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CAT/7/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 807/90  
T.A. No.

199

DATE OF DECISION 25.1.1991.Shri Satya Dev Dahiya~~Petitioner~~ ApplicantShri Shankar RajuAdvocate for the ~~Petitioner(s)~~ Applicant

Versus

Commr. of Police, Delhi & Ors.

Respondent

Smt. Avnish Ahlawat

Advocate for the Respondent(s)

## CORAM

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

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?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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

The point at issue in the present application is whether the findings arrived at in a preliminary inquiry have any bearing on the initiation of regular departmental inquiry against a Police Officer under the Delhi Police (Punishment & Appeal) Rules, 1980.

2. The facts of the case in brief are that in November, 1987, while the applicant was posted in Police Control Room, a complaint was made to the Police by the Principal of Dr. Zakir Hussain College regarding removal of the footpath vendors in front of the College. Consequently, the

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Lt. Governor, Delhi, instructed the Delhi Police not to allow illegal squatting on the footpath by the street vendors. In March, 1988, the applicant was posted at P.S., Kamla Market, and was further deputed at Ajmeri Gate Chowki. A number of footpath vendors who had been removed from their squatting places, had moved an application to the D.C.P. (Central District) against some Police officials regarding harassment and demand of illegal gratification. The name of the applicant did not figure in the said complaint.

3. A preliminary inquiry was ordered against the applicant and other Police officials. Shri Jai Chand, A.C.P., Headquarters Central District, Delhi, was appointed to enquire into the matter. He submitted a report after holding a preliminary inquiry. The applicant has contended that in the report of the preliminary inquiry, the allegations levelled against him, could not be substantiated. This is, however, being disputed by the respondents in their counter-affidavit.

4. On 11.7.1988, the Additional Commissioner of Police, in exercise of the power under Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980,

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that<sup>or</sup>  
directed/a departmental inquiry should be conducted against the applicant. In the order passed by the Additional Commissioner, it has been stated that a preliminary inquiry under Rule 15(1) had been conducted against the applicant and two other Head Constables and the allegations of accepting illegal gratification had been substantiated.

5. Thereafter, the respondents have given to the applicant a memorandum along with the summary of allegations, list of witnesses, and list of documents.

6. The applicant requested for the supply of the final report of the preliminary inquiry conducted by the A.C.P., Headquarters, so that he could cross-examine<sup>or</sup> the PWs in the departmental inquiry proceedings. The respondents have informed him that the copies of the statements of PWs recorded during the preliminary inquiry, have been supplied to the applicant to enable proper cross-examination of PWs, and that the final report of the preliminary inquiry is not being relied on in the departmental ~~xxxixxy~~<sup>or</sup> inquiry. Accordingly, the report of the preliminary inquiry is not relevant and a copy of the final report of the preliminary inquiry cannot be supplied to the applicant.

7. The applicant has been informed that in case he would not join the departmental inquiry, he would be put under suspension.

8. The applicant has sent a representation to the Commissioner of Police on 12.4.1990 requesting for dropping the inquiry against him.

9. The applicant has contended that the departmental inquiry which has been initiated against him, is illegal, as it is in violation of Rule 15 (2) of the Delhi Police (Punishment & Appeal) Rules, 1980.

10. The contention of the applicant is that a departmental inquiry shall be ordered only when the preliminary inquiry discloses the commission of a cognizable offence by a Police Officer and not otherwise. According to him, the officer who held the preliminary inquiry, has exonerated him from the alleged charges. The Additional Commissioner of Police, while ordering the regular departmental inquiry against him, has misread the findings of the preliminary inquiry report.

11. The respondents have contended in their counter-affidavit that the departmental inquiry is not initiated on the grounds alleged. According to them, the departmental inquiry has been initiated against him on the

basis of the report of the preliminary inquiry. The Inquiry Officer in the preliminary inquiry, has concluded that the defaulters had indulged in an illegal deal with the complainants and their integrity in the case was doubtful. According to them, the holding of the departmental inquiry is well within the powers of the Additional Commissioner of Police and is in accordance with Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980.

12. We have carefully gone through the records of the case and have considered the rival contentions. In our view, even in a case where in a preliminary inquiry conducted by the respondents, the allegations against a Government have not been substantiated, nothing precludes the disciplinary authority from holding a regular departmental inquiry against that Government servant after giving him <sup>opportunity</sup> reasonable ~~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 facie case for holding a regular 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

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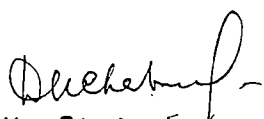
inquiry discloses the commission of a cognizable offence by a Police Officer of subordinate rank in his official relations with the public, departmental inquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered 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.

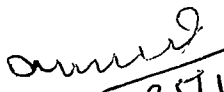
13. In one case which had gone up to the Supreme Court, the appellant contended that there had been a preliminary inquiry <sup>made</sup> against him into the allegations of misconduct and that he had been exonerated of the allegations and imputations made against him. In view of this, it was contended that a fresh inquiry into the same charges was not permissible under the departmental rules and was also barred by rules of natural justice. The Supreme Court held that "if an inquiry is held at a particular stage, possibly to determine whether regular proceedings should be drawn up or started, it does not debar a departmental trial".

(Vide R.C. Sharma Vs. Union of India,  
1976 SCC (L&S) 463 at 465).

14. In the facts and circumstances of the case, we are of the opinion that there is no justification for quashing the departmental inquiry initiated against the applicant at this stage on the grounds alleged in the application. It is, however, noticed that the memorandum proposing to hold the inquiry against the applicant was issued to him on 27.10.1988. The respondents shall, therefore, finalise the inquiry and pass final orders as expeditiously as possible, but in <sup>any</sup> ~~event~~ <sup>not</sup> ~~later~~ than 30th April, 1991. The 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 the remedies available to him under the relevant service law by way of appeal.

There will be no order as to costs.

  
(D.K. Chakravorty)  
Administrative Member  
25/1/1991

  
(P.K. Kartha)  
Vice-Chairman(Judl.)  
25/1/91