

Central Administrative Tribunal
Principal Bench: New Delhi

O.A.No. 448/89

New Delhi the 16th Day of September, 1994

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

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

1. Rohtas singh,
Head Constable 94/DAP
1st Battalion,
DAP, Delhi.
2. Shri Mohinder Singh,
Sub Inspector, D.776,
1st Battalion,
DAP, Delhi

... Applicants

(By Advocate: Shri J.P. Verghese)

Vs.

1. Union of India,
through 1st Chief Secretary,
Old Secretariate, Delhi.
2. Commissioner of Police,
Police Hqs.,
I.P. Estate,
New Delhi-110 002.

.... Respondents

(By Advocate: Ms. Veena Kalra proxy
for Shri B.N. Gobardhan)

O R D E R

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

The applicant i.e., Sub-Inspector Mohinder Singh and Head Constable Shri Rohtas Singh are employees in Delhi Police and were posted in 1st Battalion, DAP, Delhi. On 10-11.2.1988 SI Mohinder Singh approached HC Rohtas Singh and told him that 26 drums containing used black mobile oil were to be sent to OPL which had already come on record and the remaining 7 drums of black mobile oil would be sold a sent by them in the open market. 7 drums of used mobile oil were loaded in a truck and that was taken to Gulabi Bagh in Delhi and unloaded there. The

misconduct alleged against them is that the Government drums were removed without the permission of the senior officer. It is said that SI used this black mobile oil with a ulterior motive and with dishonest intention and without any authority. SI Mohinder Singh on 6.3.1988 took 12 drums containing used black mobile oil on the protest that he was going to deposit the same in OPL. These drums were brought back by SI Mohinder Singh on 18.3.1988 in a private tempo driven by Driver Daya Ram. An enquiry was ordered vide office order dated 7.4.1988 and Shri Jagdish Singh, ACP was appointed Inquiry Officer. After completing the departmental Inquiry upto the stage of charge and due to technical lacuna the case was referred to ACP Delhi for obtaining necessary permission under Rule 15(2) Delhi Police (Punishment & Appeal) Rules 1980 which was received by letter dated 6.1.1989. By this letter the departmental proceedings completed till that date had been cancelled and fresh orders for departmental Inquiry have been issued. So the fresh departmental inquiry ordered by the letter dated 12.1.1989. The Inquiry was entrusted to Shri J.P. Singh, ACP who framed the summary of allegation and served the same on the applicant on 31.1.1989.

2. The grievance of the applicant is that the respondents cannot issue second time the charge memo on the same cause of action and on the same ground. The applicants prayed for the grant of the relief:

The charge memo dated 31.1.1989 be quashed with the direction to the respondents to reinstate the petitioner forthwith with all consequential benefits.

3. A notice was issued to the respondents who contested the application and stated that the earlier departmental enquiry reached upto the stage of charge and because of some technical lacuna after obtaining the approval from the competent authority the de novo inquiry proceedings were initiated. The applicants are not at all prejudiced. The misconduct alleged against the applicants is the same. The competent authority can issue this charge memo again before the completion and conclusion of the Inquiry ordered earlier. The applicants have also filed the rejoinder reiterating the same facts.

4. Heard the learned counsel for the parties at length and purused the record. The contention of the learned counsel is that there is no provision in the Delhi Police Act 1978 to re-start the departmental Inquiry when once the summary of allegations have been served on on the delinquent and the enquiry has commenced. It shall, therefore, be presumed that the charge memo was cancelled and the proceedings against the applicants is dropped. The disciplinary authority has become functus officio after issuing the chargesheet earlier. On the same basis, it is argued by the learned counsel that the respondents could not have initiated a second departmental inquiry. The contention of the learned counsel has no force. The

misconduct alleged against the applicants have not yet been finally decided in the departmental inquiry. The Inquiry Officer has not even assessed the witnesses for framing a charge against the applicants. Since there was a lacuna of the absence of an order under Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 the Inquiry Officer has remitted the matter to the disciplinary authority. The competent authority after passing a formal order under Rule 15(2) directed the Inquiry Officer to proceed with the inquiry afresh. In fact the summary of allegations, the list of witnesses, the documents to be produced in support are almost the same. The applicants have not to suffer because of disclosure of any evidence on their behalf. Though there is no specific provisions in the rules and Rule 16 of the Rules do not envisage such a situation still there is an inherent power of the Inquiry Officer to point to the disciplinary authority any fatal defect in the proceedings of the Inquiry by referring the matter with a forwarding note. It was for the competent authority thereafter to pass necessary orders and if it was directed that the fresh charge be served almost with the same allegations that will not make departmental disciplinary inquiry commenced second time. The stage of the first inquiry is still continuing except that to be on the saffer side since there was no order under Rule 15(2) of the Rules, the competent authority thought it better to start the inquiry afresh. This is not a case where the allegations made against the applicants are different then those which

were in the earlier inquiry. In fact this is not the second inquiry but a continuing of the first with the serving of fresh memo of chargesheet on the applicants.

