

Central Administrative Tribunal  
Principal Bench: New Delhi

O.A.No. 1911/94

New Delhi this the 22nd Day of September, 1994

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

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

Shri Rohtas Singh,  
Inspector D.I/385,  
III Bn DAP, Delhi ... Applicant

(By Advocate: Dr.Jos P. Verghese

VS

1. The NCT of Delhi,  
through its Chief Secretary,  
Old Secretariat,  
Delhi.
2. The Commissioner of Police,  
Police Headquarters,  
IP Estate,  
New Delhi. .... Respondents

(By Advocate:

## O R D E R (Oral)

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

The grievance of the applicant is that Additional Commissioner of Police has invoked the provision of Section 1 of the Delhi Police Act, 1978 and passed an order that a regular departmental enquiry against the applicant be conducted by DCP VI. The reasonings for holding the enquiry have been detailed in the order which are quoted below:

1. The statements of Smt. Gurdeep Kaur and Smt. Kuldeep Kaur were recorded at a rather related stage i.e. 5 months from the date of incident.

2. The statements recorded by Inspector Rohtas Singh, No. D/I/385 under Section 161 CrPC of Smt. Gurdeep Kaur and Smt. Kuldeep Kaur do not cover the details of the incident. Instead, bogus and confusing statements were recorded.
3. The statements under Section 161 CrPC were not recorded of any family member or neighbour or any other independent witnesses.
4. The material witnesses of this case, PWS Smt. Gurdeep Kaur and Smt. Kuldeep Kaur were not produced by the I.O. in the court on the grounds that they were untraceable.
5. Nothing was shown on the record that the accused Rajinder Singh had participated in that alleged incident.

2. The learned counsel for the applicant highlighted the facts that there is no *prima facie* case and the respondents have raised an issue which on the face of it is *malafide* and there is no substance in reasoning given by the Additional Commissioner of Police to initiate departmental enquiry against the applicant. The learned counsel has also pointed out that certain other original applications filed by similarly situated persons including the petitioners in which some orders have

been passed that enquiry be commenced after giving the Mittal, Jain and Aggarwal's report to the delinquents. It is said that those orders have not been complied with till today. It is also contended by the learned counsel that every time the applicant is due for promotion, the respondents, Additional Commissioner of Police has issued similar memos.

3. We have given a careful thought but we are constrained to observe that the prerogative of the administration to proceed against the delinquency of their employees cannot be reserved by the Tribunal at this stage. It is open to the delinquent to assail any final order, if passed against him and at that time all the points available attacking the chargesheet or memo holding an enquiry or incidentally intermediary proceedings can be challenged. This application is totally pre-mature.

4. Regarding the fact whether there is a *prima facie* case or not it is for the administration itself to see and the Tribunal as a matter of fact should not interfere.

5. A chargesheet or an enquiry against a delinquent in certain circumstances can be judicially reviewed only when the authority is not competent to issue such a memo or chargesheet. That is not the case of the applicant before us.

6. The contention of the learned counsel that there are certain earlier directions issued in the original applications filed before the Principal Bench that the enquiry be commenced only after supply Mittal, Jain and Aggarwal's Report and therefore the respondents cannot proceed with this enquiry cannot be accepted. If the compliance of the direction was not carried out in the judgement, it was open to the aggrieved person to go under the procedure provided in the CAT Act itself press the respondents to comply with the direction or face the contempt. That appears to have not been done. This application cannot be confined to any of the aspect dealt with in the earlier original applications. However, the judgement delivered in those OAs can very well be looked into while deciding on merit any adverse orders passed against the applicant in the departmental enquiry.

7. In view of the above facts and circumstances of the case, this application is totally pre-mature and does not make out a *prima facie* case.

8. After this judgement is coming to an end, the learned counsel for the applicant recapitulated the arguments advanced that he also highlighted the facts that the present memo has been issued in a malafide manner. Malafide is which is not bonafide. No person bias or any pre-notions against Additional Commissioner has been alleged. Merely because the promotion of the applicant is withheld, which he can claim after <sup>he is</sup> exonerated from the date from which any

of his juniors stand promoted will not by itself make action of the Additional Commissioner of Police malafide. Application is dismissed as pre-mature.



(B.K.Singh)  
Member(A)

(J.P.Sharma)  
Member(J)

\*Mittal\*