

In the Central Administrative Tribunal
Principal Bench, New Delhi.

Regn. Nos.:

Date: 22.1.1993.

1. OA-1994/91

Constable Subhash Chand Applicant

Versus

Delhi Admn. & Ors. Respondents

2. OA-1995/91

Sub-Inspector Mahipal Singh Applicant

Versus

Delhi Admn. & Anr. Respondents

For the Applicants in 1 & 2 above Smt. Avnish Ahlawat, Advocate

For Respondent in 1 above Ms. Geeta Luthra, Advocate

For Respondent in 2 above Shri J.P. Singh, Advocate

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. B.N. Dholiwal, 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*

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

We have gone through the records of these cases and have heard the learned counsel for the parties. OA-1994/91 has been filed by Constable Subhash Chand, being aggrieved by the show-cause notice dated 19.8.1991 issued by the Deputy Commissioner of Police proposing to dismiss him from the Delhi Police and to treat his suspension period from

6.7.1990 onwards as period 'not spent on duty'. 01-1195/91 has been filed by Sub-Inspector, Mahipal Singh, being aggrieved by the impugned order dated 19.8.1991 issued by the Deputy Commissioner of Police, proposing to dismiss him from the Delhi Police and to treat his suspension period from 10.4.1990 onwards as period 'not spent on duty'.

2. The applicants in both these applications were given 15 days' time to file reply to the show-cause notice, failing which, it would be presumed that they had nothing to say in their defence and that the case would be decided on its merits. Without filing reply to the show-cause notice, both of them have moved this Tribunal by filing the above mentioned applications.

3. The applicants have stated in their applications that they rushed to this Tribunal without exhausting the remedies available to them for the reason that the alleged show-cause notice proposing to dismiss them from the Delhi Police is wholly illegal and that at this stage, they cannot file any appeal against that order except submitting a reply, which in all probability, will not be considered because the Deputy Commissioner of Police is bent upon passing the orders of dismissal against them in spite of the fact that

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the charge was not proved against them.

4. In OA-1194/91, the charge brought against the applicant is that he had accepted 20 U.S. dollars from Shri R.K. Srivastava, ACIO-II, who had received the same as an illegal gratification from one, Shri Mangaljeet, going to London by Flight No. AI-111 at about 6.00 a.m. on 6.7.1990. Then, he was noticed throwing the currency notes of 20 U.S. dollars along with one currency note of 10 dollars and one currency note of Rs. 100/- and two currency notes of Rs. 20/- each behind the dustbin kept outside the room in which he was taken for personal search. After holding an enquiry, the Enquiry Officer submitted a finding holding that the charge against the applicant was not proved. The disciplinary authority disagreed with the finding of the Enquiry Officer and has issued to the applicant the impugned show-cause notice.

5. In OA-1195/91, the charge brought against the applicant is that he accepted Rs. 100/- as gratification from one, Shri Ashok Pal Singh, a passenger who arrived at the Indira Gandhi International Airport, New Delhi, on 9.4.1990. After conducting an enquiry, the Enquiry Officer held that the charge was not proved. The disciplinary authority, however, disagreed with the finding of the Enquiry Officer and issued the impugned show-cause notice.

6. The learned counsel for the applicant contended that the show-cause notices issued in both these cases were perverse

and there was no evidence in support of the charge. She had filed written submissions in these two cases and relied upon numerous decisions and we have duly considered them. In Charan Singh Vs. Union of India and Others, 1986 (4) SLR 108, this Tribunal had entertained an application under Section 19 of the Administrative Tribunals Act, 1985 against an order of reversion of the applicant from Class III to Class IV post. The order of reversion was not served on him and the respondents stated that he had been avoiding service. The Tribunal had made an interim order staying the reversion. When the case came up for hearing, the respondents argued that the applicant had not exhausted all the remedies of appeal, revision and review available to him under the service rules and, therefore, the application should not be entertained. Reliance was placed on the provisions of Section 20 of the Administrative Tribunals Act which provides, inter alia, that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The Tribunal observed that it was common ground that there was no specific provision empowering the appellate authority or reviewing authority to consider the staying of the operation of the order under appeal or review, pending disposal of the appeal or review, as the

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case may be. In the absence of any such rule, it is doubtful whether the said authorities could stay the order under appeal or review even in a just and proper case. In the facts and circumstances of the case, it was held that the applicant was justified in moving the Tribunal under Section 19 without availing of the remedies provided under the service rules. The Tribunal directed the applicant to present himself in the office of the respondents and receive the written order of reversion. If he filed any appeal against the same, the appellate authority was directed to entertain and dispose it of on the merits. If any adverse order was made by the appellate authority, he might file a review application. The Tribunal further directed that there shall be interim stay pending disposal of the appeal and review, if any filed.

7. In our opinion, the case of Shri Charan Singh is clearly distinguishable. In the instant case, no penalty has been imposed on the applicants as yet. They have filed the applications without filing a reply to the show-cause notice issued by the disciplinary authority and without exhausting the departmental remedies. No doubt, the Tribunal has the discretion to entertain an application even without exhaustion of departmental remedies, but this could be done only in ^{an} extraordinary cases and circumstances. In our opinion, there is no such extraordinary circumstance in these cases. The

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applicants can urge in their reply all the contentions raised in the present application against the departmental enquiry and the impugned show-cause notice. The disciplinary authority is required to consider their reply and take an appropriate decision in the matter. We do not express any opinion on the merits of the contentions advanced by both the parties in these applications on the ground that it is premature. There cannot be any presumption that the disciplinary authority will impose punishment specified in the show-cause notices on the applicants.

8. In S.S. Rathore Vs. State of Madhya Pradesh, A.I.R. 1990 S.C. 10, the Supreme Court has observed that "the purport of Section 27 of the Administrative Tribunals Act is to give effect to the disciplinary rules and the exhaustion of the remedies available thereunder, is a condition precedent to maintaining of claims under the Administrative Tribunals Act". Following the aforesaid ruling of the Supreme Court, a Full Bench of this Tribunal in B. Parameshwara Rao Vs. the Divisional Engineer (Telecommunications), has held in its decision dated 12.4.1990 in OA-27/90 that the Tribunal should not ordinarily exercise the power to entertain application under Section 19 of the Act unless the applicant had exhausted the remedies available to him under the relevant service rules.

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9. In the light of the above, we do not wish to express any opinion on the merits of the case, one way or the other, as the law should be allowed to have its course at this stage. The application is, therefore, disposed of with the observation that the applicants would be at liberty to file fresh applications in the Tribunal after the disciplinary authority passes his order in the light of the points raised in the reply to be filed by the applicants to the impugned show cause notice and after the applicants have exhausted their remedies by way of appeal/revision under the relevant service rules. The interim order passed on 29.08.1991 directing the respondents not to give effect to the show cause notice dated 19.08.1991 is hereby vacated with the aforesaid observations.

There will be no order as to costs.

Let a copy of this order be placed in both the case files.

B.N. DHOONDIYAL
(B.N. DHOONDIYAL) 22/11/83
MEMBER (A)

22/11/83
(P.K. KARTHA)
VICE CHAIRMAN (J)