

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-3087/91

(12)

New Delhi this the 5th day of May, 1997.

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Sh. S.P. Biswas, Member(A)

S.I. Jai Kishan No.1520/D,
S/o Shri Late Sh. Amar Singh,
R/o Otr.No.220, Type-II,
Police Colony, Ahata Kidara,
Delhi-6. Applicant

(through Sh. Shankar Raju, advocate)

versus

1. Commissioner of Police,
Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. The Dy. Commissioner of Police,
Provisioning & Lines,
Rajpur Road, Delhi-54. Respondents

(through Sh. Vijay Pandita, advocate)

ORDER(ORAL)

delivered by Hon'ble Dr. Jose P. Verghese, V.C.(J)

This O.A. is coming up for final hearing.

A preliminary enquiry was held against the applicant by an appropriate authority and on the basis of the said preliminary enquiry, the regular enquiry was initiated and enquiry officer has returned a finding that the charges stand proved. The applicant has approached this Tribunal stating that the disciplinary enquiry initiated is vitiated by mala fide firstly for the reason that the preliminary enquiry was held by an officer against whom a complaint is pending at the instance of the applicant wherein the applicant had complained against the said officer that he has misappropriated certain amounts. The applicant has reasonable apprehension that the enquiry held by an officer against whom a complaint of that nature is

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pending, can do any justice to him. Even though the said enquiry is said to be a preliminary enquiry, the proceedings in the regular departmental enquiry are said to be solely based on the said enquiry and the mala fide character of the preliminary enquiry has carried forward to the disciplinary proceedings. Besides, the documents containing to the preliminary enquiry, though relied upon, and the copy of the preliminary report has not been supplied to the applicant whereby he could have assailed or put up a proper defence before the enquiry officer. In the circumstances, the applicant has approached this Tribunal at the stage of enquiry report.

The enquiry officer has framed certain charges against the applicant and the same are given at page-27 of the O.A. which are again for misappropriation of the certain amounts at the instance of the applicant. The defence of the applicant to the said charges is that these amounts have been misappropriated, not at the instance of the applicant, but at the instance of the officer who had conducted the preliminary enquiry. It is just and proper that the applicant must be given an opportunity of a proper enquiry and that opportunity can only be given if the enquiry including the preliminary enquiry be held in accordance with the rules by an officer who is not *prima facie* biased. The learned counsel for the applicant fairly states that he is not shirking out his liability of being enquired, provided the said enquiry and the preliminary enquiry be conducted by a third

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independent officer other than the one complained against, in accordance with the rules. In view of this even though the respondents are opposing such grant of reliefs, in the interest of justice, we quash the orders passed in the disciplinary proceedings and direct the respondents to start the departmental enquiry de novo, after the matter has been enquired into in a preliminary enquiry by an officer other than one complained against. On the basis of the preliminary enquiry, if any substance is found against the applicant, the proceedings may be initiated against him in accordance with rules thereafter.

With the aforesaid directions, this O.A. is disposed of. There shall be no order as to costs.


(S.P. Biswas)
Member(A)


(Dr. Jose P. Verghese)
Vice-Chairman(J)

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