

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

18

O.A. No./T.A. No.2795 of 1991 Decided on: 6.5.97

Shri Parmanand & other Applicant(s)
connected case
(By Shri Shankar Raju, Advocate)

VERSUS

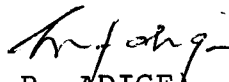
Commissioner of Police & Anr. Respondents

(By Shri Amresh Mathur, Advocate)

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HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to ther
Benches of the Tribunal?


(S.R. ADIGE)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

(19)

New Delhi, dated this the 6th May 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

O.A. No. 2795 of 1991

Shri Parma Nand
S/o Shri Puran Singh,
R/o Vill. & P.O. Daryapur Kalan,
P.S. Narela,
Delhi-110039.

... APPLICANT

VERSUS

1. Commissioner of Police,
Police Headquarters,
MSO Building,
New Delhi.
2. Union of India
Ministry of Home Affairs,
New Delhi through
the Secretary.

... RESPONDENTS

O.A. No. 2871 of 1991

Shri Jeevan Lal,
S/o Shri Har Swaroop,
R/o Vill. Chandhat,
Tehsil Palwal,
Dist. Faridabad,
Haryana.

... APPLICANT

VERSUS

1. Commissioner of Police,
Police Headquarters,
MSO Building,
New Delhi.
2. Union of India,
Ministry of Home Affairs,
New Delhi through
the Secretary.

... RESPONDENTS

Advocates:

Shri Shankar Raju for the applicants

Shri Amresh Mathur for the Respondents

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

As both O.As involve common question
of fact and law, they are being disposed of
by this common judgment.

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2. Both applicants impugn the disciplinary order dated 25.4.91 (Ann. P-1 in O.A. No. 2795/91) dismissing them from service and the appellate order dated 18.9.91 (Ann. P-3 in O.A No. 2795/91) rejecting their appeal.

3. One Shri N.K. Joshi complained that S/Shri J. Ahmed, Jagat Singh, A. Ballabh and R. Singh cheated him of Rs.2,48,000/- in connecting with the purchase of land measuring 400 sq. yds. in New Ashok Nagar. On his complaint FIR No. 121 dated 22.4.89 was instituted under relevant IPC sections at P.S. Shakar Pur and all four were arrested. Rs.1,32,000/- was recovered. Shri N.K.Joshi also complained that the above mentioned persons had given Rs.38,000/- to the two applicants. The summary of allegations against the two applicants states that during preliminary investigation it was also revealed that they had received Rs.38,000/- for favouring the accused in the aforesaid case, and it further states that from enquiries it was revealed that the applicants had helped the accused persons in getting a forged deal finalised for their selfish and ulterior motive.

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4. Both applicants were suspended, and with the prior approval of Addl. Commissioner of Police under Rule 15(2) Delhi Police (P&A) Rules a common Departmental Enquiry was ordered to be instituted against them. The E.O. in his report dated 25.10.90 (Ann. P/2) held the charges against both applicants proved. Show cause notice was issued to applicants as to why they should not be dismissed from service. Upon receipt of their replies, the Disciplinary Authority after considering the same dismissed them from service, vide impugned order dated 25.4.91, and their appeal was rejected, vide impugned appellate order dated 18.9.91.

5. We have heard applicants' counsel Shri Shanakr Raju and respondents' counsel Shri Amresh Mathru.

6. At the outset Shri Raju invited our attention to that portion of the discussion of ~~the~~^{the} evidence in the E.O's report where¹ the E.O. before concluding that applicants were guilty of the charge, has recorded a finding that in order to save the defaulters S.I. S.B.Yadav, I.O. in case FIR No. 121/89 had asked Shri N.K.Joshi not to lodge FIR against the two applicants and had asked him to give a separate complaint against them and had also informed applicants of this, who had agreed to return Rs.35,000/- as S.I. Yadav had agreed to save them. This amount, had been given to him who in turn had given it to

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N.K. Joshi along with Rs.97,000/- which had been recovered from the accused person during investigation of the case. Shri Raju pointed out that before coming to such a finding, neither was SI Yadav cited as a witness, nor was he examined/cross-examined in the D.E, and under the circumstance both applicants were gravely prejudiced in the D.E. Shri Raju contended that the proceedings against both applicants were liable to be quashed on this short ground. In this connection other grounds were also briefly urged.

7. Respondents' counsel Shri Mathur conceded that the recording of the above finding, without SI Yadav being cited as a witness or being examined/cross-examined in the D.E. was fatal to the conduct of the entire proceeding, which merited judicial intervention.

8. Both counsel agree that the ratio of the Hon'ble Supreme Court's judgment in State of Punjab Vs. Dr. H.S. Greasy JT 1996 (5) SC 403 will be applicable in the present case, wherein it has been laid down that when the enquiry is found to be faulty the matter must be remitted to the Disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law, and pending the enquiry the delinquent officer must be deemed to be under suspension.

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9. In the result the two O.As are allowed and the impugned disciplinary and appellate order against both applicants are quashed and set aside. The matter is remitted back to the disciplinary authority to follow the procedure from the stage at which the aforesaid fault arose and to take further action against both applicants according to law. Pending completion of the inquiry, both applicants will be deemed to be under suspension, and the manner in which the suspension period is to be treated shall be determined by the Disciplinary Authority at the conclusion of the D.E. in accordance with rules. No costs.

10. Let a copy of this judgment be placed in both O.As.

A. Veda Valli

(DR. A. VEDAVALLI)
Member (J)

/GK/

S. R. Adige
(S.R. ADIGE)
Member (A)