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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.1492/94

New Delhi, dated the 13th July, 1995

Hon'ble Shri N.V.Krishnan, Vice Chairman (A)

Hon'ble Smt.Lakshmi Swaminathan, Member (J)

- 1.Const.Aman Singh
son of Shri Kiranpal Singh
r/o Barrack No.2, P.S. Adarsh Nagar
Delhi.
- 2.Const.Jai Parkash
son of Shri Suraj Singh
r/o Netaji Subhash Gali, Khushk Road No.2
Saropp Nagar, Delhi-110042.

... Applicants

(By Advocate Shri Shanker Raju)

Vs.

1. Lt.Governor of N.C.T.D.
through Commissioner of Police,
Police Headquarters, M.S.O. Building,
I.P.Estate, New Delhi.
2. Deputy Commissioner of Police,
North West District, Ashok Vihar,
Delhi.

... Respondents.

(By Advocate Shri Vijay Pandita)

ORDER (ORAL)

(Hon'ble Shri N.V. Krishnan, Vice Chairman (A)

The two applicants before us are constables in the Delhi Police. Their grievances is that in respect of same facts alleging misconduct, were proceedings / first initiated in which the first applicant was given penalty of censure and in respect of IInd applicant, after perusing his reply to the show cause notice relating to censure, ^{the} notice was vacated. However, on the same facts, a regular departmental enquiry was subsequently held against ^{the} three persons including/two applicants and punishment

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of major penalty was imposed by the impugned Annexure-A order dated 26-9-92. This has been challenged in the present O.A.

2. Respondents have^{filed}/their reply contesting the claim.
3. We have heard the parties.
4. Admittedly, the two applicants were transferred to IGI Airport, Security and Crime & Railways by the Deputy Commissioner of Police (North West District), with the request that disciplinary action may be taken in respect of mis-conduct. In pursuance thereof show cause notice of censure was issued to the first applicant by the order dated 3-7-91 of the Deputy Commissioner (IGI Airport) and penalty of censure was imposed. In respect of second applicant, the Additional/^{Deputy Commissioner} issued show cause notice. He filed a reply. by the order dated 25-2-1991 (Ann.A-4)./He was informed by the Assistant Commissioner of Police, Security, New Delhi that show cause notice of censure was vacated by the order dated 13-6-1991 (Ann.A.6)
5. Subsequently, on the same facts a joint departmental enquiry has been held against three officials including the two applicants and impugned Ann.A.1 order has been passed imposing the major penalty against them. An appeal was preferred which has been dismissed by the order dated 27-1-1994 (Ann.A.2) by the Additional Commissioner of Police Range, Delhi.
6. In so far as^{the}/two applicants are concerned, the only point^{the} pressed is that/order dated 26-9-92 (Ann.A.1)

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imposing the major penalty is illegal as they cannot
be proceeded/departmentally for the second time.
against

7. Learned counsel for the respondents states that joint proceeding against three applicants are justified as it was felt that the two applicants were let off lightly. We wanted to know whether the power of revision or review is available to Head of Department or any other authority who can take the order in revision or review. He admits that such power was not available until 29.6.94.

8. We find that a copy of the enquiry officer's report in the departmental proceeding was given to the three delinquents to make a representation. A joint representation dated 5.9.92 was filed by the three persons, including the two applicant(Ann.A.9). In para 3 thereof it was stated that Const.Aman Singh and Const.Jai Prakash were awarded the punishment of censure on the same facts and grounds and therefore, Departmental enquiry is not justified. Though this statement is true in respect of Aman Singh in the case of Jai Prakash, the notice ^{for} ~~was~~ imposing penalty of censure was dropped. The Disciplinary authority, should have verified the facts regarding the earlier departmental proceedings and dropped the proceedings against these two applicants. No doubt, in the appeal such a ground has not been taken by the applicants. But as this is an issue of law, it can be raised before us.

9. We find that the Delhi Police is governed by Delhi Police (Punishment and Appeal) Rules, 1980 framed under the Delhi Police Act, 1978. In accordance with the provisions of Section 5 (b) of that Act, the Administrator is authorised to prescribe the rules regarding conditions of service. The notification dated 17.12.1980 issued under this authority states that the rules issued by the Central Government as mentioned therein would apply to all subordinates, besides the rules framed under the Act. That notification does not make the CCS (CCA) Rules, 1965 applicable to Delhi Police. Therefore, the power of revision and review under rule 29 and 29-A of the CCS (CCA) Rules, 1965 are not available to any of the authorities in respect of Delhi Police. The Delhi Police Act, 1978 (Punishment and Appeal) Rules, 1980 also does not confer any such powers. It is admitted by the both parties that power of revision and review has been made available to the Delhi Police w.e.f. 29.6.1994.

10. We are of the view, that in the above circumstances fresh departmental enquiry with a view of imposing a more ^{Severe} ~~sense~~ penalty could have been initiated only if such power was available. We find that such power ^{did} ~~does~~ not exist. It was conferred ^{by} ~~used~~

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much later. Hence the impugned order has been passed without authority in so far as two applicants are concerned. Accordingly, the impugned order Annexure A-1 dated 26.9.92 in so far as it imposes penalty on the two applicants before us is hereby quashed.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)

Member (J)

N.V. Krishnan
13.7.85

(N.V. Krishnan)

Vice Chairman (A)

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