

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

1. OA No.873/91 Date of decision: 20.08.93

S.C. Dhawan ...Applicant

Versus

Commissioner of Police & Anr. ...Respondents

2. OA No.1165/92

Inspector S.C. Dhawan ...Applicant

Versus

Commissioner of Police & Anr. ...Respondents

Coram:-

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

For the applicant Shri Shankar Raju, Counsel. and
Shri G.D. Gupta

For the respondents Shri M.C. Garg, Counsel.

1. Whether Reporters of local papers may be allowed to
see the Judgement?

2. To be referred to the Reporter or not?

(Judgement of the Bench delivered by Hon'ble
Mr. J.P. Sharma, Member (J))

The applicant initially joined as Stenographer
(Civilian) in Delhi Police in May, 1969 and subsequently,
on the amendment in the Police Act he was enrolled and was
conferred the Executive Rank of Assistant Sub-Inspector
(Stenographer) w.e.f. 7th November, 1969. He was later
on promoted as Sub Inspector (Steno) w.e.f. 9th July,
1976. and he was promoted to officiate as Sub Inspector
(Ministerial) w.e.f. 31st October, 1988. He was promoted
on ad hoc basis as inspector vide order 8th Sept., 1989.
In the year 1986 one Mr Sunil Kumar Verma filed a
complaint against the applicant while he was working as
S.I (Ministerial) with Dy Commissioner of Police, D.C.P.
(Communications) Old Police Lines, Delhi. The complaint was

to the effect that some persons personated as Police Officers and has seized his two-wheeler's documents. Shri A.P. John DCP (Communication) Shri Sunil Kumar Verma and got the preliminary enquiry conducted, by A.C.P. (Communication) Shri Mittal. D.C.P.(Communication) addressed a Memo dt 15.09.89 to DCP (Vig) with reference to his letter dated 14.09.89 pertaining to the slips against traffic violators issued by Sub Inspector (Inspection) Shri S.C.Dhawan. The DCP observed that he did not find any lapse on the part of Shri Dhawan and the same is not any substance in real sense and be consigned to record. No further action is called for in this case. Copy of this communication was also sent to DCP (Traffic) w.e.t. his letter dated 31st August, 1989 addressed to the DCP (Vig.)

The contentions of the applicant is that he seized the document from Shri Sunil Kumar Verma and he has sent the slip about his case along with seized document to DCP(Traffic) on 28.8.1986, through ACP (Communication). The case of the applicant is that though he was working as SI(Ministerial) under DCP(Communication), he performed his duties in compliance with the Circular of Commissioner of Police dt 30.09.1985 (Annexure A-3) which prescribes that all members of the Delhi Police to make cognizance of manner of violation of traffic law if it takes place in front of them so that habit of traffic laws etc can be inculcated into average citizen of the city. It may here be noted that on the basis of seizure of document of two-wheeler of Mr Sunil Verma in violation of the Traffic rules, he (Complainant), against the applicant had been fined Rs.200 by the Traffic Unit Office of DCP(Traffic) as

le

mentioned in the chit issued by the applicant at the time of seizure . The grievance of the applicant is that when once the DCP (Communication) was the disciplinary authority of the applicant has written to DCP (Vig.) that the complaint is not having any substance in real sense and the same be consigned to record, the respondents have no legal sanctity to issue Memo dated 31.10.90 whereby Shri V.N. Singh Addl Commissioner of Police (CID) ordered a regular disciplinary enquiry against the applicant on account of the applicant managing to obtain a notice back from Traffic Staff DPL in contravention of his instructions, rules/orders regarding use of Notice book, as it is meant only for GOS' of Delhi Police and further he challenged a seized document relating to Scooter No.DBS3160 along with driving licence from one Shri Sunil Kumar Verma illegally with ulterior motive. The said department enquiry was directed under Section 21 of the Delhi Police Act under the order by Addl Commissioner of Police (CID) Delhi. The applicant preferred an appeal to the Commissioner of Police (Annexure-5) by the order dated 19.02.1991 the Commissioner of Police rejected the representation of the applicant for dropping the enquiry against him. In the application 873/91 the applicant had prayed to quash the Memo dated 31 October, 90 and Memo dt 19.02.91 with the direction to the respondents not to reopen the case which has already been enquired into by the competent disciplinary authority holding that no further action was called for.

