi Police, challenges the legality of the order dated 23.02.1994 passed by the Additional Commissioner of Police suspending him from service.

2. A counter-affidavit has been filed on behalf of the respondents. Though the O.A. has not been admitted formally, yet with the consent of the learned counsel for the parties we are disposing of the same finally as the point involved is short and simple.

3. We may extract the relevant portion of the impugned order:-

" Inspector S.K. Giri No.D/1870 posted in New Delhi District is hereby placed under suspension with immediate effect".

Sdy

4. A bare reading of the aforequoted order indicates that no reason whatsoever has been given in it for passing it. Therefore, there is force in the argument of the counsel for the applicant that the impugned order has been passed without any application of mind by the authority passing it.

5. A counter-affidavit has been filed on behalf of the respondents by Shri Ranjit Narayan, Deputy Commissioner of Police, Headquarters-I, Delhi. Therein, the material averment is: " .....The CBI authorities vide their letter dated 12.10.1993 stated that in conformity with the instructions of the DP&TMO Personnel, PG & Pension, Government of India, OM No. 142/5/A-IV/AVD-I dated 20.06.1986, the three accused (1) Inspector Sri Kishan Giri (2) SI Badal Singh Kaushik and (iii) ASI Bakhtawar Singh should also be placed under suspension and to intimate them action taken report".

6. The aforequoted averments in the counter-affidavit go to show that the impugned order has been passed at the direction of the CBI.

7. Section 21 of the Delhi Police Act, 1978 (the Act) catalogues various forms of punishment which can be awarded to a Police Officer of the subordinate rank. Suspension of service is not one of ~~it~~<sup>them</sup>. Therefore, it is manifest that no order of suspension by way of punishment is contemplated in the Scheme of the Act.

8. Rule 26 of the Delhi Police (Punishment and Appeal) Rules, 1980 (the Rules) states that officers of the rank of an Assistant Commissioner of Police and above are authorised to suspend all police officers of the subordinate rank. Inspectors of police can suspend any police officer below the rank of Sub-Inspector. Rule 27 talks of suspension

34

in departmental cases. Rule 28 deals with suspension in judicial proceedings.

9. In the counter-affidavit filed it is stated that the officer passing the impugned order of suspension purported to act under Rule 28(b), which, inter alia, stated that the police officer of the subordinate rank against whom a proceeding has been taken on a criminal charge but who is not actually detained in custody may be placed under suspension by an order of the appointing authority. If the charge is connected with the official position of the Government servant or involves any moral turpitude on his part, suspension shall be ordered under this rule unless there are exceptional reasons for not adopting this course. In the latter case permission of the next higher authority for not suspending the individual concerned shall be obtained. A bare reading of Rule 28(b) makes it clear that a discretion has been given to the officer concerned not to exercise the power of suspension even in the situation where the conditions laid down are fulfilled. This strengthens the legal position that even the order of suspension has to be passed after due application of mind.

10. Since the impugned order has been passed at the direction of the CBI, the reason for it being passed mechanically is obvious. It is now a settled law that even an administrative order has to be passed by a statutory authority independently after due application of mind and within the four corners of the statute conferring that power to pass such an order. In the present case, the power of suspension belong exclusively to the officers mentioned in Rule 26. No outside agency, including the highest

34

authority in the hierarchy of the administration has jurisdiction to interfere with the exercise of the statutory power conferred by Rules 26 and 27. The CBI, therefore, had no jurisdiction to issue the direction, as mentioned in the aforequoted averments made in the counter-affidavit. It necessarily follows that the impugned order is a nullity. It goes without saying that under the law, the relevant competent authority has full jurisdiction to consider the question of suspension of the applicant from service a fresh.

11. This application succeeds and is allowed. The impugned order is quashed.

12. There shall be no order as to costs.

P.T.D.  
(P.T. THIRUVENGADAM)  
MEMBER (A)

S.K.D.  
(S.K. DHAON)  
ACTING CHAIRMAN

RKS