

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

O.A. No. 1760/1990
T.A. No.

199

DATE OF DECISION 22.03.1991

<u>Shri Arjun Singh</u>	<u>Petitioner</u>
<u>Shri A.S. Grewal</u>	<u>Advocate for the Petitioner(s)</u>
- Versus -	
<u>Commissioner of Police, Delhi & Others</u>	<u>Respondent</u>
<u>Mrs. Avnish Ahlawat</u>	<u>Advocate for the Respondent(s)</u>

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The Hon'ble Mr.P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr.D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

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*

JUDGMENT

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

The applicant, who is working as Assistant Sub-Inspector in the Delhi Police, filed this application under Section 19 of the Administative Tribunals Act, 1985, seeking the following reliefs:-

- (i) The order of Additional Commissioner of Police (CID) Delhi No.33861-65/Vig./HA-IV dated 3.7.1989 (Annexure 'D') be quashed;
- (ii) Summary of allegations and charge issued by the enquiry officer be quashed;
- (iii) findings of the enquiry officer dated 29.3.1990 may also be quashed; and
- (iv) show cause notice No.3673/HAP-2nd Bn.D.A.P. dated 16.8.1990 proposing the penalty be also further quashed.

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2. The application was filed in the Tribunal on 28.8.1990. On 31.8.1990, the Tribunal passed an interim order directing the respondents not to pass any final orders on the show cause notice dated 16.8.1990 issued by the applicant. The interim order was continued thereafter till the case was heard finally on 7.3.1991 and orders reserved thereon.

3. The facts of the case in brief are as follows. The applicant is working as Assistant Sub -Inspector (ASI) since 16.7.1984. He has stated that during the course of his employment in East District, he was entrusted with the enquiry into a quarrel between one Smt. Noor Jahan and her neighbour Raghbir and some other persons known to Raghbir in which the said Raghbir and his friend under the influence of liquor misbehaved and gave beating to her and her daughters Nasim and Shamim. It was further alleged that the applicant did not lodge a report; rather turned them out from the police station etc.etc. On the complaint of Smt. Noor Jahan levelling false allegations against the applicant, an enquiry was conducted by Inspector Vigilance, East District, and Shri Kanwar Ahmed, ^{and} the then DCP, East District, Delhi issued a show cause notice proposing the punishment of censure to the applicant. After receiving his reply to the show cause notice, the DCP, East District, Delhi awarded the punishment of censure, vide order dated 18.5.1989. He did not prefer an appeal against the above punishment. However, the Additional Commissioner of Police passed an order dated 3.7.1989 for holding de novo enquiry. Pursuant to this, the Enquiry Officer served a summary of allegations on the applicant on 11.7.1989. On the basis of the report of the Enquiry Officer, the D.C.P. issued a show cause notice to him on 16.8.1990 proposing the punishment of dismissal.

4. The applicant has contended that the orders of the respondents initiating de novo departmental enquiry are liable to be quashed as the Additional Commissioner of Police has no such powers.

5. The contention of the respondents is that the Additional Commissioner of Police has full authority to issue orders for a fresh enquiry as per Rule 16.28 of the Punjab Police Rules.

6. 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
 - (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 porposed 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".

7. 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.

8. 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).

9. 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.

10. 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.

11. 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".

12. 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 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.

13. 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.

14. 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 extension of the jurisdiction~~ ~~that~~ the provisions of PPR 16.28 and 16.32 of the Punjab Police Rules dealing with the powers of review and revision can ~~not~~ be invoked by the appellate authority after ^{the} coming into force of the Delhi Police (Punishment & Appeal) Rules, 1980 ~~as they are incompatible~~. 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 invoked by the respondents in view of the provisions of Delhi Police(Punishment & Recruitment) Rules, 1980. In this context, we follow the decision of this Tribunal dated 20.7. 1990 in OA 51/90 - Om Prakash Vs. Union of India - to which both of us are parties and where a similar conclusion had been reached by us.

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15. In the light of the aforesaid legal position, we are of the opinion that the applicant is entitled to the relief sought in the present application. We, therefore, set aside and quash the impugned order dated 3.7.1989 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.

D. Chakravorty
(D.K. CHAKRAVORTY) 22/3/1991
MEMBER (A)

P.K. Kartha
22/3/1991
(P.K. KARTHA)
VICE CHAIRMAN (J)