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Central Administrative Tribunal
Principal Bench

O.A.No.160/2004

Hon'ble Shri Justice P. Shanmugam, Chairman
Hon'ble Shri N.D.Dayal, Member(A)

New Delhi, this the 20th day of February, 2007

Shri B.L. Meena (ACP)
S/o Shri Dana Ram,
R/o 169, Police Colony,
Hauz Khas,
New Delhi.

... Applicant

(By Advocate: Shri Shyam Babu)

Vs.

1. The Chief Secretary
Govt. of N.C.T. of Delhi
Players Building
I.P. Estate
New Delhi.
2. Smt. Geetanjali Kundra, IAS
Inquiring Authority
Additional Director of Education
Govt. of NCT of Delhi
Old Secretariat
Delhi.

... Respondents

(By Advocate: Shri Ajesh Luthra)

ORDER

By Justice P. Shanmugam, Chairman:

Applicant working as Assistant Commissioner of Police,
being aggrieved by the Charge Memorandum dated 06.05.2003,
has filed the above Original Application.

2. Brief facts of the case are as follows:

2(a) It is alleged that on 19.8.1998, SI Prem Singh and Head
Constable Satyender Singh were posted at Police Station, Kalyan
Puri, Delhi. It is further alleged that they forcibly took into

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possession of a Truck No.HR-38-B-5656 belonging to one Shri Javed at the instance of one Shri Ashok Goyal who had financed the said Truck. The Truck was ostensibly taken into possession in case FIR No.342/98 registered under Section 457/380 IPC, Police Station Kalyan Puri (CD No.8 dated 19.8.1998) as the stolen Truck of the case. The Driver of the Truck named Usman was also illegally detained. Shri Javed filed a suit in the Court and obtained a stay order against the Financier in respect of his Truck No.HR 38-B-5656 and thereafter Shri Javed and Sh. Noor Mohd. Pradhan have approached the SHO, Kalyan Puri and B.L.Meena, ACP (the applicant herein) on 20.8.1998, but they did not take any action on their complaint and was said to have asked the parties to compromise the matter. It is alleged that the Truck was illegally kept at the Police Station even when the facts had been known and it was finally seized under Section 66 of the Delhi Police Act by SI Prem Singh as unclaimed. The Truck was not released to the rightful owner for nearly six months even though the power vested with the ACP. Shri Javed approached the Court in a Contempt Petition No.M-19/98 and the Court after taking a serious view of the matter appointed a receiver for the safe custody of the Truck. Shri Javed also filed Writ Petition No.1078/1998 in the High Court of Delhi for an inquiry and registration of case against SI Prem Singh and his associates for committing dacoity and action against Inspector Anjani Kumar and Shri B.L.Meena, ACP for not bringing the guilty to book and for dereliction of their duties. Pursuant to the orders of the High Court, Shri S.M.Bhaskar, ACP was directed to



enquiry into the matter and submitted a report. The report found the applicant prima-facie guilty of abusing his powers for a collateral purpose.

3. Another inquiry was also conducted by Shri M.K. Meena, the then Additional DCP (East) and submitted his report holding that the allegations were not substantiated. The Writ Petition No.1078/1998, filed by Shri Javed Khan, was permitted to be withdrawn by the Delhi High Court on 20.11.2000.

4. In the above circumstances, respondents issued the impugned Memorandum of Charges dated 06.05.2003.

5. The applicant submitted his representation on 11.12.2000. However, without considering the said representation, an inquiry authority was appointed. The applicant was asked to appear before the inquiry authority on 12.01.2004 vide her order dated 24.12.2003. The above OA is filed at this stage against the Memorandum of Charges.

6. The respondents have filed reply. According to them, the applicant was duty bound to take prompt action on the complaint of Shri Javed. But for obvious reasons, the applicant did not take any action against the errant police personnel and instead advised the complainant to settle the matter with Financier. This according to the respondents is failure to maintain absolute integrity and the applicant thereby exhibited conduct unbecoming of a Government servant. According to the respondents, the report submitted by Shri M.K. Meena, the then Additional DCP did not reflect the correct facts and it was his personal opinion in the matter. Since the



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representation furnished by the applicant was devoid of any merit, the competent authority decided to appoint inquiring authority and continued the disciplinary proceedings. According to the respondents, there is no case for interference with the disciplinary proceedings at this stage and has prayed for dismissal of the Original Application.

7. The learned senior counsel, who is appearing on behalf of the applicant, strongly and vehemently pleaded that the disciplinary proceeding is vitiated and cannot be proceeded with. According to the learned counsel, the Charge Memo is ex-facie illegal, vague and is based on the one sided inquiry report submitted by Shri S.M.Bhaskar. The Memorandum of Chargesheet is also liable to be quashed inasmuch the applicant was exonerated in a duly constituted inquiry conducted by Shri M.K.Meena, the then Additional DCP. In any event, the failure to take into account validly constituted the inquiry report has vitiated the whole initiation of the proceedings and, therefore, the same is liable to be quashed.

8. The learned counsel appearing on behalf of the respondents submitted that it is too premature for the applicant to move this Tribunal at the stage of framing of the charge. According to him, the Memorandum of Charge is based on sufficient material and after prima-facie coming to the conclusion that the applicant should be asked to reply and face the enquiry based on the Memorandum of Charges. The report submitted by Shri M.K. Meena is not binding on the Department, since the preliminary report, if any, is not the result of inquiry conducted at the instance



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of the competent authority and, therefore, the contention on behalf of the applicant is devoid of any merit. In support of his plea, he has referred to the Full Bench decision of this Tribunal and has prayed for the dismissal of the OA.

