

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI

O.A.No.425 of 1991

Date of Decision: 4.6.93

Tola Ram Mirwani .....Applicant

Versus

Union of India & others .....Respondents.

CORAM:

Hon'ble Mr.J.P.Sharma, Member(J)

Hon'ble Mr.S.R.Adige, Member(A)

For the applicant:

Shri Kanwar C.M.Khan for the  
applicant.

For the respondents:

Shri B.S.Oberoi, proxy counsel  
for Shri D.K.Sharma.

JUDGMENT

(By Hon'ble Mr.S.R.Adige, Member(A).)

The applicant Shri Tola Ram Mirwani-Inspector (Anti Corruption Branch) Delhi Police has impugned the order dated 29.11.89 passed by the Addl.Commissioner of Police (A.P.) and Former Addl.Commissioner of Police (Training) ,Delhi(Annexure-A), Shri P.R.S.Brar , forfeiting one year approved service of the applicant temporarily for a period of two years and reducing the applicant's salary by one stage for a period of two years from the date of issue of that order, Consequent to a departmental proceeding <sup>being</sup> conducted against the applicant, which has been upheld in the appeal by the Commissioner of Police Delhi vide his order dated 28.3.90 (Annexure-B). The applicant has also prayed for setting aside the findings of the Enquiry Officer dated 20.1.89, on the basis of/said orders which the <sup>which the</sup> were passed, and for setting aside the orders of the Commissioner of Police dated 14.7.87 in respect of A.C.R as well for setting aside the probation period list dated 30.10.90 and allowing ~~the~~ clearance to the applicant.

2. Briefly stated, it appears that departmental

proceedings were conducted against the applicant with respect to certain alleged acts of omission and commission by him while posted as SHO, P.S.Nand Nagri, <sup>allegedly in</sup> where in he <sup>had</sup> failed to exercise proper supervision over the work of his staff, in that:

i) One Shri C.S.Khoker was brought to the police station on 26.8.86 by ASI Dalip Singh and Constable Arun Kumar and released after extorting Rs.2500/- after threatening him in a rape case.

ii ) Unauthorised constructions/ encroachments on D.D.A lands falling within the jurisdiction of P.S. Nand Nagri during the applicant's posting there.

iii) A case of rape on the complaint of Smt. Janki Devi was registered after a delay of 12 hours on 7.5.86 only when the complainant party met D.C.P/East.

3. In the departmental enquiry, charges no.1 and 3 appear to have been proved against the applicant and it was held that he could not escape from the responsibility of serious lapses of supervision. A show cause notice was issued to the applicant, to which he submitted a reply, upon which the Addl. Commissioner of Police (AP) and Former ACP (Training) Shri Brar issued the impugned order dated 29.11.89 (Annexure-A) which was upheld in appeal by the Commissioner of Police vide his order dated 28.3.90 and it is against those orders, <sup>that in</sup> the applicant has now approached this Tribunal.

4. We have heard the learned counsel for the applicant as well as the learned counsel for the respondents.

5. Learned counsel for the applicant has assailed the impugned order on merits as well as on points of law. He has argued that Shri Brar was not competent to pass an impugned order dated 29.11.89 as he had relinquished <sup>in</sup> charge of post of Addl.C.P (Training) by that date and

Shri R.S.Sahai was the Addl.CP(Training) at that time. This was clear from the order itself where Shri Brar had signed the order as Former Addl.Commissioner of Police(Training). O.M.No.F 7/14/6/Ests(A) dated 24.1.63 clearly laid down that the Officers performing current duties on a post cannot exercise the statutory powers under the rules. Learned counsel for the applicant argued that <sup>as on</sup> Shri Brar was not the Disciplinary Authority on 29.11.89, he could not pass the impugned order on that date. In this connection, the learned counsel for the applicant has drawn attention to the order dated 31.7.89(Annexure-P2) posting Shri Brar as Addl.CP(AP). In the said order, it is stated that he will also lookafter the training in addition to Armed Police. Attention has also been drawn to the order dated 13.10.89 posting Shri R.S.Sahai as Addl.CP (Training).

6. On behalf of the respondents, it has been argued that Shri Brar was working as Addl.CP(Training) at the time when the applicant appeared in Orderly Room on 10.8.89 and depositions made by the applicant orally were logically concluded by him. Hence the orders were issued by Shri Brar designating as Former Addl.Commissioner of Police(Training). Had the orders been issued by the Officer who had not heard the applicant, it would have been violative of the principle of natural justice.

7. The law is clear on the point that a disciplinary order can be passed only by an authority who is fully competent to pass such orders. On 29.11.89 <sup>on the date on</sup> i.e. on which the impugned disciplinary order was passed, Shri Brar was Addl.CP(A.P) <sup>in the same</sup> and <sup>of Addl. Commissioner of Police (Training)</sup> that post was held by Shri R.S.Sahai. Learned counsel for the respondents has failed to furnish any order

(b)

issued by the Commissioner of Police, vesting Shri Brar with disciplinary powers in respect of the disciplinary proceedings before us. Under the circumstances, it must be held that Shri Brar not being the Disciplinary Authority in the instant case on the date the impugned orders were passed, was not the competent authority to pass the impugned order dated 29.11.89.

8. In the result without entering into the rival contentions of both the parties on the other points stated in the O.A., we allow this application and quash the impugned order dated 29.11.89 on the ground that it was passed by an authority who was not competent to pass the same. The appellate order dated 28.3.90 upholding the order dated 29.11.89 cannot also be sustained and it is therefore, also quashed.

9. The case is remanded back to the Commissioner of Police, <sup>D.L.H.A.</sup> who will direct the competent Disciplinary Authority to pass a fresh order in this case after giving the applicant an opportunity of being heard. While passing orders, the Disciplinary Authority will also examine the applicant's allegation that while those who were actively involved in the alleged acts of omission and commission have got of scot-free, he, who only exercised supervisory powers is the only one to be punished. No costs.

*Adige*  
(S.R. ADIGE)  
MEMBER(A)

*Sharma*  
(J.P. SHARMA)  
MEMBER(J)

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