In the O.A 1165/92 applicant is aggrieved by the Order of his reversion w.e.f. 20.04.92 to the substantive rank of SI (Ministerial) (Annexure A-5). He is also

le

agrieved by the order dated 21.04.92 (Annexure A.6) whereby number of Sub Inspectors (Ministerial) who are Junior to the applicant have been promoted as Inspectors (Ministerial) in F-List w.e.f. dated 13.4.92 ignoring the legitimate claim of the applicant.

Relief claimed by the applicant in O.A. 1165/92 is for quashing order of reversion (Annexure A.5) with the direction to the respondents to give him promotion and regularise him as Inspector (Ministerial) w.e.f. 20.04.92 restoring his seniority, continuity in service along with all consequential benefits.

To direct the respondents to induct the name of the applicant at appropriate place in Annexure A-6, according to his seniority.

A direction to the respondents not to consider the factum of pendency of departmental proceedings against the applicant and existence of his name in the "Secret List" while giving him promotion in the "F List" as Inspector (Ministerial);

In both these applications notices were issued to the respondents to file their reply and they filed the same separately and contested the reliefs claimed by the applicant in the above original application, by the order dated 19.10.92. The bench ordered that both the original applications be heard together in O.A. 873/91. An interim direction was issued on 16.4.91 restraining the respondents to proceed with the holding of the departmental enquiry pursuant to the Impugned Memo dated

Impugned Memo dated 31st October, 1990 and that interim order shall continue till the date of hearing. That Interim order is continuing uptill now.

The respondents had taken the stand in O.A 873/91 that the applicant was SI(Ministerial) managed to procure illegally a Notes book of the Traffic Violator which is meant specifically for the Gazetted Officers of the Delhi Police from the Traffic staff of OPL. He has misused the same book and made cuttings in the Sr. No.2 of the book. The applicant had no lawful authority to Challan Shri Sunil Kumar Verma and seize documents of two-wheeler and he has done so with ulterior motive. The DCP (Communication) never ordered departmental enquiry into the misconduct of the applicant and he did not enjoy any such power to order the departmental enquiry or to take any action/decision on the complaint so made against the applicant. The complaint made against the applicant was referred to the then DSP(Communication) for sending the factual report. The DCP(Communication) did not order departmental enquiry against the applicant and merely ~~un~~related the facts and recommended filing of the complaint. Thus recommendation of the DCP(Communication) could not be implemented because of administrative laxity and the matter was later on verified by the Vigilance branch of the Delhi Police. The learned counsel for the applicant also referred to the authority of State of Assam and Another Vs J.N. Roy Biswas reported in AIR 1975 SC Page 2277. The applicant's counsel has highlighted para 4 which is reproduced below :

↓
e

"We may, however, made it clear that no government servant can urge that if for some technical or other good ground, procedural or other, the first enquiry or punishment or exoneration is found bad in law that a second enquiry cannot be launched. It can be; but once a disciplinary case has closed and the official reinstated, presumably on full exoneration, a charged Government cannot re-start the exercise in the absence of specific power to review or revise, vested by rules in some authority. The basics of rule of law cannot be breached without legal provision or other vitiating factor invalidating the earlier enquiry. For the present this is theoretical because no such deadly defect is apparent on the record."

A perusal of the above authority shows that in that case proceedings were desired to be reopened when a already Enquiry Officer submitted his report of findings adverse to the employee and 'show cause notice' was also issued to him. However, the Director in the light of the explanation offered by the employee, direct his reinstatement, the employee retired and thereafter enquiry was reopened and de novo recording of the evidence progressed. Employee moved the High Court of Assam and the High Court granted relief that there was no power to reopen a case concluded for exoneration and reinstatement and illegal vexation offered on second enquiry should be arrested. The State of Assam came in appeal to the Hon'ble Supreme Court.

↓

In the present case no enquiry has commenced against the applicant and summary of allegations were never served. The case is therefore, below distinguishable on facts and law.