9. We have heard the counsel and considered the matter. The legal principle on the issue of interference of Court at the initial stage of framing of charge is well settled. As a matter of fact, even according to the learned counsel for the applicant, the charges are vague and ex-facie illegal and, therefore, they are liable to be quashed. Therefore, the only question that has to be considered in this case is whether the Memorandum of Charges are liable to be quashed or not.

10. The Statement of Articles of Charge and imputation of misconduct are very clear. We find there is no vagueness in it. As per the Statement of Imputation, the following are the facts set out:

- (a) The applicant was functioning as Assistant Commissioner of Police, Kalyanpuri at the relevant time.
- (b) On 19.8.1998, SI Prem Singh and HC Satender Singh forcibly took into possession of the Truck No.HR-38-B-5656 belonging to one Shri Javed.
- (c) The vehicle was taken possession of at the instance of Shri Ashok Goyal, who is a Financier of the Truck.



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- (d) The Truck was taken possession in case FIR No.342/1998 under Section 457/380 IPC, PS Kalyan Puri as the stolen truck of the case.
- (e) No seizure memo. was prepared and the driver of the truck, namely, Sh. Usman was illegally detained.
- (f) Shri Javed obtained a stay order against the Financier and, thereafter approached the applicant on 20.8.1998 with a complaint to take action against the erring officers.
- (g) The applicant is alleged to have advised them to compromise the matter with Shri Ashok Goel, the Financier of the Truck without taking any action.
- (h) The Truck was illegally kept at the Police Station and was not released to the rightful owner for nearly six months even though the applicant had power to release the vehicle. Owner of the vehicle was constrained to move the Court and the Court took a serious view of the matter and appointed a receiver to take custody of the vehicle (truck). Shri Javed has also filed Writ Petition in the High Court for an inquiry and registration of case against SI Prem Singh and his associates.



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- (i) Following the order of the High Court, an inquiry was conducted and Shri S.M.Bhaskar, ACP submitted a report dated 14.6.1998.

11. These are the facts, which are not seriously disputed. Therefore, it cannot be stated that the Memorandum of Charges are vague and not specific. It is also clear that if the facts as alleged are established, it would constitute a misconduct attracting the provisions of Rule 3 of CCS (CCA) Rules, 1965.

12. Hon'ble Supreme Court in the case of **UNION OF INDIA & OTHERS V. UPENDRA SINGH**, (1994) 27 ATC 200 considered the scope of judicial review against the Chargesheet. Their Lordships held that the Tribunal can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter of the disciplinary authority to go into. Applying the above ratio, it cannot be stated that the charges are contrary to any law. But, on the other hand, if the allegations are established, it would amount to misconduct.

13. Therefore, the only submission that remains to be seen is whether an inquiry report submitted by another officer, namely, Sh. M.K. Meena, the then Additional DCP ought to have found part

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of the Memorandum of Charges or it ought to have been taken into account before framing the charges.

14. We find that both the departmental inquiries ordered to be conducted are not preliminary inquiries ordered by the competent authority, therefore, it is not incumbent on the disciplinary authority to take into account of such of those reports which were not in pursuance to any order of the competent authority.

15. A similar question arose for consideration of the Full Bench of this Tribunal in OA No.340/2004. In their opinion, dated 10.5.2005, on the question, i.e., under what circumstances statements made in pre-inquiry can be brought on the record of the departmental proceedings, and further question whether it is necessary that there should be an order in writing of initiating the preliminary enquiry by the Authority, the Tribunal answered the said questions holding that a preliminary inquiry should be ordered by the competent authority and only thereafter it could be construed as report of the preliminary inquiry. Therein, their Lordships observed as follows:

"29. These precedents clearly show that preliminary inquiry necessarily has to be ordered by the authority rather than any other inquiry that may be conducted by any other person and forwarded to the disciplinary authority."

16. While answering the question, their Lordships opined as follows:

(a) There has to be an order to initiate preliminary inquiry by the authority.



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- (b) Preliminary inquiry has to precede the departmental inquiry to collect the facts contemplated under Sub-Rule (1) to Rule 15 of the Rules.

17. It is not in dispute that the so called preliminary inquiries were not conducted at the instance of the competent disciplinary authority in this case under the Rules. Therefore, the reports, if any, by themselves would not be binding the disciplinary authority in this case.

18. It is pointed to the learned counsel for the applicant that it is open to the applicant to call for the report of Shri M.K. Meena, the then Additional DCP in support of his defence, if any. We also find that the inquiry report submitted by Shri S.M.Bhaskar is not the sole material on which Memorandum of Charges are framed against the applicant. There are 14 other documents which were relied upon by the Department to sustain the Memorandum of Charges. Therefore, it would not be possible to accept the case of the applicant that Memorandum of Charges is solely based on the said report of Shri S.M.Bhaskar.

19. For the above reasons, we do not find any grounds to interfere with the impugned Memorandum of Charges. Original Application No.160/2004 is accordingly dismissed.


(N.D. Dayal)
Member(A)


(P. Shanmugam)
Chairman

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