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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
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O.A.No. 2245/1991

30/8/1996

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

Hon'ble Shri R.K. Ahooja, Member (A)

Shri Raj Kumar,
S/o Shri Vedpal Singh,
Constable No. 743/T,
Old Police Lines,
Traffic Circle,
Delhi.

Applicant

(By Advocate: Shri A.K. Bharadwaj)
Vs

1. Delhi Administration,
through the Chief Administrator,
Old Secretariat,
No. 5 Alipur Road,
New Delhi.
2. The Deputy Commissioner of Police,
Traffic: Civil Lines Traffic Circle,
Old Police Line,
Delhi.
3. Inspector,
Enquiry Officer, Delhi
Vigilance,
Delhi.



Respondents

(By Advocate: Shri D.K. Sharma)

O R D E R (Oral)

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

On the basis of a complaint made by Shri Bimal Jain on 11.2.1991 that one Constable Hardyal Singh and another extorted money from him and his frined Sanjeev Suri on 10/11.2.1991 at 1.15 AM. The Respondent No. 2, after a preliminary enquiry, placed the applicant Shri Raj Kumar, Constable No. 743/T under suspension by order dated 11.2.1991. The Additional Commissioner of Police (S&T) Delhi ordered an enquiry under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 against

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the applicant to be conducted by an officer nominated by the DCP, DE Cell. Inspector Shakti Singh, the Enquiry Officer submitted his report to Respondent No. 2 on 3.9.1991 without framing a charge against the applicant and holding him not guilty. According to the applicant the enquiry against him and Harkhyal Singh was jointly held and similar reports were sent to the second respondent as also to the disciplinary authority of Harkhyal Singh by the Enquiry Officer. The DCP Kotwali, the disciplinary authority of Harkhyal Singh accepted the report, revoked the suspension of Harkhyal Singh and reinstated him in service while the second respondent ordered issue of a charge sheet against the applicant and entrusted the enquiry with Inspector Bhagawant Singh. Pursuant to the above, the Inspector Bhagawant Singh has issued a fresh charge sheet to the applicant on 19.9.1991. It is alleged in the application that this action on the part of the second respondent ordering a denovo enquiry directing issuing a fresh charge sheet is beyond the powers of the disciplinary authority under Rule 15 and 16a(x) of the Delhi Police (Punishment & Appeal) Rules, 1980 and that the fresh charge sheet issued by the third respondent is illegal. Alleging that the action on the part of the respondent, in holding a denovo enquiry against the applicant while discharging Harkhyal Singh on the basis of a common enquiry where no evidence at all was forthcoming to establish his guilt is

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wholly illegal, arbitrary and unjustified, ~~whereas~~ the applicant has filed this application under Section 19 of the A.T. Act praying that the impugned charge sheet dated 19.9.1991 (Annexure A-11) may be set aside that the respondents may be directed to pass an order on the basis of the finding submitted by the Enquiry Officer Shri Shakti Singh in his report dated 25.7.1991 and to reinstate the applicant in service with consequential benefits.

2. The respondents in the reply contend that separate enquiry was ordered against the applicant, that the second respondent did not agree with the findings of the Enquiry Officer that there was no evidence to frame a charge because the Enquiry Officer had discarded the fact that Bimal Jain and Sanjeev Suri though resiled from their statement earlier given while ~~in the~~ cross examined in the enquiry, had actually identified the applicant and Harkhyal Singh before ACT, Kotwali, that on this evidence a charge should have been framed and the enquiry proceeded further and that therefore the second respondent has validly and properly directed the enquiry to be further proceeded with from the stage of prosecution evidence already recorded by order dated 19.7.1991. The respondents therefore pray that as there is nothing illegal or arbitrary in the action, the application may be dismissed. They have further contended that the applicant has no right to

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challenge this action at this point of time and that his remedy lies in challenging the final order to be passed in the departmental enquiry.

