

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 477
T.A. No.

1987

DATE OF DECISION 3-12-1987

SHRI SHOORVIR SINGH

Petitioner

Shri S.C.Gupta, Senior Counsel Advocate for the Petitioner(s)
with Shri Aravind Gupta

Versus

Lt Governor Delhi & Others

Respondent

Shri M.M.Sudan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Member (A)

The Hon'ble Mr. Ch. Ramakrishna Rao, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *NO*

Ch. Ramakrishna Rao
(CH. RAMAKRISHNA RAO)

S.P. Mukerji
(S.P. MUKERJI)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI

OA 477/87

December 3, 1987

Shri Shoorvir Singh ... Applicant

vs.

Lt Governor Delhi & Others ... Respondents

CORAM:

Hon'ble Mr. S.P. Mukerji, Member (A)

Hon'ble Mr. Ch. Ramakrishna Rao, Member (J)

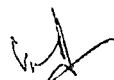
For the applicant: Shri S.C. Gupta, Senior
Counsel with Shri Aravind Gupta

For the respondents: Shri M.M. Sudan, Counsel

(Judgment of the Bench delivered by
Hon'ble Shri Ch. Ramakrishna Rao, Member)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985.

2. The facts giving rise to the application are briefly as follows: The applicant is an Inspector of Police in Delhi Police. At the time of the assassination of the former Prime Minister Smt. Indira Gandhi on 31-10-1984, he was posted as Station House Officer (SHO) at Kalyanpuri Police Station. In the wake of the assassination, widespread riots broke out in several parts of Delhi particularly in East Delhi. At about 11 p.m. on 2-11-1984, Shri Sewa Das, Deputy Commissioner of Police (DCP) East Delhi, placed the applicant as also Shri Jagti Ram, ASI, who was working as Deputy Officer (DO) and Shri Munshi Ram, Constable, under suspension for dereliction of their duties in not taking immediate action when information of



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riot, arson and killing was given to them nor did they inform any senior officer about the same. On 2-11-1984, a FIR was registered against the applicant, being FIR No. 425/84, at Kalyanpuri Police Station, alleging criminal misconduct on his part inasmuch as he had not taken proper and timely action when the riots occurred. He was also placed under suspension by a note recorded in the Daily Diary by the DCP himself at 11 p.m. This was followed by a formal suspension order issued by the DCP on 8-11-1984. In both these orders, the suspension was on the same ground on which the FIR had been lodged. On 6-9-1986, the Court of Additional Sessions Judge, after examining the details of the case, discharged the applicant on the ground that there was no sanction for prosecution under section 197 Cr.P.C., that the proceedings were time-barred under section 140 of the Delhi Police Act, and there was no adequate evidence to sustain the charge. Consequently, the applicant's suspension was revoked and he was reinstated on 1-10-1986. On 7-11-1986, Departmental Enquiry (DE) was ordered against him by the Additional Commissioner of Police(R), Delhi, (ACP). On 20-11-1986 he was transferred and posted at Palam Airport. An order dated 9-1-1987 was also passed by the ACP placing the applicant under suspension pending the order against him on 7-11-1986. DE/ Aggrieved by these two orders, the applicant has filed this application.

3. Shri S.C.Gupta, learned counsel for the applicant, strenuously contends that his client initially remained under suspension for about two years. and



the action of the respondents in placing him again on suspension was wholly unjustified. Shri Gupta maintains that an order of suspension has far reaching repercussions on the career of his client and it cannot be passed lightly by the respondents at their whim and caprice. According to Shri Gupta, the order of suspension is violative of the guidelines prescribed in the Standing Order No.123 dated 20-5-1964 issued by the Inspector General of Police, Delhi, as also the Government of India's decisions on the subject. As such, it is arbitrary and is liable to be struck down.

4. Shri M.M. Sudan, learned counsel for the respondents, on the other hand, contends that placing an officer under suspension is not in the nature of a punishment and the respondents were justified in placing the applicant under suspension pending the finalisation of the DE.

5. We have considered the rival contentions carefully. We have no doubt in our mind that if there are administrative instructions or guidelines having statutory force, the same will have to be followed by the authorities concerned in view of the adverse impact that an order of suspension is likely to have on the delinquent. A Division Bench of the Kerala High Court in VEERAMANI VS. STATE OF KERALA 1983(3) SLR page 281, while considering the consequences of an order of suspension, has observed as follows:

"The passing of an order of suspension of any public servant is a matter of important consequences not only so far as the public servant is concerned but

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as regards the satisfactory discharge of the duties by the members of a service and therefore so far as the public interest is concerned, it affects the reputation of the public servant and if unjustifiably passed it affects his morale apart from the fact that it deprives him of his full emoluments and the right to work. It affects the efficiency of the service as well as security of service. As far as the Police Force is concerned, demoralising it and making it ineffective and inefficient has the result of rendering the rule of law envisaged by the Constitution a mockery. This being so it is necessary that such power is exercised with caution and only for valid reasons and not for extraneous considerations."

on the subject
This decision and other decisions were followed by
a Single Judge of the same High Court in N.J.SAJIVE
VS THE ASSTT.COLLECTOR AND OTHERS 1983(3) SLR page
276, who, in the course of his Judgment, observed:

"May be that the guidelines and instructions have not been prescribed or laid down under any statute, even then the Government and the competent authorities are bound to follow the same as long as they are in force. Ext.P3 does not contain any reason as such."

