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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2128/2000

This the 4th day of April, 2002

HON'BLE SH. V.K. MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

1. Sugan Chand
S/o Shri Surja Ram
R/o Village & P.O. Saround
P.S. Kotputli
Distt. Jaipur (Rajasthan)

2. N.B. Survase
S/o Shri Bhima Haruti Surbase
R/o Village & P.O. Kangara
P.S. Babeli
Distt. Osmanabad (Maharashtra)

...Applicants.

(By Advocate: Sh. Shyam Babu)

Versus

1. Govt. of NCT Delhi
through Chief Secretary,
5, Sham Nath Marg,
Delhi.

2. The Joint Commissioner of Police
(Southern Range)
P.S. Hauz Khas
New Delhi -110016.

3. Deputy Commissioner of Police
(West District)
P.S. Rajouri Garden,
New Delhi.

...Respondents.

(By Advocate: Mrs. Jasmine Ahmed)

ORDER (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicants in this OA has assailed an order dated 21.9.99
vide which the applicants have been dismissed from service.

They have also assailed another order dated 12.3.99 vide which
the appeals filed by the applicant against the order of
dismissal have also been dismissed by the Joint Commissioner
of Police.

2. Facts in brief as alleged by the applicants are that both
these applicants were proceeded departmentally on the charges
that on 2.9.95 one Sh. Sanjay Dhawan S/o 2Sh. Kailash Chand

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Dhawan, r/o A-6/269-270, Janta Flats, Paschim Vihar, New Delhi reported that on 29.7.95 his Oil Tanker bearing No.DEL-4931 in which he was carrying oil for supplying was standing near COD, Mandir on Ring Road, Naraina as the vehicle has developed some defect. He has also called his relations and was unloading the oil from the standing Tanker by transferring them into drums when 5 persons including applicants approached Sh. Sanjay Dhawan and introduced themselves as officials of anti-corruption cell and threatened Sh. Sanjay Dhawan and his father to book them in a case of theft of oil. Applicants were also amongst those 5 persons and ultimately these persons demanded Rs.1 lac for settling the matter. However, the deal was finalised for Rs.75,000/- and then 3 persons abducted the father of the complainant and was told to bring money near Hotel Jageer Palace. Applicant, N.B.Survase, who was identified later on, took the complainant to his house and asked him to arrange money within 10 minutes. Complainant mortgaged/pledged ornaments of his mother and wife for Rs.20,000/- , borrowed Rs.20,000/- from a friend and managed Rs.10,000/- from his own house and took it to Hotel Jageer palace and handed over Rs.50,000/- to one of the applicant, namely, Sujan Chand who then released his father. An amount of Rs.25,000/- was settled to be given to them later on 2.9.95. While the complainant was going on Scooter he was stopped near Sabzi Mandi, Naraina by Sujan Chand and N.B.Survase, and one more person who demanded the remaining amount of Rs.25,000/- and when the complainant asked for their Identity Cards, the three tried to run away. But two of them were over-powered but the third culprit managed to escape. Complainant then took them to Police Station Naraina and handed over them to Police where they were identified as Constable Sujan Chand and Constable N.B.Survase and it was found that these Constable were already under suspension, so

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another case was registered. Naraina Police arrested the applicants and on the interrogation they had also given the names of their accomplices as Constable Jitender Pal Singh and Virender Kumar who were posted to Police Station, Kirti Nagar, New Delhi and one Delhi Home Guard Pratap Singh. They were also arrested. So it was said that this act on the part of the applicants is a grave misconduct, misuse of police powers and unbecoming act of police officers and highly prejudicial to the security of the citizens and they are liable to be punished. Enquiry proceeded on this which was concluded and after the impugned order of punishment was passed.

3. The impugned order is being challenged on various grounds and one of the grounds taken by the applicants is that while the enquiry was in progress applicants made a representation to the authorities for withholding of the enquiry for keeping the enquiry in abeyance. Vide an order dated 7.4.98 the Deputy Commissioner of Police, West Delhi directed that the prosecution can be completed and defence should not be taken and the DE shall be kept pending till the verdict of the court case which is pending against the defaulters.

