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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 453 of 1989

This 23rd day of February, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

Kashmira Singh,
Qr. No.35, Police Station Delhi Lines,
Delhi.

..... Applicant

By Advocate: Shri Shyam Babu

VERSUS

1. The Delhi Administration, through
Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.
3. The Addl. Commissioner of Police,
Armed Police,
Police Headquarters,
New Delhi.

..... Respondents.

Through: Shri Oberoi, proxy for Shri Anoop Bagga
Counsel for Respondents

O R D E R (Oral)

(By Hon'ble Mr. J.P. Sharma, M(J))

A departmental enquiry was held against the applicant under Section 21 of Delhi Police Act along with one Constable Tanjeb Singh where the allegations were that while posted at Police Station, Delhi Cantt., they apprehended Shri Chajju Ram, his brother-in-law named Balram and Rohtas and brought them to Police Station on 9.12.83. It is also alleged that both these personnel beat them and extorted a sum of Rs.350/- as illegal gratification. After serving summary of allegations, a departmental inquiry was held by Inspector Bhom Singh who gave his findings that the allegations of handcuffing and beating the suspects could not be substantiated as well as the allegation of accepting illegal gratification has not been established.

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2. The disciplinary authority, Dy. Commissioner of Police, by the order dated 3.6.85 after agreeing with the findings of the I.O., exonerated both the police personnel in the aforesaid departmental inquiry. It appears that subsequently the Additional Commissioner of Police did not agree with the order of the Disciplinary Authority and gave a show-cause notice to the applicant on 18.6.86 taking cognisance suo moto. After considering the reply filed by the applicant, the Addl. Commissioner of Police reversed the findings of the Disciplinary Authority and disagreed with the findings of the Inquiry Officer and observed that the two police personnel brought the suspects to the Police Station, extorted Rs.300/- from Chajju Ram and after receiving this money the handcuffs were removed and the suspects were allowed to go which amounted to gross misconduct and therefore the punishment of forfeiture of 4 years approved service permanently of both the police personnel, the present applicant and Tanjeb Singh, was imposed by the order dated 14.12.87.

3. The applicant has assailed this order of 14.12.87. The Commissioner of Police exercising the powers under PPR 16.28 read with 16.32 issued another show-cause notice for enhancement of punishment to the present applicant, Kashmira Singh. So he wanted to review the punishment order proposing why he should not be dismissed from service. This order apparently appears to have been passed on an appeal filed by the applicant to the Commissioner of Police against the order of Addl. Commissioner of Police dated 14.12.87.

4. The applicant has prayed that the aforesaid punishment order of 14.12.87 and the show-cause notice dated 10.2.89 issued by the Commissioner of Police for enhancement of sentence of dismissal from service be quashed and the applicant be given all consequential benefits.

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5. The respondents in their reply have contested the application and opposed grant of reliefs on the ground that the Additional Commissioner of Police has exercised revisional powers under the provisions of Punjab Police Rules 1934 and the Commissioner of Police has exercised the powers vested in him for enhancing the sentence imposed by the Addl. CP while considering the appeal filed by the applicant.

6. We have heard the learned counsels for the parties. The applicant's counsel during the course of hearing placed before the Bench a copy of the order in O.A. 2444/88 decided on 13.3.92 (Constable Tanjeb Vs. Union of India & Ors.). In this case the Principal Bench has quashed the punishment imposed by the disciplinary authority by the order dated 14.12.87 giving all consequential benefits arising therefrom.

7. The learned counsel for the respondents argued that the observation made in the aforesaid judgment that the provisions of Rule 16.28 read with Rule 16.32 of PPR 1934 are subject of an issue for decision before the Hon'ble Supreme Court in another matter. The learned counsel has also placed before us a circular of September 1987 issued by Commissioner of Police whereby the provisions of PPR 16.28 are made applicable to the disciplinary inquiry proceedings pursued under Section 21 of Delhi Police Act 1978 and Delhi Police (Punishment & appeal) rules 1980. A photocopy of Rule 16.28 has also been placed on record where certain powers have been conferred on I.G. of Police, DIG of Police and SP to suo moto call for the records to look into the same and pass an order or make further investigation as the nature of the case warrants. The contention of the learned counsel therefore is that since PPR of 1934, so far they are not inconsistent with the Delhi Police (Punishment & Appeal Rules) 1980, shall mutatis mutandis apply to all disciplinary inquiries held under Section 21

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of the Delhi Police Act, 1978.

8. We have given anxious thought to the above perception placed before us. Firstly, the Delhi Police Act 1978 has totally repealed the Police Act of 1961 by virtue of Section 147 and 149 of the Act and further providing that the PPR 1934 shall not be applicable insofar as they are inconsistent with the provisions of the Act. The Delhi Police Act 1978 has also delegated powers for framing of rules under which different sets of rules have been framed and one of them is Delhi Police (Punishment & Appeal) Rules 1980. These rules themselves provide elaborate procedure for conducting an enquiry, the mode and manner in which inquiry officer will conduct himself and that how defence shall be taken into account including the previous conduct of the delinquent. The disciplinary authority as well as appellate authority has also been specified. But the rules are silent on the point whether any suo moto action can be taken in a case where the disciplinary authority on the findings of the inquiry officer has already exonerated the delinquent police personnel proceeded against.

9. We do not want to further dilate this matter as it has already been considered in the judgment of OA No.2444/88 and also by the Hon'ble Supreme Court in the case of Yogendra Pal Singh Vs. Union of India reported in AIR 1987 SC 1015. Thus the powers exercised by the Additional Commissioner of Police and subsequent thereto by the Commissioner of Police are without jurisdiction and are arbitrary and cannot be substantiated under the provisions of law.

10. The learned counsel for the respondents also argued that the judgment of Tanjeb Singh is only a judgment concerning that applicant and it has no bearing on the case of the present applicant, Kashmira Singh inasmuch as the act assigned to each of

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them has been alleged to be different in the statements of the witnesses recorded in the proceedings of inquiry. He therefore argued that in spite of the application of Tanjeb Singh having been considered and allowed by the Tribunal by the order dated 13.3.92, the case of Kashmira Singh cannot be treated on the same lines as has been in the case of Tanjeb Singh. The basic rule of jurisprudence is that justice should not only be done but it should seem to be done. When two persons are jointly tried and punished by the same penalty on the basis of same accusations and charges, then after subsequently one of them gets relieved by quashing of punishment order imposed upon him, then in the subsequent consideration of the case of the other jointly tried delinquent, he has to be treated on the same parity as the former one. The judgment in the case of Tanjeb Singh has become final and has not been assailed by the respondents by way of SLP before the apex court. It is not disputed that the charges and accusations against Kashmira Singh are same and similar as has been against Tanjeb Singh.

11. Thus the applicant, Kashmira Singh, irrespective of our findings in the foregoing paragraphs of this order, deserve the same benefits as have been awarded by the Tribunal to Tanjeb Singh in its judgment dated 13.3.92.

12. In view of the above facts and circumstances the present application is allowed and the impugned of punishment dated 14.12.87 and the show-cause notice dated 10.2.89 for enhancement of sentence are quashed and set aside and the applicant shall be treated as has never been punished entitling him to all consequential benefits, viz. pay, allowances, promotion etc.

There will be no order as to costs.

(B.K. Singh)
Member (A)

(J.P. Sharma)
Member (J)