

14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI.

O.A. No. 2338 of 1990  
~~XXXXXX~~

DATE OF DECISION 18.03.1994

Shri Hari Singh Applicant(s)

Versus

Delhi Admn. & Another Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? *45*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

*S.K.*  
(S.K. DHAON)  
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No. 2338/90

NEW DELHI THE 18<sup>th</sup> DAY OF MARCH, 1994.

HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)  
HON'BLE MR.B.N.DHOUNDIYAL, MEMBER(A)

BY ADVOCATE SHRI J. P. VERGHESE.

V<sub>S</sub>.

1. Delhi Administration  
through its Chief Secretary  
Old Secretariat  
Rajpur Road  
Delhi.

2. Commissioner of Police  
Police Headquarters  
IP Estate  
New Delhi 110 002

## Respondents

BY ADVOCATE SHRI O.N. TRISHAL.

## ORDER

JUSTICE S.K.DHAON:

The applicant, a Sub Inspector of Police and Head Constable Vinod Kumar, are facing departmental proceedings. The applicant alone has come to this Tribunal with the allegation that the said proceedings are without jurisdiction. Therefore, the same may be quashed.

2. On 29.9.1989, the Deputy Commissioner of Police, VII Bn.DAP, Delhi passed an order that during an enquiry made by Inspector Balbir Singh, it had been established that the applicant and Head Constable Vinod Kumar committed gross negligence and carelessness in the discharge of their duties. They acted in violation of Rule 3(i)(iii) of the CCS(Conduct) Rules rendering them punishable under Section 21 of the Delhi Police Act,1978(the Act). Then comes the material portion of the order:

" Now, therefore, I, A.A.Farooquee/DCP/8th  
Bn.DAP Delhi order under rule 15(2)

of D.P.Act,(Punishment &Appeal) rules 1980, that SI,Hari Singh No.D.5039/- and H.C.Vinod Kumar No.9141/DAP be dealt with departmentally by Sh.Mauzi Khan/ACP- 8th Bn.DAP, on day to day basis and submit his finding expeditiously."

3. Sub-rule(2) of Rule 15 of the Delhi Police (Punishment & Appeal) Rules,1980(the Rules) is relevant and may be extracted:

"In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public,departmental enquiry shall be ordered after obtaining prior approval of the Addl.Commissioner of Police concerned, as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

4. Admittedly, the prior approval of the Additional Commissioner of Police concerned was not obtained by the Deputy Commissioner of Police before passing the order dated 29.9.1989. The argument, therefore, is that the condition precedent for the passing of the said order dated 29.9.1989 being absent, the same is without jurisdiction and consequently the disciplinary proceedings must fall through.

5. The contents of the summary of allegations served upon the applicant by the inquiry officer and the contents of the charges framed against the applicant are substantially the same. Therefore, we are focusing our attention on the charges framed. Apparently the charges have been framed jointly against the applicant and the Head Constable Vinod Kumar. They are as follows:

- (1) Both while posted as S.I.M.T. & H.C M.T respectively in 8th Bn.P.T.S. Malviya Nagar handed over Government

vehicle No.DEL-549 to Satnam Motors chowk Hari Nagar Ashram, New Delhi on the evening of 9.3.1989 unauthorisedly and without the prior permission of the competent authority and made false entries in the relevant record.

(2) Both managed to get the original axle assembly(Differential) E-Model of the said vehicle replaced with an old model thereby causing financial loss to the Government to the tune of Rs.35000/-approximately.

(3) Both prepared a forged bill dated 8.3.89 for Rs.491/- of the said vehicle when the vehicle was in Telco on the said date and has been brought back to the Bn.Headquarter on 9.3.1989 at 6.30 p.m. after engine over-hauling.

(5) Both wilfully neglected the upto-date maintenance of the record of the said vehicle.

6. The applicant is undoubtedly a police officer of a subordinate rank. The crucial words in sub-rule(2) of Rule 15 of the Rules are:"the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public". The Rule is not confined to the commission of a cognizable offence by a police officer of subordinate rank. It goes little further and enjoins that a cognizable offence should have been committed by such an officer in his official capacity in relations with the public.

