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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.544/86

Date of decision: 19.2.1992

Shri Jagtar Singh

.... Applicant

Versus

Commissioner of Police, Delhi.... Respondents

For the Applicant

.... Shri B.S. Charya, Advocate

For the respondents

.... Smt. Avnish Ahluwati, Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The question whether the appellate authority has the power of suo motu review in a departmental enquiry, is in issue in this case. The same issue had been considered by this Tribunal in its judgments dated 20.7.1990 in DA-51/90 (Om Prakash Vs. Union of India) and dated 22.3.91 in DA-1760/90 (Arjun Singh Vs. Commissioner of Police) and held that the appellate authority has no such power.

2. In the instant case, the applicant, while working as Assistant Sub-Inspector of Police, was issued a charge-sheet on 24.9.1984 containing the following charge:-

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"I, Parbhati Lal Nimbhal, Assistant Commissioner of Police, Paharganj Delhi hereby charge you ASI Jagtar Singh No.5151/C and Const. Harbans Lal No. 235/C that on 17.6.83 you stopped a private three wheeler scooter driven by one Sh. Ashok Kumar s/o Sh. Dush Raj R/o B-1/108, Phase II, Ashok Vihar, Delhi near Parshad Nagar and asked him to take you to police post Tank Road. On his refusal to oblige you, you took him to the police post Tank Road by force and left him with the consideration of Rs. 100/-.

The above criminal acts on the part of you ASI Jagtar Singh and Const. Harbans Lal during the course of discharge of your official duties which make both of you liable for departmental action u/s 21 of Delhi Police Act read with Rule 15 of the Delhi Police Punishment and Appeal Rule, 1980."

3. The applicant denied the allegations. Thereafter, a departmental enquiry was held against him under Section 21 of the Delhi Police Act, 1978, as a result of which the Deputy Commissioner of Police imposed on him the punishment of censure, by orders dated 30.7.1985. The applicant did not prefer any appeal against the aforesaid order. However, on 14.11.1985, he was served with a show-cause notice dated 14.11.1985 by the Additional Commissioner of Police, the Appellate Authority in his case, stating that he had set aside the order of the Dy. Commissioner of Police dated 30.7.1985 by virtue of powers allegedly vested in him under P.P.R. 16.28 read with Delhi Administration Letter No.11060-99/CR-I dated 7.7.83 and consequently the applicant was called upon to showcause as to why his 3 years' approved service be

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not forfeited permanently entailing reduction in his pay. The Additional Commissioner of Police thereafter passed the impugned order dated 5.3.1986 imposing the punishment by enhancement to forfeiture of one year's approved service permanently entailing reduction in the pay of the applicant from Rs.338 to Rs.330 w.e.f. the date of issue of the order. This has been challenged before us.

4. We have carefully gone through the records of the case and have heard the rival contentions. The power of the appellate authority in respect of the members of Delhi Police is dealt with in Section 23 of the Delhi Police Act read with Rule 25 of the Delhi Police (Punishment & Appeal) Rules, 1980. Section 23 of the Act provides, inter alia, that an appeal against any order of punishment passed against a Police Officer, shall lie to the authorities mentioned therein. In view of this provision, in the instant case, the appeal lies to the Additional Commissioner of Police. Rule 25 of the Delhi Police (Punishment & Appeal) Rules, 1980 deals with the orders that may be passed on appeal. This Rule reads as follows:-

"25. The Orders on Appeal

(1) On appeal, the appellate authority may:

- (a) confirm the impugned order; or
- (b) accept the appeal and set aside the punishment order; or
- (c) reduce the punishment; or

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(d) disagree with the disciplinary authority and enhance the punishment after issue of a fresh show cause notice to the appellant and affording him a reasonable opportunity (including personal hearing if asked for) against the proposed enhancement.

(2) Every order passed on appeal shall contain the reasons therefor. A copy of every appellate order shall be given free of cost to the appellant".

5. It will be noticed that the aforesaid rules do not empower the appellate authority to review or revise the order of disciplinary authority suo motu.