The learned counsel has also referred to another authority of single Member Bench of Andhra Pradesh Administrative Tribunal Hyderabad in P.R. Narasimah Vs State of Andhra Pradesh and Another. In this case also the enquiry has completed but on judicial review, it was held that enquiry conducted by the enquiry officer is vitiated and therefore was set-aside. Learned counsel highlighted Para 4 arguing that the Tribunal did not order fresh enquiry because there was gap of three or four years. As the facts will show this case is not at all applicable to the facts of this case.

The respondents are therefore within their right to issue Memo dated 31.10.90 because it was beyond the competence of the DCP(Communication) to consign the case to records. Appeal preferred by the applicant to the Commissioner of Police has been rightly rejected.

The stand taken by the respondents in their reply on O.A. 1165/92 is that applicant was promoted purely on ad hoc and temporary basis w.e.f. 6.9.1989 Inspector (Ministerial). This promotion was made under Rule 19 of Delhi Police (Promotion) (Confirmation) Rules, 1980. This rule lays down in special circumstances when there are no approved names and vacancy exists, the Commissioner of Police may promote suitable Officers in order of seniority to next higher rank temporarily. Such

↓

claim any right for regular appointment or seniority or for appointment. This shall be liable soon as qualified man becomes available. Because of the complain of Shri Sunil Verma and the alleged mis-conduct by the applicant in obtaining a notice-book from Traffic staff which was only meant for Gazetted Officers and after he challaned and seized document relating to scooter DBS-3160 in violation of traffic rules, disciplinary enquiry was instituted against application, which is pending.

D.P.C. on considering the case of the applicant on 13.4.1992, and he was found unfit for promotion. It is thereafter that the applicant was reverted to the substantive rank of SI(Ministerial) w.e.f. 2.4.92 vide notification dated 21.4.92. The applicant had not made any departmental representation. Thus the applicant according to respondents has been rightly reverted being found unfit by the D.P.C. held on 13.4.1992 and now departmental enquiry is pending against him by the Memo dated 31.10.1990. Applicant, therefore, is not entitled to grant of any of the reliefs prayed for in the O.A.

We have heard the learned counsel for the parties at length and perused the record. Learned counsel for the applicant argued that the D.C.P.(Communication) was the disciplinary authority of the applicant at the relevant time. On the complaint of Shri Sunil Verma a Preliminary enquiry was got conducted through ACP(Communication) by DCP(Communication and on that basis it was found that there was no lapse on the part of the applicant and the case was consigned to record. To substantiate this contention learned counsel stressed that the applicant by

↓

case was consigned to record. To substantiate this contention learned counsel stressed that the applicant by virtue of circular dtated 13.09.1985 issued by the Commissioner of Police (Annexure A-3) in the capacity of a member of the Delhi Police was authorised to check minor violation of traffic rules. The applicant issued the slip No.80101 to one Shri Sunil Kumar Verma and seized the documents of the scooter who was found driving at 9.40 hours opposite Karorimal Sahadara, without halment and crossing over middle path from LNS road to RNS road which is not allowed. The applicant has only forwarded the zeized documents to the Traffic Unit and ultimately Sunil Verma was fined Rs.500/- on the slip in question issued by the applicant. Considering these facts DCP(Communication) has dropped the proceedings by Order dated 15.09.89. It is evident that the applicant was not served with any summany of allegations and it was only at the preliminary stage as to whether the applicant had committed any misconduct as per Service Rules in issuing a Slip to one Shri Sunil Kumar Verma and seized documents of the scooter. The complaint by one Shri Sunil Kumar Verma was not made to DCP(Communication). The final authority in drawing any action on this complaint was not DCP(Communication). The complaint was with the Vigilance Unit of the Delhi Police and certain factual report was desired from DCP(Communication). It was the opinion of the DCP(Communication) that there was no lapse on the part of the applicant and the matter be closed and dropped. However, the Vigilance Branch persued with the said enquiry irrespective of the note of DCP (Communication) and found that the applicant had managed to procure illegally note-book traffic violator which is meant

