

Q.A. No. 1396/1987 & 1370/1987

DATE OF DECISION 26.4.89

SHRI JAGDISH RAM KATARIA

....APPLICANT

VS.

UNION OF INDIA & OTHERS

....RESPONDENTS

CORAM

SHRI B.N. JAYASIMHA, HON'BLE VICE-CHAIRMAN

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

....IN PERSON

FOR THE RESPONDENTS

....SMT. AVNESH AHLAWAT

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not? *Q.S.*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, Sub-Inspector (Executive) in the Office of the Deputy Commissioner of Police, Special Branch, Delhi under suspension filed the application No. 1396/87 on 5.10.1987 aggrieved by the show-cause notice dated 18.9.1987 wherein the applicant has been asked to

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explain why he should not be dismissed from service and his suspension period from 24.3.1983 to the date of the final order in the enquiry under Section-17 of Delhi Police (Punishment and Appeal) Rules, 1980 may not be treated as not spent on duty.

2. The applicant in the O.A. claimed the following reliefs :-

- (A) The respondents be directed to vacate the impugned Show Cause Notice No. 9030/CR-SB dated 18.9.1987 and to reinstate the petitioner in service with treating him on duty for all purposes for the whole suspension period.
- (B) The respondents be restrained to conduct any other or further departmental proceedings against the petitioner on the same facts.
- (C) The Contempt Proceedings under Section 12 of the Contempt of Courts Act 1971 be ordered against the respondents;
- (D) The respondents No.1 be directed to initiate the action in accordance with his order No. G.I. M.H.A. O.M. NO. F.2/9/959-Ests (A) dated the New Delhi 27th May, 1961 as amended by O.M. of even no. dated the New Delhi 30th May, 1962 against the authority which before dismissing the petitioner from service, either wilfully did not observe or through gross negligence failed to observe the 'proper procedure' during the course of departmental proceedings.

3. In O.A. No.1370/87 filed on 24.9.1987, the above named applicant is aggrieved by the order of respondent No.2 dated 24.6.1983 communicated to the petitioner only in 1987 by which the respondent re-opened the said case by the order dated 15.4.1987 and the order dated 24.7.1987 issued by D.C.P., Special Branch on behalf of Additional C.P./C.I.D., Delhi.

4. The applicant in this O.A. claimed the following reliefs :-

- (a) Quash the order dated 24.6.1983 communicated to the petitioner after four years as illegal, malafide and done on extraneous considerations.
- (b) Restrain the Respondents from proceeding with the said inquiry.
- (c) Pass such other further order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Both these orders pertain to holding of a departmental enquiry against the applicant.

5. In O.A. No.1370/87, the enquiry has almost concluded and the applicant has been given a show-cause notice on 18.9.1987.

6. The applicant in both the above numbered Original Applications moved MP No.116/90 dated 8.1.1990 that

he may be allowed to draw both the applications, but subsequently he did not press this petition and it was rejected by the order dated 30.1.1990.

7. In the O.A. 1370/87, the relief claimed by the applicant is only that the order dated 24.6.1983 be quashed and the respondents be restrained from proceeding with the said enquiry. The enquiry has since been completed and the show-cause notice has already been issued on 18.9.1987 to the applicant.

8. Since both the Original Applications pertain to the same applicant and involve the same question whether the respondents have a right to proceed with the enquiry against the applicant, and as alleged by the applicant, the procedure adopted by the respondents is not warranted by law as laid down in Delhi Police (Punishment and Appeal) Rules, 1930, the respondents are not within their rights to pass any punishment or otherwise deal with the reports of the Inquiry Officers. We are disposing of these applications by a common order.

9. We have heard the applicant in person and the learned counsel for the respondents at length.

10. In O.A. 1396/87, it appears that the applicant is accused of misconduct relating to 19.11.1988 when he gave out that he will not report for duty on gazetted holidays unless he is granted compensatory leave or pay for working on the holiday and absented himself on 19.11.1982. Further, there is also another accusation that on 18.12.1982, the applicant circulated certain cyclostyled handbills highlighting the grievances of the Police Force and instigating them to form a union and as such the applicant has committed misconduct punishable under Section-21 of the Delhi Police Act, 1978. The applicant earlier filed a Civil Suit in the Civil Court of Delhi No.787/85 for a declaration of injunction which stood transferred under Section-29 of the Administrative Tribunals Act, 1935 and was registered as T.A. No.404/86. This Transferred Application was decided by the Tribunal by the order dated 2.1.1987 and the operative portion is at p-65 of the paper book and is reproduced below :-

"We, therefore, allow the petition, set aside the impugned orders and direct the respondents to initiate the departmental enquiry afresh strictly in accordance with the Police Act and

the relevant Rules keeping in view the observations made in this order. The petitioner should give his utmost co-operation to the departmental enquiry and the proceedings following thereon. The petitioner should be reinstated in service with effect from the date of his dismissal on 24.8.1989 but he should be considered to be under suspension from the date of his reinstatement till the disciplinary proceedings are completed. These proceedings should be completed as far as possible, within a period of three months. The petitioner will be at liberty to see redressal from appropriate forums departmental or otherwise, if so advised, in accordance with law. There will be no order as to costs."

