

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2308/89.

New Delhi, this the sixth day of May, 1994.

SHRI J.P. SHARMA, MEMBER(J).

SHRI S.R. ADIGE, MEMBER(A).

Shri Naresh Chand,
S/o Shri Patram Singh,
R/o D-506/I, Gali No.3, Shaheed Bhagat Singh Marg,
Ashok Nagar, Mandoli Road,
Shahdara, Delhi-110093, ...Applicant
working as Head Constable in Delhi Police.

By advocate : Shri B.S. Charya.

V E R S U S

1. Commissioner of Police,
Police Headquarters,
I.P. Estate, M.S.O. Building,
New Delhi.
2. Deputy Commissioner of Police,
Central District, M.S.O. Building,
I.P. Estate, New Delhi.
3. Union of India,
Ministry of Home Affairs,
Government of India,
New Delhi, through its Secretary.

...Respondents

By advocate : Mrs. Avnish Ahlawat.

O R D E R (ORAL)

SHRI J.P. SHARMA :

The applicant Head Constable in Delhi Police
earlier filed OA-133/87 aggrieved by an order passed in
a departmental inquiry on the basis of summary of
allegations that while posted as In-charge, Clothing
Store, Central State at Police Station, Patel Nagar on
1-9-84, he was caught taking away the articles of
general store of clothing store and has misappropriated

the clothing articles by resorting to wrong entries and forged signatures in the issue/stock register of the upper subordinates. By the order dated 17-8-86, the applicant was removed from service. Earlier to it, the applicant remained under suspension. The Tribunal considered the matter on the basis of pleadings in that O.A. and certain observations have been made regarding the procedure in the inquiry. The conclusion drawn by the Tribunal is that the applicant was not afforded adequate opportunity to present his defence in respect of the charge of forgery and reliance on the check sheets by the department for substantiating the charge of forgery without making them available to the applicant is illegal. On the basis of this, the departmental proceedings were initiated and the same were set aside. The respondents reinstated the applicant wef 6-1-88 vide order dated 28-2-87. In this order of reinstatement, it was also observed that the period from the date of removal till the date of reinstatement shall be considered by the subsequent order. A show cause notice was also given to the applicant and an order appears to have been passed under F.R.54(A)(2)(a) by which the period when the applicant was out of employment by virtue of the order of removal was taken to be as a period spent on duty restricting his pay and allowances to the amount which

he has already drawn in the shape of subsistence allowance under FR 53 when he was under suspension. This period is from 17-6-86 to 5-1-88. The period of suspension is from 1-9-84 to 21-2-85. This order is dated 8-6-88. The applicant was also issued a show cause notice dated 9-3-88 initiating the departmental inquiry which was the subject of decision in the earlier OA 133/87. The applicant represented to the respondents not to initiate the departmental inquiry and having not been favoured with the reply, the present application has been filed in November, 1989. The applicant has, however, claimed a number of reliefs which ordinarily cannot be claimed in one application. These reliefs are quashing of the impugned order of 9-3-88 of initiation of departmental inquiry; order dated 8-6-88 whereby the applicant has claimed full pay and allowances for the period from 17-6-86 to 5-1-88. He has also prayed full wages of suspension from 1-9-84 to 21-2-85. He has also claimed various promotions to higher posts and also challenged the virus of rule 16 of the Delhi Police (Punishment and Appeal) Rules, 1980. He also claims interest at the rate of 18 per cent. The Tribunal admitted the case on 21-11-89. An interim direction was granted to the applicant in the manner that the departmental inquiry may proceed but the final order shall not be passed against him.

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2. A notice was issued to the respondents who contested the application and opposed the grant of the reliefs stating that the judgment in favour of the applicant dated 11-9-87 is not on merit of the matter but on technical grounds whereby the departmental proceedings were held to be vitiated. Since the applicant has not been given a clear chit even by judicial review, so there is no bar to commence the departmental inquiry after removing the defects of non-supply of documents etc. to the applicant.

3. The applicant has also filed rejoinder reiterating the same facts. During the course of hearing, the learned counsel has also referred to MA-915/94 in which he has highlighted some more facts and developments during the pendency of this original application since 1989 to 1994. The only prayer in this MA is that these points be taken on record and a direction be issued to the respondents to produce the documents. We are disposing of the M.A. along with this O.A. The learned counsel for the applicant emphatically argued at considerable length that there is no specific provision in the Delhi Police(Punishment and Appeal) Rules, 1980 for initiating de novo inquiry and in this connection also has placed reliance on the decision of the CAT in the case of JAIPAL SINGH VS.

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DELHI ADMINISTRATION reported in 1988 ATR VOL.2 p.506. The aforesaid judgment also refers to a number of decisions particularly of the Hon'ble Supreme Court of K.R. DEB v. THE COLLECTOR OF CENTRAL EXCISE, SHILLONG - 1971(2) S.C.C. 102. The learned counsel has also referred to an authority of N.V. KARWARKAR v. ADMINISTRATOR OF GOA, DAMAN AND DIU AND OTHERS (BOMBAY) reported in the aforesaid journal at page 232. The learned counsel has also referred to a decision in the case of C.L.SUBRAMANIAN v. THE COLLECTOR OF CUSTOMS, COCHIN reported in AIR 1972 SC 2178. The learned counsel wants to substantiate the reasoning that either a direction in judicial review should be apparent from the judgment, then only the departmental inquiry can be held. In the case of KARWARKAR and SUBRAMANIAN as well as in the case of JAI PAL SINGH, there was specific speaking operative orders while in the case of the applicant of OA-133/87, there is no specific direction eitherway to hold an inquiry or not to hold an inquiry. In fact, the issue involved in this case is somewhat different. The point under consideration is whether a person who is said to have committed certain misconduct and the allegations and imputations against him on the basis of which a departmental inquiry under the rules has been initiated culminating in finding of guilty and punishment, then