le

authority to pass final order on a complaint under investigation with the Vigilance branch. It is not a case where the final order has been passed in a disciplinary enquiry. Article 21 of the Constitution of the India only prescribed that a person shall not be tried second time for the same Offence. In fact alleged applicant has not been exonerated for the alleged mis-conduct against him. The reliance of the applicant on the case of Ajaib Singh Bakshi Vs Union of India ,1969 SLR Page-400 revising a decision taken previously counsel is not to the point. Similarly, authority relied by the learned counsel in the case of 1992(2) ATC Page-127 which lays down that when once a departmental enquiry is concluded then there is no power of review under Delhi Police (Punishment and Appeal) Rules, 1990 to re-commence the enquiry. Authority on Ajaib Singh Bakshi is on the point that if any decision has been taken by a competent authority then subsequently another decision on the same ame facts and circumstances without reviewing the earlier decision cannot be taken. By this learned counsel wants to emphasise that when DCP(Communication) by his letter dated 15.09.89 addressed to DCP(Vigilance) to close the case against the applicant. The same cannot be reopened at a time when the applicant was working as Inspector (Ministerial). The contention of the learned counsel for the applicant therefore cannot be accepted because no decision on the actual misconduct alleged has been been taken.

From another angle also the mis-conduct alleged against the applicant was not only seizing of scooter documents of Shri Sunil Kumar Verma but also that he was found in possession of certain slip notes only to be used

le

by Gazetted Officers and it is not the case that Sub Inspector (Ministerial) was ever issued those chits by the Traffic Unit or by DCP(Traffic). The complaint of Sunil Verma was not addressed to the DSP Communication and it was addressed to the Head Office whereby it was sent to DSP(Vig.) which Office has been corrected at the Police Headquarters by standing order No.290. The DCP(Vig) has only desired comments from DSP(Communication and in fact the Memo dated 15.09.89 is addressed by DSP(Communication) to Dy Commissioner of Vigilance, wherein he has written 'the case does not have any substance in real sence and be consigned to record.' This authority cannot be exercised by DCP(Communication because the complaint has arisen not because of any act done by the applicant in the discharge of his duties as Sub Inspection(Ministeria) in the office of DCP(Communication but it was an act which was done by the applicant as member of the Police force reserving the power which was primarily entrusted to the traffic Office under the charge of the DCP(Traffic). Thus by any stretch of arguments, it is not made out that the applicant has been exonerated for the alleged misconduct which came to light on the complaint of one Shri Sunil Kumar Verma.

We are, therefore, of the considered opinion that the Memo issued on 31st October, 1990 and the second rejection of the appeal by the Commissioner of Police by the order of 19.02.1991 does not call for any interference. As regards O.A 1165/92 the applicant was considered by DPC and was not found fit. He was only given ad hoc promotion to the rank of Inspector but was not approved by D.P.C held on 13.04.92. Thus applicant cannot have any case. Now, moreover the applicant has

↓

30

Now, moreover the applicant has been placed in the 'Secret List' and the enquiry is pending against him. In view of the authority of Hon'ble Supreme Court, in the case of Delhi Development Authority Vs S.C. Khurana reported in 1993 24 ATC P-703 and in the case of State of Madhya Pradesh and Others Vs Syed ^{Zahir} ~~Naseem~~ and others in the same Journal in Page 249 and the law laid down in the case of Union Vs K.V. Jankiraman (1991) 4 ^{SCC} ~~DW~~ 109, applicant cannot be considered even for ad hoc promotion as he has already been issued a Memo dated 31.10.90, to initiate disciplinary proceedings for misconduct alleged to ^{be} done by the applicant while he was posted as sub inspector (Ministerial) ^{with} ~~that~~ DCP (Communication). Thus the applicant has no case and in fact the learned counsel for the applicant has conceded the fact that if the O.A 873/91 is not considered favourably for the grant of reliefs to the applicant, ^{the} ~~and~~ relief claim ^{ed} / in O.A. 1165/92 also cannot be allowed to applicant.

In view of the above discussion of the facts, and in the circumstances of the case, we find no merit in both the above applications and ^{leaving} ~~are~~ dismissed, and the parties to bear their own costs. Copy of the judgement is placed on the file. Interim stay granted in O.A. 873/91 is vacated.

S. Gurusankaran
20/8/93
(S. Gurusankaran)

Member (A)

sss

J. P. Sharma
20/8/93
(J.P. Sharma)
Member (J)