

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No. 602/91

Date of Decision: 31-1-92

Inspector Harbans Singh

Applicant

Shri Shankar Raju

Counsel for the applicant

Vs.

The Commissioner of Police & Ors. Respondents

Shri M.K. Sharma

Counsel for the respondent

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The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

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.Member Shri B.N. Dhoundiyal)

This OA has been filed by Shri Harbans Singh, Inspector of Police under Section 19 of the Central Administrative Tribunal Act, 1985, praying for the following reliefs:-

(i) To quash the impugned order at Annexure A-5 as well as the Summary of Allegations and the Departmental proceedings vide Annexure A-6;

(ii) To quash the impugned order at Annexure A-9 as being non-speaking;

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(iii) To quash the impugned order at Annexure A-4

(iv) To direct the Respondents not to initiate any Departmental Enquiry against the applicant on the same allegations on which the show-cause notice of Censure was withdrawn;

(v) To direct the Respondents to remove any adverse entry entered in the C.R. of the applicant pertaining to the Disciplinary proceedings;

2. On 7.5.91, the Tribunal passed an interim order directing that the respondents shall not proceed further with the departmental proceedings against the applicant vide Annexure A-5 and A-6 to the application.

3. The applicant is working as a confirmed Inspector of Police since 1985. According to him, he is in the zone of promotion to the rank of Assistant Commissioner of Police. While he was posted as S.H.O. Police Station Ashok Vihar, Delhi, a complaint received from one V.P. Malhotra, led to a vigilance inquiry and subsequent issue of Show Cause notice for imposing the penalty of censure on him by order dated 14.8.89. The allegation was that he had connived with some persons in dispossessing the family of one V.P. Malhotra from their house in Ashok Vihar. By order dated 27.10.1989, the Disciplinary authority, without stating any reasons, withdrew the show cause notice for censure issued to him. The Additional Commissioner of Police vide order dated 30.10.1989, ordered a regular departmental enquiry against him on the ground that he was alleged to have failed to register a criminal case and was in active connivance in dispossessing the complainant.

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The impugned orders are challenged on the grounds that

- (a) The Disciplinary Authority was debarred from initiating fresh proceedings on the same charge unless reasons for cancellation of the original charge sheet or for dropping the proceedings were adequately mentioned and it was duly stated in the order that the proceedings were being dropped without prejudice to further action;
- (b) A reasonable opportunity was not given to him to explain his case before withdrawing the charge-sheet for censure;
- (c) The tentative punishment of lesser kind has been changed to a graver form prejudicing his case;
- (d) This change involves a review of the earlier decision which is not delegated to the Additional Commissioner of Police;
- (e) The earlier show cause notice and the fresh inquiry were both based on the same report of the vigilance branch;
- (f) Inordinate delay has occurred in initiating the proceedings;

4. The facts relating to the earlier show cause notice being withdrawn and fresh enquiry being ordered are admitted by the respondents. They have stated that an enquiry was conducted by the Vigilance Branch on the complaint of Vidya Prakash Malhotra of Ashok Vihar alleging that he had been forcibly and illegally dispossessed from his residence in connivance with SHO Ashok Vihar, who did not register a criminal case. The

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vigilance inquiry confirmed this act of the applicant which constituted commission of a cognizable offence and misuse of official power. There is no restriction in Delhi Police (Punishment and Appeal) Rules, 1980, to withdraw the show cause notice and to initiate a Departmental Enquiry against a defaulting police officer. No prejudice has been caused as no punishment had been awarded to him on the show cause notice. They have also denied that any undue delay has occurred in the Departmental Proceedings.

5. We have gone through the records of the case and heard the learned counsel for both parties. The applicant has cited a number of cases to support his contention that no fresh enquiry can be ordered on the same charge and we have duly considered them.** The crucial question to be considered is whether withdrawal of show cause notice for censure, a minor penalty and ordering of Departmental Enquiry under Rule 14 of the CCS(CCA) Rules, 1965 and later, on the same charge, without giving any reasons is legally sustainable.

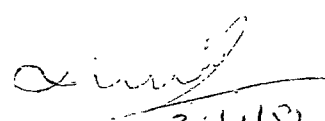
6. By not indicating the reasons for the withdrawal of the first show cause notice, the applicant has been deprived of the opportunity of appealing or representing against the impugned show cause notice. Government of India's instruction number 9 below Rule 15 of the CCS(CCA) Rules, 1965, provides, inter alia, that reasons for cancellation of the original charge sheet is to be given for issuing a fresh charge sheet. It is clarified therein that "once the proceedings initiated under Rule 14 or Rule 16 of the CCS(CCA) Rules, 1965 are dropped, the Disciplinary Authorities would be barred from initiating a fresh charge sheet against the delinquent officers unless the reasons

for the cancellation of the original charge sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case (cited in Kartar Singh Vs. Union of India, 1987(4) SLJ(CAT) 230 at 233-234). What is stated above holds good even for enquiry under the Delhi Police (Punishment and Appeal) Rules, 1980. In the instant case, no reasons have been given for withdrawing the first show cause notice and for ordering fresh departmental enquiry against the applicant. This is not legally sustainable.

7. In view of what is stated above, we hereby set aside and quash the impugned orders dated 27.10.1989, 30.10.1989, 12.12.1990 and December 1989, ordering a fresh departmental enquiry against the applicant. The respondents shall comply with this direction within a period of three months from the date of receipt of this order. The interim order passed on 07.05.1991 directing the respondents not to proceed further with the departmental proceedings against the applicant are hereby made absolute.

8. Parties will bear their own costs.


(B.N. DHOUNDIYAL)
MEMBER (A)


31/1/92
(P.K. KARTHA)
VICE CHAIRMAN (J)

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