6. The aforesaid provision may be contrasted with the provisions of the CCS(CCA) Rules, 1965, which expressly provide for revision and review (vide Rules 29 and 29A).

7. The question arises whether the appellate authority can be said to have any inherent power in this regard. In our opinion, the theory of inherent power does not apply to quasi-judicial bodies, such as, the appellate authority under the Conduct Rules.

8. We may now consider the question whether in the absence of an express repeal of the provisions of PPR 16.28 and 16.32 of the Punjab Police Rules by the Delhi Police (Punishment & Appeal) Rules, 1980, the appellate authority can invoke the powers under the said rules.

9. Section 149 of the Delhi Police Act, 1978, provides, inter alia, as follows:-

"Cesser of operation of certain enactments and savings.

(1) On the commencement of this Act the enactments specified in Schedule II shall cease to be in force in Delhi:

Provided that -

(1) all rules and standing orders made (including the Punjab Police Rules, as in force in Delhi), appointments made, powers conferred, orders made or passed, directions and certificates issued, consent.

"permit, permission or licence given, summons or warrants issued or served, persons arrested or detained or discharged on bail or bound search warrants issued, bonds forfeited and penalties incurred under any such enactment shall, in so far as they are consistent with this Act, be deemed to have been respectively made, conferred, passed, given issued, served, arrested, detained, discharged, forfeited or incurred under this Act".

10. Section 147 of the Delhi Police Act, 1978, empowers the Administrator to make the rules for carrying out the purposes of the Act including awarding of any of the punishments referred to in sub-section(1) or sub-section(2) of Section 21 of any Police Officer of subordinate rank and the procedure for awarding punishment under Section 22. The Delhi Police (Punishment & Appeal) Rules, 1980 have been made in exercise of the aforesaid powers conferred by Section 147 of the Delhi Police Act, 1978.

11. The Delhi Police (Punishment & Appeal) Rules, 1980 are self-contained and comprehensive. The said rules do not contain any 'repeal and saving' clause as in the case of the Delhi Police (Promotion & Confirmation) Rules, 1980, which have also been made in exercise of the powers conferred by Section 147 of the Delhi Police Act. Rule 22 of the Delhi Police (Promotion & Confirmation) Rules, 1980 which

deals with 'repeal and savings' stipulates that "all provisions contained in the Punjab Police Rules is applicable to the Union Territory of Delhi relating to Promotion and Confirmation of employees are hereby repealed subject to the provisions contained in the proviso to sub-sections (1) and (2) of Section 149 of the Delhi Police Act, 1978". A corresponding provision has not been included in the Delhi Police (Punishment & Appeal) Rules, 1980.

12. Neither the Delhi Police Act, 1978, nor the Delhi Police (Punishment & Appeal) Rules, 1980 contain a provision for suo motu revision and review. To our mind, the provisions of PPR 16.28 and 16.32 of the Punjab Police Rules dealing with the powers of review and revision cannot be invoked by the appellate authority after the coming into force of the Delhi Police (Punishment & Appeal) Rules, 1980. As has been observed by the Supreme Court in *Yogender Pal Singh Vs. Union of India*, AIR 1987 SC 1015, "it is well settled that when a competent authority makes a new law which is totally inconsistent with the earlier law and that too cannot stand together any longer, it must be construed that the earlier law had been repealed by necessary implication by the later law". Accordingly, the Supreme Court rejected the contention that Rules 12.14 and 12.15 of the Punjab Police Rules could be

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invoked by the respondents in view of the provisions of Delhi Police (Punishment & Recruitment) Rules, 1980.

13. In the light of the aforesaid legal position, we are of the opinion that the applicant is entitled to the relief sought by him.

14. Accordingly, we set aside and quash the impugned order dated 5.3.1986 whereby de novo departmental enquiry was initiated against the applicant. We, however, make it clear that the penalty of censure imposed on the applicant by the disciplinary authority will stand. The application is disposed of with the above directions.

There will be no order as to costs.

B. N. Dheundiyal
(B.N. Dheundiyal)
Administrative Member

Kartha
19/2/82
(P.K. Kartha)
Vice-Chairman(Judl.)