5. The learned counsel for the applicant has also argued that if the proceedings are initiated second time that will amount to double jeopardy, this is not so. The applicants have not either been exonerated or punished for the misconduct alleged against them. The applicants have only been served with summary of allegations and no report of the Inquiry Officer, nor even the charge was framed against the applicants so by no stretch of arguments it can be said that the applicants are tried second time for the same accusations. The learned counsel for the applicant has relied on the authority of Shyam Lal Vs. State of Uttar Pradesh reported in 1955 SCR P26. The case relates to compulsory retirement and has no application to the present case. The other authority relied by the applicant is the case of Jai Pal Singh Vs. Delhi Administration reported in 1988(2) CAT P 506 that is also a different case where the Inquiry Officer remitted the findings of not guilty against the charged officer and the disciplinary authority did not agree to the same and ordered de novo inquiry. The Tribunal considered the matter and held that Rule 16(X) of the Rules refers to further inquiry as supplementary inquiry and not de novo inquiry. In the present case the stage of agreement or disagreement with the Inquiry Officer has not reached at all.

6. The learned counsel has also referred to the fact that the order issued by the competent authority for starting a *de novo* Inquiry does not give any reason. The Additional Commissioner of Police, Delhi, by the order dated 6.1.1989 cancelled the departmental proceedings which were completed till then and ordered afresh departmental Inquiry which was commenced by the order dated 18.1.1989 and Shri J.P. Singh, Additional Commissioner of Police was directed for conducting the Inquiry from the initial stage. The respondents in the reply have fairly stated that permission under Rule 15(2) of the Additional Commissioner of Police was required and so the Inquiry was stayed for further orders to be passed by the Additional Commissioner of Police. This clearly goes to show that under Rule 15(2), a decision was taken whether to proceed against the applicants in a criminal case or a departmental inquiry be held. The misconduct alleged against the applicants is covered both as a criminal act as well as of misconduct. Therefore, the contention of the learned counsel that the order of the competent authority does not give any reason has not been substantiated.

7. On the other hand, there are a catena of decisions on the point that if first departmental inquiry is set aside on account of technical grounds, the second inquiry on the same is not barred. *Ravinder Singh Vs. State of Punjab & anr.* reported in 1986(1) SLR P 489. The Punjab and Haryana High Court has also relied on a decision in this case of the Hon'ble Supreme Court in the case of *State of Assam and anr.*

Vs. J.N.Roy Biswas AIR 1975 SC P 2277. The Hon'ble Supreme Court observed that no Government servant can urge that for some technical or other ground, procedural or other, the first inquiry or punishment or exoneration is found bad in law that a second inquiry cannot be launched. The Hon'ble Supreme Court clarified that only if a disciplinary case has closed and the official reinstated in full exoneration, the government cannot re-start the exercise in the absence of specific power to review or revise vested by rules in the same authority. In the present case the disciplinary case was never closed against the applicants because the Inquiry Officer only remitted the matter to the competent authority on findings a technical defect in the case. The learned counsel for the respondents also cited the case of Dinesh Kumar Vs. State of Uttar Pradesh decided by the Allahabad High Court reported in 1984(2) SLR P 465 holding that if the order of dismissal is quashed on technical grounds subsequently fresh proceedings can be started as earlier proceedings cannot be said to have been completed. The learned counsel for the applicant also placed reliance on the case of K.R. Dev Vs. Collectorate of Central Excise, Shillong reported in 1971(2) SCC P 102. The Hon'ble Supreme Court held that in a disciplinary inquiry the matter can be remitted by the competent authority for removing certain defects which have been crept in the proceedings of the earlier inquiry. In the case of Anand Narain Shukla Vs. State of Madhya Pradesh 1979 SC P 1923, a similar point was considered and it was held that if an earlier order passed in an inquiry was quashed on a technical ground on merit, a second inquiry

can be held. In this judgement the case of State of Assam Vs. J.N. Roy Biswas (Supra) has also been referred to. Thus, the law laid down by the Hon'ble Supreme Court in the K.R. Dev (Supra) giving absolute power to the Government to initiate departmental inquiry after removing any of the defects which have crept in the Article of Charges, summary of allegations etc.

8. It was held that in K.R.Dseb's case (Supra)

"It may be possible if in a particular case there has been no proper enquiry because some serious steps has crept into the inquiry or some important witnesses were not available at the time of the inquiry or not examined for some reasons, the disciplinary authority may asked the Inquiry Officer to record further evidence".

9. There is another decision of Delhi High Court in the case of Nahar Singh Vs. Union of India and ors. in LP Appeal No. 23/85 decided on 30.4.1991 where it has been held that the earlier orders were quashed on account of technical grounds not on merit, the inquiry can be held. In view of the above matter, it is evident that because of certain technical lacuna coming to the notice of the Inquiry Officer, the matter was remitted to the competent authority for necessary orders. The

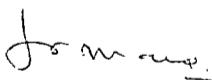
competent authoirty has the power to initiate departmental inquiry. It has rightly done in this case by according permission to hold inquiry there after serving summary of allegations on the applicants. No prejudice has been caused to the applicants.

10. The learned counsel, however, argued that certain facts have come on record in the earlier inquiry and if the same is not placed on the record, the case of the applicants will be prejudiced. In the interest of justice, the proceedings of the earlier inquiry will also form the part of the record of the supplementary inquiry. The applicants shall have a right to confront any part of the proceedings drawn earlier to the witnesses and also place before the Inquiry Officer in their defence statement etc.

11. In view of the above facts and circumstances, the application is totally devoid of merit and is dismissed. The stay order granted to the applicants on 3.3.1989 is vacated. Costs on parties.


(B.K. Singh)

Member(A)


(J.P. Sharma)

Member(J)

Mittal