3. Having perused the pleadings and having heard the learned counsel on both side we find that there is no merit at all in this application. The allegation in the application that the second respondent has acted beyond his powers as a disciplinary authority under Rule 16a(X) of the Delhi Police (Punishment and Appeal) Rules, 1980 seems to have been made on the assumption that this order was to hold a denovo enquiry. It is well settled by now that when an enquiry has been held and completed by the Enquiry Officer and if the disciplinary authority finds that the enquiry is incomplete in any way it can either hold a further enquiry itself or direct such further enquiry as may be prescribed to be held, but cannot direct a denovo enquiry to be held. This principle is applicable to enquiries under the CCS(CCA) Rules as also under the Delhi Police (Punishment and Appeal) Rules. Here what was done by the second respondent was finding that the Enquiry Officer has gone wrong in holding that there was no material to frame a charge against the applicant, directed the proceedings to be further held from the stage of prosecution witnesses already examined. In other words the direction was to consider and frame a charge and then proceed further. There is a difference

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between the proceedings under the CCS (CCA) Rules and the Delhi Police (Punishment & Appeal) Rules while an enquiry under Rule 14 of the CCS (CCA) Rules commences with framing a charge in the proceedings under Delhi Police (Punishment & Appeal) Rules, a charge is framed only after the evidence in support of the summary of allegation is taken. After examination of the witnesses in support of the summary of allegation is over, the Enquiry Officer after applying his mind would frame a charge or hold that there is no evidence sufficient to frame a charge. After framing a charge the Police Officer facing the enquiry will be asked whether he accept the charge or not and if he does not accept, he would be required to enter upon his defence. Framing a charge or not framing a charge after the evidence in support of the summary of allegation is recorded is a step in the departmental proceedings. Even while the disciplinary authority disagrees with the views of the Enquiry Officer that there is no evidence sufficient to frame a charge, it is not necessary for the disciplinary authority to give a copy of the report to the police official facing the enquiry and notifying his intention to disagree with the finding because after framing charge and after the culmination of the enquiry, the report of the enquiry would be placed before the disciplinary authority who will after serving a copy of the same on the official and getting his representation take a final decision. Therefore,

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an opportunity will be available to the police official before a final order is passed by the disciplinary authority. Framing a charge being only a step in the disciplinary proceeding, it is not necessary that at that stage disciplinary authority should notify the police official of his intention to disagree with the finding of the enquiry authority. No prejudice at all is caused to the police official by not giving a copy of the report or a notice of disagreement at that stage because such an opportunity will be available to him before a final order is passed. If the second respondent had ordered a denovo enquiry from the stage of summary of allegation, it could be argued that the procedure is irregular and that prejudice has been caused because in a denovo enquiry whatever evidence was recorded earlier would not find a place. Here such a situation did not arise even if there is a change in the Enquiry Officer. It does not make any difference at all for the decision in regard to framing of charge has to be taken by the successor Enquiry Officer on the basis of the evidence recorded by the first Enquiry Officer. Therefore by entrusting the enquiry with Inspector Bhagawant Singh while the evidence was recorded by Inspector Shakti Singh no prejudice has been caused to the applicant.

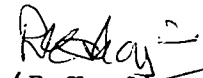
4. The learned counsel for the applicant invited our attention to a ruling of the Hon'ble

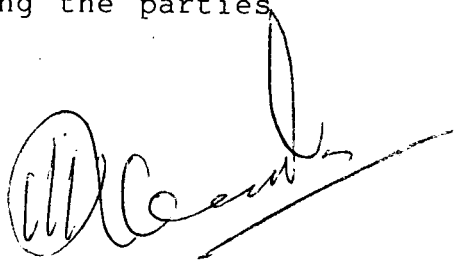
Supreme Court in K.R. Dev Vs. the Collector of Central Excise, Shillong reported in AIR 1971 SC 1447 wherein it was held that it is not open for the disciplinary authority to set aside an enquiry report and to direct a denovo enquiry to be held by another Enquiry Officer for the reason that the ~~first~~ ^{first} report of the Enquiry Officer did not appeal to him. But the dictum of that ruling has no application to the facts of the case because in this case the disciplinary authority has not ordered a denovo enquiry though the enquiry is now to be further held from the stage reached by the first Enquiry Officer by another officer. Learned counsel of the applicant further argued that by issuing a charge sheet to the applicant while Harkhyal Singh has been discharged and reinstated the respondents have shown a hostile discrimination against him, we are not impressed by this argument. The disciplinary authority in respect of Harkhyal Singh was a different officer than the second respondent. The second respondent being the disciplinary authority in the case of the applicant is entitled to appraise the evidence at the enquiry to agree or disagree with the view taken by the Enquiry Officer and if necessary to direct a charge to be framed and to proceed further with the enquiry. It is only that what the second respondent has done in this case.

5. In the light of the above discussion, we do not find any merit in this application and

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therefore we dismiss the same leaving the parties
to bear their own costs.


(R.K. Ahooja)
Member (A)


(A.V. Haridasan)
Vice Chairman (J)

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