

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1084/2000

New Delhi this the 24th day of January, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKAR RAJU, MEMBER (JUDICIAL)

Ex. Ct. Laxman Singh No.2516/DAP,
P.O. Bassi Via Shri Madhopur,
Distt. Sikar,
Rajasthan.

...Applicant

(By Advocate Shri Anil Aggarwal)

-Versus-

The Commissioner of Police,
Delhi Police, Police Headquarters,
I.P. Estate, New Delhi.

...Respondent

(By Advocate Shri Ram Kanwar)

O R D E R (ORAL)

By Mr. Shankar Raju, Member (J):

The applicant, an ex-Constable in Delhi Police assails the order of dismissal dated 26.2.99, which was confirmed by the appellate authority vide order dated 22.2.2000 as well as the order passed by the Deputy Commissioner of Police (Vigilance) on 21.7.98, where the departmental enquiry which was initially kept in abeyance on account of pendency of criminal case against the applicant has been re-opened on the basis of a circular issued by the DCP (Vigilance).

2. The applicant has assailed the orders on the ground that on his representation the enquiry has been kept in abeyance till the finalisation of the criminal case FIR No.227/96 under Sections 419/420/478/471 I.P.S. P.S. Mukherjee Nagar, Delhi, pending against the applicant on the same allegation on which the departmental enquiry was ordered against him. The aforesaid order of the DCP has

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been further confirmed by the Additional Commissioner of Police (AP&T), by making the following remarks:

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"The DE has been kept in abeyance till get decision of the CrI. case. He will get adequate opportunity to defend himself and prove his innocence during the course of DE. He is under suspension. No useful purpose will be served to hear him at this stage. Let Ct. Laxman Singh, No.2226/DAP be informed accordingly."

3. The enquiry, in pursuance thereof, was kept in abeyance after the stage of charge against the applicant. Vide an order dated 21.7.98 without affording a prior opportunity to the applicant the DCP of 3rd Bn. on the instructions received from DCP (Vigilance) resumed the departmental enquiry and ordered for its completion beyond the charge stage. The learned counsel for the applicant impugned this order of resumption of enquiry on the ground that the same has been passed by an incompetent authority purportedly exercising the power of review, laid down under Rule 25-B of Delhi Police (Punishment & Appeal) Rules, 1980. According to him once the order of keeping the enquiry in abeyance has been passed by the DCP the same can be revoked only by the Additional Commissioner of Police or an officer equivalent to his rank or by the superior officer, but not an authority who is subordinate to the Additional Commissioner of Police. Admittedly, these orders have been issued by the DCP on the instructions of DCP (Vigilance). Both these officers are subordinate to and inferior in rank to the Additional Commissioner of Police as per Schedule of Delhi Police Act of 1978.

4. The learned counsel for the respondent justified the action on the ground that the order has been passed by a competent authority on the basis of

instructions of DCP (Vig.) based on the ratio laid down by the Apex Court in State of Rajasthan v. B.K. Meena, JT 1996 (8) SC 684, where it has been observed that there is no bar for initiating simultaneous criminal proceedings as well as disciplinary proceedings as the criminal cases are dragged on endlessly and unduly delayed and in that event the interest of administration demands expeditious disposal of the disciplinary proceedings. 14

5. We are not dealing with the merits of the case and adjudicating this OA only on the short ground of competence of the authority, resuming the enquiry, kept in abeyance till the final disposal of the criminal case was arrived at by the Additional Commissioner of Police and the DCP, who is subordinate authority, would not be legally competent to review the decision of the higher authority. Apart from it, we also feel that before taking a decision to resume the enquiry the applicant has not been afforded a prior opportunity to show cause. We have perused Rule 25-B of the Delhi Police (Punishment & Appeal) Rules, 1980 where the power of review is to be exercised with reference to the record of awards made by any of the subordinate officer and thereafter the same could be confirmed/ modified or annulled. Apart from this provision, there is no other statutory provision existing in the Delhi Police Act or Rules for exercising the power of review. In our view, the DCP while exercising the power of review could not have called for the awards made by a superior authority, i.e., Additional Commissioner of Police. Thus, in our considered opinion, the DCP has exceeded his jurisdiction and without any competence resumed the enquiry without taking into account the order passed by the Additional Commissioner of

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Police, who is his superior. This would vitiate the order^{ke} resuming the departmental enquiry. Hence, we hold the same as illegal. (15)

5. In the result, the OA is allowed. The impugned order of resumption of enquiry dated 21.7.98 (Annexure C) is quashed and set aside. We also set aside the order of dismissal and the appellate order. The respondents are directed to re-instate the applicant and put him in a position which he was having at the time of dismissal. However, this would not preclude the respondents from taking up the disciplinary proceedings prior to resumption of departmental enquiry held in abeyance vide order dated 29.4.97 (Annexure H), if so advised. No order as to costs.

S. Raju
(Shankar Raju)
Member (J)

'San.'

V.K. Majotra
(V.K. Majotra)
Member (A)