

Central Administrative Tribunal  
Principal Bench: New Delhi

OA No.669/89

New Delhi this the 9th Day of March, 1994.

Shri N.V. Krishnan, Vice-Chairman(A)  
Shri B.S. Hegde, Member (J)

Braham Singh,  
r/o 1/3629 P.O. Gali,  
Ram Nagar, Loni Road,  
Shahdara

...Applicant

(By Advocate Shri J.P. Verghese, though none appeared)

Versus

1. Delhi Administration,  
through its Chief Secretary,  
Old Secretariat  
Rajpura Road,  
Delhi.
2. Commissioner of Police,  
Police Headquarters,  
I.P. Estate,  
New Delhi 110 002. ....Respondents

(A.S.I. Lal Behari, departmental representative)

Order(Oral)

Mr. N.V. Krishnan:

This case is listed at serial No.5 in today's cause list for peremptory disposal. Hence, we have perused the record and proceed to pass final orders.

2. The applicant is an Assistant Sub Inspector of Police in the Delhi Police. His grievance is that a second chargesheet on the same cause of action has been framed against him and a disciplinary enquiry is now instituted against him. He has, therefore, prayed for the following directions:-

"(a) DIRECT the Respondents not to proceed against the petitioner for the second time on identical cause of action and set of facts.

(b) QUASH the charge-sheet dated 8.1.86 and 10.2.1989.

(c) DECLARE Rules 15 and 16 of the Delhi Police Punishment & Appeal Rules, 1978 ultra vires to Sections 21, 22, 147 and 148 of the Delhi Police Act."

3. The brief facts giving rise to this grievance are as follows:-

3.1 The disciplinary proceedings were initiated against the applicant by the issue of summary of allegations with the memorandum dated 21.5.83 (Annexure I). After considering his reply dated 11.7.83 (Annexure-II), a charge as in Annexure-III was issued to him. As the charge was denied by the applicant in his reply, an enquiry was conducted and the findings of the enquiry officer dated 13.2.85 are at Annexure-V. A notice (Annexure VI) dated 23.2.85 was issued to him to show cause why he should not be dismissed from service. The applicant filed a reply on 15.3.85 (Annexure-VII). This reply was considered by the disciplinary authority - Deputy Commissioner of Police, East District, Delhi. It was noted by this officer that there was a procedural defect and hence he issued the order dated 13.9.85 (Annexure VIII), a relevant extract of which is reproduced below:-

"I have carefully considered the explanation of ASI in the light of facts, evidence on record and circumstances of the case. The ASI was also heard in person on 10.5.85. On thorough perusal of the D.E. file, it has been found from the allegation levelled against the defaulter ASI that action as envisaged under rule 15(2) of Delhi Police (Punishment & Appeal) Rules,

1980 was required to be taken. Thus the entire proceedings of the D.E. have been vitiated. No final order can, therefore, be passed on the reply of the defaulter ASI Brahm Singh No.979/L.

In view of the above discussion, I drop the DE proceedings. Action as envisaged under rule 15(2) of Delhi Police (Punishment & Appeal) Rules, 1980 have been taken and therefore, afresh Departmental Enquiry will be initiated accordingly against ASI Brahm Singh, 979/L. Let the ASI be informed accordingly."

3.2 In pursuance to this direction a fresh summary of allegation was issued to the applicant with the memorandum dated 8.1.86 (Annexure IX) and a charge (Annexure X) was issued to him. It is at this stage that the applicant filed this O.A. seeking the above reliefs.

3.3 The principal ground on which the reliefs are sought is that the second chargesheet is on the basis of the same cause of action, same set of facts, the same allegations and, therefore, the respondents cannot proceed with the second departmental enquiry. It is contended that there is no provision in the Delhi Police (Punishment & Appeal) Rules, 1980 for initiating such action.

3.4 The applicant has also challenged the vires of Rules 15 and 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 as being ultra vires of Sections 21, 22, 147 and 148 of the Delhi Police Act.

4. The only question for consideration is whether in the above circumstances, the disciplinary authority was competent to hold that the earlier proceedings in the D.E. stand vitiated, as the sanction or order required to be taken under Rule 15(2) had not been taken and that, therefore, no final order

could be passed on those proceedings and to further direct that the earlier proceeding be dropped and the fresh proceedings be initiated, as the sanction under Rule 15(2) of the Rules has now been taken.

5. We have carefully considered the matter. It is always open to the disciplinary authority to take such a decision if it is found that the proceedings conducted at a particular stage are vitiated by the absence of jurisdiction. The disciplinary authority found that as sanction under Rule 15(2) has not been taken the proceedings initiated earlier were without sanction and hence vitiated. It was, therefore, open to that authority to cancel those proceedings. In the circumstances, we find that there is no irregularity in the order issued by the disciplinary authority at Annexure VIII and, therefore, the Annexure IX, summary of allegations dated 8.1.86 and charge dated 10.2.89 (Annexure X) cannot be assailed on the ground raised in the O.A.

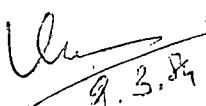
6. In so far as the challenge to the vires of Rule 15 and 16 is concerned, we are not satisfied about the grounds on which this challenge has been made. What is contended is that after the charge is framed, there is no provision requiring the Department to establish the charge framed.

7. Perhaps, this ground is based on the consideration that under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, after the charge is framed, it has to be first established by witness for the Department before the delinquent is asked to enter upon his defence.

8. The rules under consideration and the CCS(CCA) Rules, 1965, are structurally different from each other. In the former set of Rules, the provision is for a summary of allegations to be made after a preliminary enquiry in which the delinquent may remain present but cannot cross-examine witnesses. Thereafter, witnesses are examined in the presence of the delinquent who can cross-examine them. It is on the basis of these proceedings that a charge is framed and then the Police official is given an opportunity to defend himself. We do not see how these provisions are bad in law. In our view, they satisfy the requirements of Art.311(2) of the Constitution as well as any other set of Rules. Therefore, the challenge to Rules 15 and 16 is without any basis.

9. In the circumstance, this O.A. is liable to be dismissed. We order accordingly. We also vacate the interim order issued on 4.4.1989 in this case. No costs.

  
(B.S. Hegde)  
Member(J)

  
9.3.81  
(N.V. Krishnan)  
Vice-Chairman(A)

Sanju.