

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1944/90 with
M.P.~~TA~~ No. 1353/91 199

DATE OF DECISION 26.2.1992

Shri Amar Singh	xPetitioner Applicant
Shri Shankar Raju	Advocate for the Petitioner(s) Applicant
Versus Commissioner of Police & Ors.	Respondent
Mrs. Avnish Ahlawat	Advocate for the Respondent(s)

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

The Hon'ble Mr. B.N. Dhaundiyal, 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? *No*
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
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as Sub-Inspector of Police in the office of the respondents, has sought for the following reliefs:-

- (i) To quash the impugned order dated 27.12.89 whereby a departmental enquiry was instituted against him;
- (ii) to quash the Memorandum, summary of allegations and other documents dated 28.2.1990; and
- (iii) to quash the departmental enquiry against him.

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2. The facts of the case are as follows. On 31.1.89, the Deputy Commissioner of Police issued a show-cause notice to the applicant as to why he should not be censured for a misconduct of hushing-up a criminal case. After considering his explanation, the Deputy Commissioner of Police passed an order on 10.11.1989 confirming the punishment proposed in the show-cause notice.

3. On 27.12.1989, the same Deputy Commissioner of Police ordered for holding a regular departmental enquiry against the applicant for the same misconduct for which he had been censured. Pursuant to this, he was given the impugned memorandum, summary of allegations and other documents on 28.2.1990.

4. On 7.3.1990, the applicant filed a review petition to the Additional Commissioner of Police against the order of departmental enquiry, which was rejected by him on 18.5.1990.

5. On 5.9.1990, the applicant was compulsorily retired from service under F.R.56(j) in public interest.

6. The applicant has contended that the initiation of departmental enquiry amounts to de novo enquiry, that the power of review cannot be exercised by the Deputy Commissioner of Police, and that he, having been compulsorily retired from the post of Sub-Inspector of Police, the continuance of the departmental enquiry is with a view to

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depriving him from getting his retirement benefits.

7. The respondents have contended that the departmental enquiry was ordered against the applicant under Section 21 of the Delhi Police Act, 1978 as the provision of Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 is not attracted to this case. According to them, the allegations in the Censure order as well as in the D.E. order are not the same. The punishment of censure was awarded to the applicant since he failed to register a case under section 328/376 I.P.C. and as such, he had hushed up the case and is responsible for a grave misconduct of burking an offence of such a heinous crime knowingly. Whereas D.E. was ordered for inserting the words 'MLC' and 'Nahi' in the original reznamcha at a later stage, and had initially planned to hush up the entire matter. They have stated that the applicant is getting provisional pension and all other retirement benefits to which he is entitled for under the rules.

8. We have gone through the records carefully and have heard the learned counsel for both the parties. On 28.9.1990, while admitting the application, the Tribunal passed an interim order directing the respondents not to proceed with the enquiry initiated against the applicant. This order has been continued thereafter till the case

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was finally heard on 21.8.1991 and orders reserved thereon. In the meanwhile, the respondents had also filed MP-1353/91 on 29.4.1991 praying for vacating the stay order passed on 28.9.1990.

9. The respondents have argued that when the departmental proceedings or show-cause notice is issued under a statutory provision, courts should be reluctant to interfere, unless the notice is shown to have been issued palpably without any authority of law. In the instant case, the inquiry was initiated against the applicant for making forgery in the documents, which is the subject matter of the enquiry.

10. The question arises whether the subject matter of the enquiry is identical as contended by the applicant, or whether it is different, as contended by the respondents. The gravamen of the charge is that the applicant had hushed up an incident of rape of one, Miss Sujata, daughter of David Dewan. The Deputy Commissioner of Police imposed on him the penalty of censure for the said conduct by order dated 10.11.1989. In the order dated 27.12.1989 issued by the same Deputy Commissioner of Police, the charge of misconduct is substantially the same, namely, hushing up of an incident of rape of one, Miss Sujata. The order dated 27.12.1989 is, however, more

elaborate and it has also been alleged that the applicant has inserted the words 'MLC' and 'Nahi' in the original roznamcha at a later stage.

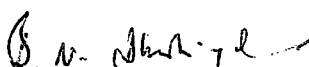
11. In our opinion, as the charge brought against the applicant in the show-cause notice issued to him on 31.1.1989 and in the order issued on 27.12.1989, and the Memorandum issued to him on 28.2.1990, are substantially the same, it will not be open to the disciplinary authority to conduct a de novo inquiry. In S.B. Bansal Vs. Union of India, A.T.R. 1987 (1) CAT 215, it has been observed that "the order of the de novo inquiry is illegal if both the proceedings are founded on the same charges".

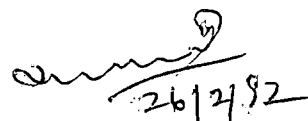
12. The Deputy Commissioner of Police, who had issued the show-cause notice and who had confirmed the order of imposition of the penalty of censure on the applicant, does not have the power of review under the provisions of the Delhi Police Act, 1978.

13. The impugned order dated 27.12.1989 runs counter to the Government of India's Instruction No.9 enumerated below Rule 15 of the C.C.S.(CCA) Rules, 1965, according to which, 'if the proceedings for minor-penalty under Rule 16 are dropped, the Disciplinary Authority would be debarred from initiating fresh proceedings unless the reasons for cancellation of original charge-sheet are given to the delinquent official.

14. In the instant case, neither the original charge-sheet was cancelled, nor ^{were} any reasons given for issuing the fresh charge-sheet against the applicant. In *Birate Bihara Vs. Union of India*, 1988 (5) SLR 529, it was observed "that issuance of fresh charge-sheet in respect of same charge in respect of which a penalty has already been imposed is illegal".

15. In the facts and circumstances of the case, we are of the opinion that the initiation of the departmental inquiry afresh on the same charge on which the applicant had been punished once, is not legally sustainable. Accordingly, we set aside and quash the impugned order dated 27.12.1989 and the memorandum, summary of allegations and other documents dated 28.2.1990. The respondents are restrained from holding any departmental enquiry pursuant to the aforesaid orders against the applicant. The application is disposed of accordingly. The interim order passed on 28.9.1990 and continued thereafter, is hereby made absolute. ^{& MP 1353/91 is also disposed of accordingly.} There will be no order as to costs.


(B.N. Dheundiyal)
Administrative Member


(P.K. Kartha)
Vice-Chairman (Judl.)

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