Ex P3 referred to in the passage extracted above was a copy of the order of suspension in that case which was under challenge. As held by this Tribunal in Dinesh Singh vs Union of India 1986(2) SLJ (CAT) page 266 the object of suspension is to safeguard any kind of tampering of evidence by the delinquent. It has also been held in ABULAIIS KHAN VS STATE OF WEST BENGAL 1986(2) SLJ 134 (CAT) that when there is no scope for the delinquent to interfere in the smooth progress of the enquiry or the trial, an order of suspension should be revoked.

6. Thus, the touchstone on which an order of suspension will have to be tested is the possibility or otherwise of the accused or the delinquent officer

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tampering with the evidence. The guidelines have been set out in Standing Order No. 123 dated 20-5-1964 (SO). The relevant portions of the SO are extracted below:

"2. Suspension not being the rule but only an exception, the power to suspend should be very sparingly exercised. Normally, a police officer against whom disciplinary proceedings are contemplated or are pending, should not be placed under suspension except when the allegations and the prima facie evidence in support thereof are such as to lead the appointing authority to a positive conclusion that the proceedings are likely to end in the award of one of the major punishments to the police officer concerned.

3. Even in cases covered by the preceding paragraph, suspension should be ordered only when a fair and a proper enquiry into the allegations is not possible, if the police officer is allowed to continue in office, e.g. when he is likely to tamper with the evidence, etc. In determining whether an enquiry will or will not be prejudiced by the continuance of the police officer in office, it should be specifically examined, whether the desired object cannot be served by transferring the police officer to some other unit or office or the Lines.

..... 7 Ordinarily such extension of time will not be granted for more than a further period of three months. This permission will, however, have to be obtained before the period of six months from the date of suspension expires." (Emphasis supplied).

Applying the SO to the present case, the applicant was earlier acquitted by the criminal court, not only on the ground that sanction to prosecute the applicant was not obtained under section 197 Cr.P.C. but also on the ground that the evidence was insufficient to enable a charge being framed against him and it cannot therefore be said that there was prima facie evidence to lead to the conclusion that the DE would end in the award of one of the major penalties to the applicant. Nor is there any scope for the applicant to tamper with the evidence since the investigation is already over. Further, the applicant was also transferred from Kalyanpuri Police Station to Palam Airport Police Station and this is

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a sufficient safeguard as mentioned in the Standing Order No.123 dated 20-5-1964 against any tampering of the evidence by him. We are, therefore, satisfied that the order dated 9-1-1987 placing the applicant under suspension pending the DE is

~~illegal as it offends the provisions of the SO.~~

7. Turning to the order dated 6-11-1986 initiating the DE against the applicant by the ACP, the contention of Shri Gupta is that it is based on the report of the preliminary enquiry (PE) ordered by Shri Sewa Das, DCP, on 30-11-1984; that the said Sewa Das was none other than the officer who placed the applicant along with two others under suspension with effect from 2-11-1984; that no proceedings were taken against the two others but only against the applicant; that the PE was held only against the applicant as an anticipatory defence sought to be built up by the applicant's superior officers and in particular Shri Sewa Das against whom a written complaint was sent on 5-11-1984 by one Shri Rahul Kuldip Bédi, a journalist, alleging that he had failed to take adequate action in spite of information being given to him and the ACP Shri H.C. Jatav and, in view of these facts and circumstances, the DE against the applicant was vitiated.

8. Shri Sudan refutes the contention of Shri Gupta by submitting that the PE is a fact-finding enquiry held under Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 (the Rules, for short) for establishing the nature of the default and

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collecting evidence to facilitate a regular DE and as such there is nothing objectionable in the PE having been ordered by Shri Sewa Das, DCP.

9. We have considered carefully the contentions of the parties. We are not prepared to give credence to the theory put forward by Shri Gupta that the PE was held to save the skin of superior officers such as Shri Sewa Das and make the applicant a scape-goat. It is an enquiry envisaged by the Rules. In fact sub-rule (3) of Rule 15 makes it clear that the file of PE will not form part of formal departmental record. We are, therefore, not impressed by the argument by Shri Gupta that the DE is vulnerable on the ground that it is based on the report of the PE conducted by Shri Sewa Das, DCP.