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if such finding or guilt is quashed on a judicial review on technical grounds, whether the employer can initiate the same inquiry afresh on the same allegations? There are no two opinions about this that a person cannot be ^{condemned} ~~contempted~~ twice for an act or commission. Article 20 of the Constitution of India protects the second trial of a person on the same allegations of act or commission amounting to misconduct or an offence. In the criminal trial also, if a person has been acquitted, then he cannot be tried again for the same charges. The order referred to above passed in OA-133/87 clearly goes to show that the most of the points raised by the petitioner in that case could not find favour except only one point that the applicant was not furnished copies of the documents and those documents were basis of findings by the inquiry officer. In the earlier judgment, the Tribunal did not apply its mind whether the inquiry officer has given finding on the basis of an admissible evidence or that the finding given by the inquiry officer is perverse or that the inferences drawn are not permissible on the touchstone of reasonableness. It goes to show that the Tribunal did not apply its mind to the main issue of misconduct for which the applicant was proceeded in the departmental inquiry. The departmental proceedings were vitiated because the principles of natural justice

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were violated in not making available to the applicant during that inquiry certain documents though they have been relied against him while holding him guilty and imposing punishment on him. In such a case, though there is no specific liberty given to the respondents, the inquiry cannot be barred. The learned counsel though cited a number of authorities but he wants to get inferences from the observations made in these precedences that unless there is a specific direction, ~~that~~ respondents are precluded from initiating de novo inquiry. We have gone through the authorities and we don't find that any of these are applicable to the present case. In the case of JAI PAL SINGH, the reliance has been placed on the case of K.R. DEB of Hon'ble Supreme Court (supra). A perusal of the aforesaid authority goes to show that the matter can be remitted for removing certain defects which have crept in in the proceedings of the earlier inquiry. The learned counsel for the respondents, however, referred to a decision of the Delhi High Court of NAHAR SINGH v. UNION OF INDIA & OTHERS in Letters Patent Appeal No.23 of 1985 decided on 30-7-91 by holding the judgment of Single Judge where it has been held that on the basis of the case of A.N.SHUKLA v. STATE OF MADHYA PRADESH reported in 1979(2) S.L.R. 289 that if earlier orders were quashed on technical ground, ^{not} on merits, the second

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inquiry could be held. In this aforesaid decision, the case of STATE OF ASSAM AND ANOTHER v. J.N.ROY BISWAS AIR 1975 S.C. 2277 at page 2279 has also been referred to. It has been held that no Government servant can urge that if for technical or other good ground, procedural or other, the first inquiry of punishment or exonerat^lion is found ^{illegal} by any law, that a second inquiry cannot be launched. In fact, the ccounsel for the applicant has also placed reliance on the case of K.R.DEB (supra). In that case, the Hon'ble Supreme Court held "it may be possible if in a particular case there has been no proper inquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some reasons, the Disciplinary Authority may ask the Enquiry Officer to record further evidence". We have already dealt with at considerable length on this issue. The law on the point is unambiguous and clear. In the present case, the applicant was not exonerated of the charges either by administrative order and on the judicial review the departmental proceedings were vitiated because certain principles of natural justice of non-supply of documents were not complied with. In view of this, we don't find any fault in the order of 9-3-1988 of commencing inquiry against the applicant on the

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allegations of misconduct served upon him in 1984.

4. The learned counsel has, however, invoked the sympathy and mercy on the ground that time has since passed and that the applicant has been already under agony and suffered harassment. However, it is not so from the record. The misconduct was alleged in 1984. The applicant was punished by the order of 1986 which was quashed in September, 87. He was reinstated w.e.f. 5-1-1988 and the impugned order was issued on 9-3-1988. The present O.A. was filed in March, 89 when an interim direction was issued not to finalise the departmental proceedings.

5. The learned counsel has also argued that certain copies of documents be got summoned before the Tribunal but the Tribunal has not to make a roving inquiry. If the applicant applies to the respondents, it is expected that the respondents will dispose of such of prayer of the applicant according to Delhi Police (Punishment and Appeal) Rules, 1980, observing the principles of natural justice.

6. The learned counsel has also argued that the proceedings have gone ex-parte against the applicant but the Tribunal is not to sit as an appellate authority and the applicant can make representation in that behalf also to the disciplinary authority.

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7. The learned counsel has also argued about the order passed in June 1988 regarding the payment of salary and allowances for the period the applicant was under suspension and also when he was out of employment because of order of removal passed in 1986 till his reinstatement in January 1988. That order by the respondents is quashed. The respondents shall pass a final order after the completion of the inquiry under the provisions of FR 54(B) specifically laying down the treatment of the period when the applicant was under suspension and also for the period when he was out of job because of the order of removal till his reinstatement on 5-1-1988.

8. In view of the above facts and circumstances, the present application is partly allowed in the manner that the respondents shall expeditiously conclude the departmental inquiry against the applicant and also consider the various representations as observed in the body of the judgment, according to law, and observing the principles of natural justice affording adequate opportunity to the applicant, finalise the inquiry, if not already finalised and pass final order. If the applicant still feels aggrieved by any order and if so advised, may assail the same, according to law. The respondents shall also pass an order regarding the

treatment of the period of the applicant while under suspension as well as for the period when he was out of job because of the order of removal till his reinstatement on 5-1-1988. In the circumstances, the parties to bear their own costs.

S.R. Adige
(S.R.ADIGE)
MEMBER(A)

J.P. Sharma
(J.P.SHARMA)
MEMBER(J)

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