

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 1272/90
T.A. No.

199

DATE OF DECISION 16.08.1991.

Shri Ved Parkash

Petitioner XXX Applicant

Shri A.S. Grewal

Advocate for the Petitioner(s)

Versus

Commissioner of Police etc.

Respondent

Mrs. Avnish Ahlawat

Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */No*
4. Whether it needs to be circulated to other Benches of the Tribunal? */No*

JUDGEMENT

(of the Bench delivered by
 Hon'ble Shri B.N. Dhoundiyal, Member)

This O.A. has been filed by Shri Ved Parkash, a Sub-Inspector of Delhi Police, against various orders relating to Departmental Enquiry.

2. While posted as a Sub-Inspector at Delhi Main Railway Station, he interrogated Shri K.K. Aggarwal in case FIR No.12/89 under Section 379 I.P.C. Later the father of Shri K.K. Aggarwal lodged a complaint against the applicant. This was enquired into by Shri L.L. Dubey, Inspector Vigilance, who found the contents of the complaint ^{false BN} and the complaint was filed. However, a fresh inquiry was ordered on the same complaint on 9.2.89 and a summary of

allegation was served on 7.4.89. Yet another order initiating Departmental Inquiry was issued on 24.5.89. Applicant made representation to the DCF/DE Cell and DCP Crime & Railways, Delhi but on 28.3.90, a memo was issued rejecting his representation.

3. The applicant contends that once an enquiry was made and the complaint was found false, a second enquiry on the same charges amounts to double jeopardy which is violative of Article 20(2) of the Constitution. His representations were not considered properly and rejected without any reasonable cause. Having cancelled the original order of enquiry, the statement of allegations stood cancelled. No compliance of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 was made.

4. The applicant has prayed for quashing of orders relating to disciplinary proceedings issued on 9.2.89, 26.5.89, 7.4.89 and 28.3.90 and for awarding the cost of the application.

5. In their reply, the respondents have stated that an inquiry conducted by A.C.P. (Railways), it was found that SI Ved Parkash had accepted Rs.5000/- from Shri Krishan Kumar Aggarwal through Shri Sardar Singh, a Jat of village Pooth Kalan, as illegal gratification for his release from police custody. The evidence and material on record though not sufficient to prove his guilt beyond reasonable

doubt in a court of law was adequate for conducting an inquiry against him. They have admitted the fact that the order for conducting the departmental enquiry was cancelled; explaining that this was done on the advice of the DCP (Vigilance) who advised that the orders for holding departmental inquiry had to be passed by the DCP and not by the Additional Commissioner of Police. The second order was issued under the approval of the DCP/DE Cell after approval of Additional Commissioner of Police/CID. They have alleged that the applicant has been playing dilatory tactics and not cooperating with the inquiry. His representation was considered and he was advised to produce all document / papers before the enquiry officer at the time of recording of defence statements. It is yet to be decided by the enquiry officer whether the charges are proved or not.

6. The main point at issue in the present application is whether the findings arrived in the preliminary enquiry have nay bearing on the initiation of the regular departmental inquiry against a police officer under the Delhi Police (Punishment & Appeal) Rules, 1980. In another case (OA.No.807/90-Shri Satya Dev Dahiya Vs. Commissioner of Police, Delhi & Ors.) decided on 25.1.91, by another Bench of this Tribunal of which one of us (Shri P.K. Kartha) was a Member, has held:

"...even in a case wherein a preliminary inquiry conducted by the respondents, the allegations against a Government servant have not been substantiated, nothing precludes the disciplinary authority from holding a regular departmental inquiry against that Government servant after giving him reasonable opportunity to defend himself. The preliminary inquiry is only a fact finding inquiry for the satisfaction of the disciplinary authority as to the existence of a *prima facia* case for holding a regular

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departmental inquiry. This is clear from the language of Rule 15(1) of the Delhi Police(Punishment and Appeal) Rules, 1980. Rule 15(2) provides that "in cases in which a preliminary inquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental inquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental inquiry should be held.. The fact that the preliminary inquiry does not disclose the commission of a cognizable offence, does not ipso facto mean that there is a bar to the initiation of a departmental inquiry."

A reference was also made in the above Judgement to the ruling given by the Supreme Court that in R.C. Sharma Vs. Union of India-1976 (SCC(L&S) 463 and 465)- that if an inquiry is held on at a particular stage, possibly to determine whether regular proceedings should be drawn up or started, it does not debar a departmental trial.

7. Having carefully gone through the records of the case and having considered the rival contentions, we are of the opinion that there is no justification for quashing the departmental enquiry initiated against the applicant at this stage on the grounds alleged in the application. In the interest of justice, the respondents may proceed with the inquiry proceedings and pass their final orders within three months from the date of receipt of this order. Applicant should also cooperate in the conduct of the inquiry. In case the applicant is aggrieved by the final order passed by the disciplinary authority, he will be at liberty to file a fresh application in the Tribunal after he has exhausted all the remedies available to him under the relevant service law by way of appeal etc.

8. There will be no order as to costs.

B. N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER(A)

Bennur
16/8/91
(P.K. KARTHA)
VICE CHAIRMAN(J)