10. Shri Gupta next contends that the ACP, who issued the order dated 6-11-1986 initiating the DE against the applicant had stated, inter alia, therein that the evidence on record in the PE was sufficient to hold a DE against the applicant though the criminal court was of the view that the evidence was insufficient to frame a charge against him. According to Shri Gupta, the object of holding a PE is to collect prosecution evidence and to bring relevant documents on record to facilitate holding a regular DE. The gravamen of the charge in the criminal court and the DE being identical, and the evidence also being the same, there is no justification in law or in fact to hold the DE.

11. Shri Sudan maintains that the standard of guilt in criminal and departmental proceedings is not the same and as such there was no legal impediment to initiating the DE against the applicant.

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12. Shri Sudan is right in saying that there is no embargo on a DE being held despite the acquittal of the applicant by the criminal court. This is a general proposition of law, but in the present case, Rule 12 of the Rules lays down the action to be taken when a police officer is acquitted by a criminal court. It prohibits the police officer being punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless -

- (a) the criminal charge has failed on technical grounds, or
- (b) in the opinion of the court, or on the Deputy Commissioner of Police, the prosecution witnesses have been won over; or
- (c) the court has held in its judgement that an offence was actually committed and that suspicion rests upon the police officer concerned; or
- (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or
- (e) additional evidence for departmental proceedings is available.

In the present case, the criminal charge no doubt failed on a technical ground i.e. for want of sanction under 197 Cr.P.C. but the criminal court also arrived at the conclusion that the evidence was insufficient to frame a charge against the applicant. Therefore, according to Rule 12(e) extracted above, unless additional evidence is available, it is not possible to initiate the DE. The report based on the PE was ready on 14-7-1985, whereas the order acquitting the applicant was passed about a year thereafter on 6-8-1986.

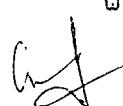
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It is, therefore, unlikely that any additional evidence would have been secured by the respondents for establishing the charge against the applicant after the order of acquittal was passed by the criminal court. In other words, it is not so much the sufficiency of the evidence for holding a DE as in the normal type of cases, but the availability of additional evidence as provided in rule 12(e) of the Rules which is sine qua non for initiating the DE. The order dated 6-11-1986 does not mention about the existence of any additional evidence to justify the initiation of the DE. In view of this, the said order is not in conformity with the requirements of Rule 12(e) of the Rules.

13. Shri Gupta invites our attention to para 6(h) of the application, wherein it is stated that the case of the applicant is not an isolated one, but there are other police officers at different levels in charge of other police stations awaiting fixation of their responsibility for the riots which broke out in many parts of Delhi. It is further stated: To assess the extent of loss and damage caused to persons and their property, as a result of the dereliction of duty on the part of police officers, a commission presided over by Justice Ranganath Mishra was set up by the Central Government. The Delhi Administration had itself submitted before the Commission that the applicant had been consistently on the move from the moment the assassination of the Prime Minister occurred and that maximum possible action was taken to cut down riots and other incidents. These arguments were submitted by the Delhi Administration in writing



before the Commission. The Commission has not specially pinpointed any particular lapse on the part of the applicant, nor was the applicant examined by the commission. Instead, the Commission recommended the appointment of a committee to identify lapses of the individual police officers. It is, therefore, obvious that until that identification of lapses is done, it is premature and patently discriminatory to single out the applicant for any departmental action or suspension. In pursuance of the said observations of the commission, the Delhi Administration has issued an order dated 23-2-1987, whereby it has appointed a committee consisting of Justice Dalip K. Kapoor, former Chief Justice of Delhi High Court and Kumari Kushumlata Mittal, retired Secretary to the Government of India to ~~enquire into delinquencies of individual police officers and~~ also good conduct of police officers and recommend such action as may be called for.

14. Shri Sudan vehemently urges that the proceedings before the Mishra Commission are wholly irrelevant for determining the legality of the DE against the applicant for lapses committed by him in the discharge of his official duties.

15. On a careful consideration of the matter, we are of the view that a committee having been set up pursuant to the recommendations of the Misra Commission, to enquire into the delinquencies of individual police officers and to recommend such action as may be called for, it is premature to hold the DE ~~only~~ against the applicant. The conduct of the applicant along with



others similarly placed is bound to be gone into by the committee and it will prejudice the cause of the applicant if the DE is held at this stage even before the outcome of the proceedings of the committee is known. We are, therefore, satisfied that to hold the DE against the applicant ignoring the case of several others similarly circumstanced as the applicant will result in hostile discrimination. Therefore, any action against the applicant can be taken only in the light of the recommendations of the committee, as and when made; not earlier.

16. In view of the foregoing discussion, we quash the order dated 9-1-1987 placing the applicant under suspension as also the order dated 7-11-1986 initiating the DE against him.

17. In the result, the application is allowed. Parties to bear their own costs.

Ch. Ramakrishna Rao

(CH. RAMAKRISHNA RAO)
MEMBER (J)

S. P. Mukerji

(S. P. MUKERJI)
MEMBER (A)

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