7. Sub-section(1) of Section 197 of the Code of Criminal Procedure,1973(the Code),inter-alia, provides that when any person who is or was a public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official

18

duty, no Court shall take cognizance of such offence except with the previous sanction of the authorites mentioned therein. In Section 197, we do not find any reference to the commission of a cognizable offence. Furthermore, it has to be seen that any act or purported act in the discharge of official duty is protected.

8. In 1978, when the Act was passed and in 1980 when the Rules were framed Section 197 of the Code was in the Statute Book. If the framers of the Rules intended to give protection to the commission of a cognizable offence by a police officer of subordinate rank in the discharge of his official duty, nothing would have been easier than to borrow ~~the~~ the phraseology employed by the Legislature in Section 197. It follows that in sub-rule(2) of Rule 15, the expression "official relation with the public" was used designedly and with a purpose. Obviously, the purpose was to give a limited protection to a police officer of a subordinate rank. This purpose is also evidenced by the fact that the requirement in sub-rule(2) of Rule 15 that the prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held is confined to only those cases where a preliminary enquiry discloses the commission of a cognizable offence. It is neither the requirement of any provision of the Act nor the that Rules./ disciplinary proceedings cannot be initiated without holding a preliminary enquiry. On the contrary, sub-section(3) of Section 21 of the Act states that notwithstanding the fact that a police officer has been awarded either a major

19

punishment or a minor punishment his liability for prosecution and punishment for any offence committed by him shall remain unaffected. Likewise, sub-rule(1) of Rule 15 itself provides that in cases where specific information covering the four points mentioned therein exists a preliminary enquiry need not be held and a departmental enquiry may be ordered by the disciplinary authority straightway.

9. Section 2(c) of the Code defines "cognizable offence" to mean an offence for which a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. In the First Schedule, a classification of the offences under the Indian Penal Code is contained. Under the heading "offences against the public tranquillity", we find Section 167 of the Indian Penal Code which states that the framing of an incorrect document with intent to cause injury by a public servant is a cognizable offence. Here the offence may or may not be in relation with the public.

10. Section 161 of the Indian Penal Code relates to a cognizable offence: being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act. This will be an official act in relation with the public. Section 169 again relates to a cognizable offence. It relates to a public servant unlawfully buying or bidding for property. This act will not be in relation with the public. Examples can be multiplied. In a nut-shell, the Indian Penal Code contains a mixture of cognizable offences committed by a public servant in the discharge of his duty either concerning his official

relation with the public or not concerning his official relation with the public. Therefore, a cognizable offence can be committed by a public servant in the discharge of his official duty unconnected with his official relation with the public.

11. The charges levelled against the applicant, if at all, make out a case of the commission of a cognizable offence by him in the discharge of his official duty. Clearly they are not in his official relations with the public.

12. Sub-section(1) of Section 140 of the Act together with the proviso thereto inter alia states that in any case of alleged offence by a police officer, or of a wrong alleged to have been done by such police officer, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution shall not be entertained and if entertained shall be dismissed if it is instituted more than three months after the date of the act complained of. The proviso relaxes this period of three months and provides that any such prosecution against a police officer may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.

13. It is not the case of the applicant that his prosecution in the criminal court has been launched. More than one year has elapsed since the commission of the alleged criminal offence by him as those offences were allegedly committed in the month of March, 1989. Departmental proceedings

are still going on. No order of punishment was passed in those proceedings against the applicant within a period of one year from March, 1989. The order of the Deputy Commissioner of Police ordering a departmental enquiry need not now be struck down as without jurisdiction on the mere ground that the same was passed in violation of sub-rule(2) of Rule 15 of the Rules.

14. This application is dismissed. The interim order passed by this Tribunal on 13.5.1991 is vacated. The disciplinary proceedings as against the applicant shall be disposed of expeditiously.

15. There shall be no order as to costs.

*B.N. Dholiyal*  
(B.N.DHOUNDIYAL)  
MEMBER(A)

*S.K. Dhaon*  
(S.K.DHAON)  
VICE-CHAIRMAN(J)

SNS