After the delivering of this judgement, the proceedings were recommenced by the Deputy Commissioner of Police,

Special Branch, placing the applicant under suspension and appointing Mr. Behl, C.P., Special Branch to conduct the enquiry against the applicant. The applicant was given all the documents etc. on 1.4.1987 along with the summary of allegations and there is a receipt available in the departmental file produced before us under the signature of the applicant. The applicant was allowed to cross-examine all the witnesses and the proceedings lasted till 6.8.1987 after which a charge was framed against the applicant as required

under Section-16 Sub-Clause IV(b) of the Delhi Police (Punishment and Appeal) Rules, 1980. The applicant was asked to give his defence statement and list of witnesses out of his 7 witnesses who were summoned.

After going through the statement of defence dated 2.9.1987, the Inquiry Officer submitted the report to the Disciplinary Authority on 7.9.1987 on which the Disciplinary Authority issued the impugned show-cause notice dated 18.9.1987. The applicant has replied to the notice by the petition dated 7.10.1987. The Disciplinary Authority also permitted the applicant to place his case, if he so desires, personally for him.

11. The grievance of the applicant is that the enquiry proceedings have not started according to the rules, but we have gone through the record minutely and Section-16 Sub- Clause (iii) is relevant which is reproduced below :-

"If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take

notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements or documents thus brought on record."

The applicant wants to draw analogy with Rule 14 of

C.G.S. (C.C.A.) Rules, 1965, but the procedure to be

adopted has been specifically laid down in Rule 16 of

the Delhi Police (Punishment and Appeal) Rules, 1980.

The applicant has not challenged the vires of these rules.

We have seen the departmental file and in that the order of remand passed in T.A. 404/86 on 2.4.1987 appears to have been substantially complied with. We do not want to enter into the merits at this stage regarding the various points raised against the show-cause notice.

The applicant shall have a right to come before the Tribunal in the event a final order is passed against him.

12. Similarly in C.A. 1370/87, the applicant is alleged to have committed misconduct by coming late on two occasions, i.e. on 11.12.1982 and 14.12.1982 and also that he absented himself from duty on 21.11.1982.

The departmental enquiry was ordered against the applicant by the order dated 24.6.1983 No.5101-5/CR-SB. However, soon thereafter the applicant was dismissed from service in an earlier enquiry on 24.8.1983, i.e., after 2 months. So the enquiry proceedings against the applicant could not commence and they remained pending.

The applicant has challenged the order of dismissal dated 28.4.1983 in the Civil Suit No.787/85 before the Civil Court which was transferred to the Tribunal and registered as T.A. No.404/86. This T.A. was decided on 2.4.1987 and the matter was remanded for fresh enquiry

against the applicant. When the enquiry was commenced on the basis of the remand order passed in T.A.404/86 on 15.4.1987, the present enquiry was revised against the applicant and Shri Munshi Ram, A.G.P. was appointed as Inquiry Officer. The applicant was given all documents and summary of accusations which he received under his signature on 23.7.1987. The applicant filed an appeal against that on 24.7.1987, but to no effect. After the statement of the witnesses were recorded under Rule 16 Sub-Clause (iii) of the Delhi Police (Punishment and Appeal) Rules, the applicant was chargesheeted on 7.8.1987 and the copy of the charge sheet was delivered to him on 12.8.1987. The applicant joined the enquiry proceedings and cross-examined the witnesses and submitted his statement of defence on 2.9.1987.

The Inquiry Officer Shri Munshi Ram gave the enquiry report on 8.9.1987. On the basis of the enquiry report, show-cause notice dated 18.9.1987 was issued to the applicant to submit his explanation within 15 days and also he was advised that he will be given, if desired by him, the personal hearing.

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13. The applicant now wants to get a direction that the enquiry be not commenced against him, but we do not find any justified reason because there is evidence which has already been recorded against the applicant within his presence and the Enquiry Officer had already submitted his report. The learned counsel for the respondents has placed reliance on the judgement of the Hon'ble Supreme Court reported in 1987 Judgement Today Vol. I & II p-571-State of U.P. Vs. Shri Brahm Dutt & Others where it is held that the High Court was not justified in quashing the show-cause notice. When a show-cause notice was issued to a Government servant under a statutory provision calling upon him to show-cause, the Government servant must place his case before the authority concerned by showing cause. The purpose of issuing show-cause notice is to afford opportunity to the Government servant and once cause is shown, it is upon the Government to consider the matter in the light of the facts and and submissions placed by the Government servant and only thereafter a final decision in the matter would be taken. Interference by the court before that stage would be premature.

14. The applicant has also placed certain case law, but that is not relevant as the same is based on either of the provisions of Rule 14 of C.C.S. (C.C.A.) Rules, 1965 or in cases where final order has been passed. It is of no use to discuss each and every case law referred by the applicant.

15. The respondents shall pass the final order and if the applicant is still aggrieved, the applicant can assail that order under law. There is no justification to interfere at this stage and both the applications are liable to be dismissed at the admission stage itself.

16. The applicant has also moved an MP regarding his suspension. But in view of the direction given to the respondents herein below, the MP is disposed of accordingly.

17. Both the applications are dismissed as devoid of merits. The stay order is vacated. The respondents shall consider the representation of the

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applicant on the show-cause notice if he had already submitted and if not submitted, allowing him a further time of one week from the date of this order, and give him personal hearing, if he so desires and pass further orders under rules. The parties shall bear their own costs.

(J.P. SHARMA) 26.4.91
MEMBER (J)

(B.N. JAYASIMHA)
VICE-CHAIRMAN