4. Applicant has now a grievance that when this order was passed the enquiry officer was directed that the defence of the applicants should not be taken. But during the enquiry the applicants were compelled to cross-examine the witnesses and the enquiry officer vide order dated 15.9.98 of his own by virtue of some apex court judgment directed the applicants to name their defence witnesses within 3 days or supply defence statement within 7 days. Applicants submit that despite that the applicants did not lead the defence evidence since their criminal case was still pending and they could not take risk of disclosing their defence as it would have prejudiced their

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matter before the criminal court and since the enquiry officer returned the findings without considering the defence of the applicant so the applicants have been seriously prejudiced, so the findings of the enquiry officer are liable to be set aside and consequently orders passed on basis of the findings recorded by the enquiry officer are also liable to be set aside.

5. In reply to this the learned counsel of the respondents submitted that since in the meantime B.K.Meena's case has been decided by the Hon'ble Supreme Court based on that the enquiry officer had called upon the applicants to give the defence statement. No prejudice has been caused and due and adequate opportunity to lead defence evidence was given.

6. In our view the contention raised by the respondents themselves has no merits. This is an admitted case of the department that the DCP vide order dated 7.4.98 had directed the enquiry officer that the defence of the applicant should not be taken and DE shall be kept pending till the verdict of the criminal case which was pending against the defaulters. In these circumstances, enquiry officer has stepped out of the jurisdiction as he reviewed the orders passed by the DCP on his own he called upon the applicants to give defence while the criminal case was still pending. Assuming for the sake of argument that because of the judgment of the Hon'ble Supreme Court in B.K.Meena's case if the order of DCP have become ineffective, then the only course open to the enquiry officer was to seek permission of the DCP in the changed circumstances and then if the DCP had modified or withdrawn the order only then the enquiry officer should have called upon the applicants to enter their defence. Since that has not been done we find that the proceedings taken up by the enquiry

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officer are in violation of the order dated 7.4.98 passed by the DCP as such are vitiated. Moreover, the applicants had also not been provided opportunity to lead defence evidence so we find it is a fit case where the case should be remanded back to the disciplinary authority from the stage of recording of the evidence and the enquiry officer should afford an opportunity to the applicants to cross-examine the witnesses and also to lead the evidence in accordance with law.

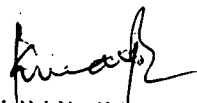
7. Sh. Shyam Babu appearing for the applicant also submits that the applicants have been acquitted in the criminal court of the Metropolitan Magistrate by virtue of Rule 12, so entire proceedings should be dropped and applicants should be ordered to be reinstated in service. As far as this contention is concerned, we find that applicant has also filed an MA urging additional grounds while this OA was pending and has also enclosed a copy of the judgment of Metropolitan Magistrate. Since this ground was not initially available to the applicants when the OA was filed nor on this ground any representation has been made by the applicants to the concerned disciplinary authorities we feel that on this ground the applicants should first make an appropriate representation to the disciplinary authorities and if their representation is decided in their favour, then probably the applicants will have no grievance. In case after the decision of the department if any grievance will survive, applicants will have the liberty to approach this court again.


8. In view of the discussion above, the impugned orders Annexure-A and Annexure-B are quashed. Enquiry is remanded back to the authorities with the following directions:

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That the enquiry officer shall now afford an opportunity to the applicant to cross examine the prosecution witnesses and also if the applicant so desire they may be permitted to lead evidence in defence. Thereafter the enquiry officer will return its findings and final order will be passed by the disciplinary authority.

9. As far MA-2726/2001 is concerned, applicant will make a representation to the department and department shall pass a reasoned and speaking order thereon within a period of 3 months from the date of receipt of a copy of this order. OA and MA both are disposed of accordingly.


(KULDIP SINGH)
Member (J)


(V.K. MAJOTRA)
Member (A)

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