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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1855/2004

Hon'ble Mr. Justice P. Shanmugam, Chairman
Hon'ble Mr. L.K. Joshi, Vice Chairman (A)

New Delhi, this the 21 day of February, 2007

Insp. J.K. Tyagi,
PIS No.16780057,
R/o WZ-13, Basai Dara Pur,
New Delhi-15

..... Applicant

(By Advocate: Shri Anil Singal)

Vs.

1. Union of India through :
Its Secretary,
Ministry of Home Affairs,
North Block, New Delhi-1
 2. Commissioner of Police,
Police Head Quarters,
I.P. Estate, New Delhi.
 3. Spl./Jt. Commissioner of Police,
(Spl. Cell), Police Head Quarters,
I.P. Estate, New Delhi.
 4. Shri Ajay Kashyap, I.P.S.,
Then DCP Central Distt.,
(To be served through Respondent No.1)
 5. Shri Sandeep Khairwal, I.P.S.,
Then ACP Paharganj, Delhi,
(To be served through Respondent No.1)
 6. Shri R.P. Sharma,
Then SHO, P.S. DBG Road,
(To be served through Respondent No.2)
-Respondents
- (By Advocate: Mrs. Rashmi Chopra)

ORDER

Mr. L.K. Joshi, Vice Chairman (A)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing and setting aside the order passed
by the Joint Commissioner of Police, Special Cell, Delhi on 6.11.2002 in the

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departmental proceedings withholding the next increment of the applicant for a period of one year having no effect of postponing future increments and also the order dated 4.8.2003 passed by the Commissioner of Police, Delhi in appeal against the order of the disciplinary authority upholding the order of the latter. He has also prayed that personal responsibility of respondents no.4 to 6 should be fixed for their illegal actions and direct respondent no.1 to take action against them.

2. Briefly, the facts of the case are that a departmental enquiry was ordered against Inspector J.K. Tyagi, formerly Additional SHO, D.B. Gupta Road vide order No.4458-79/P.Cell/Vig./P-IV dated 7.3.2000. The charge against Inspector Tyagi is that he registered a case vide FIR No.75 dated 25.03.98 on the complaint of Inderjit Singh and his wife against the brothers of Inderjit Singh in a property dispute in spite of the fact that police action under Sections 107/151 Cr.P.C. at Police Station, Pahar Ganj was in progress and the Assistant Commissioner of Police, Pahar Ganj had directed that no report should be registered before he (A.C.P., Pahar Ganj) could call both the parties for personal hearing. It is mentioned in the charge report that in spite of these clear instructions of the A.C.P., Shri J.K. Tyagi, Additional SHO, P.S., D.B. Gupta Road registered the FIR. Shri Tyagi has been charged that he had acted in undue haste with malafide intention and had willfully violated the directions of a senior officer by registering a one sided case.

3. On the basis of the chargesheet, the enquiry was held against Shri J.K. Tyagi by Shri L. Hrangnawna, Dy. Commissioner of Police, D.E. Cell, New Delhi. The enquiry officer reached the conclusion that "the charge against the defaulter has not been substantiated."

4. The Special Commissioner of Police, Intelligence, Delhi Dr. K.K. Paul disagreed with the report of the enquiry officer and came to the conclusion that the "charge of acting in undue haste obviously with malafide intention and willfully violating the directions of Senior Officers by registering the above said case is proved". A copy of the findings of the enquiry officer along with the disagreement note was served on Inspector J.K. Tyagi and his representation was called.

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Thereafter, final order in the departmental enquiry was passed by Shri Neeraj Kumar, Joint Commissioner of Police, Special Cell, Delhi in which it was ordered to withhold the next increment of Inspector J.K. Tyagi for a period of one year temporarily having no effect of postponing future increments. As has been mentioned in paragraph 1 of this order, the appellate authority Shri R.S. Gupta, Commissioner of Police, Delhi rejected the appeal of Shri Tyagi on 4.8.2003.

5. It has been contended by the learned counsel for the applicant that the procedure of the departmental enquiry is flawed because the copy of the FIR No.75 dated 25.03.98 and Kalandra under Sections 107/151 Cr.P.C. which were listed in the documents, were not supplied to the applicant. The learned counsel has also argued that the applicant did not register FIR No.75 dated 25.03.98 and it was registered after the applicant left his post at P.S., D.B. Gupta Road for a fresh posting elsewhere. He has argued that the said FIR was delivered to the Magistrate at 9.00 PM in spite of the clear instructions that the FIR should be given as soon as possible to the Magistrate in the Court and later in the residence. However, since the FIR was delivered after more than 12 hours, it can be inferred that it was not registered at 6.10 AM on 25.03.98 by the applicant. It has also been argued that the disagreement of the Special Commissioner of Police does not counter any of the arguments given by the enquiry officer in his report.

6. The learned counsel for the respondents has, however, contended that the documents listed in the list of documents along with the summary of allegations were given to the applicant. It has also been argued on behalf of the respondents that the A.C.P., Pahar Ganj who is a superior officer to the applicant had given oral directions that an FIR should be registered in the case of dispute between Inderjit Singh and others only after conducting a preliminary enquiry and after the A.C.P. had met the parties. By not complying with these instructions, the applicant was guilty of misdemeanor. It has been submitted that the FIR was written by Head Constable Jai Bhagwan of P.S. Dev Nagar on the directions of the applicant. The FIR was recorded on the 'tehreeer' submitted by S.I. Inderjeet Singh who had recorded the same at the L.N.J.P. Hospital where the

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complainant Inderjit Singh and Jasbir Kaur had been admitted after the altercation on 24.03.98. The FIR has been registered under Sections 365/368/323 of IPC.

7. The learned counsel for the applicant in his reply has argued that if a report is made to a competent officer in a Police Station, the concerned officer is bound to record the FIR. For this, he has relied upon the judgments of Hon'ble Supreme Court in the case of Superintendent of Police, CBI and others v. Tapan Kumar Singh, (2003) 6 SCC 175 and in the case of Ramesh Kumari v. State (NCT of Delhi) and others, (2006) 2 SCC 677. It is also to be noted, as has been mentioned above, that the FIR has been recorded under Sections 365, 368 and 323 of IPC, which relate to kidnapping or abducting with intent secretly and wrongfully to confine person, wrongfully concealing or keeping in confinement, kidnapped or abducted person and for voluntarily causing hurt. It is not about any property dispute to which the ACP, Pahar Ganj had referred while allegedly instructing the staff of P.S. Dev Nagar for not registering a case before he had met the parties.

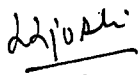
8. The incident occurred in the evening of 24.03.98 and the FIR, according to the record, was registered at 6.10AM. From the statement of ACP, Pahar Ganj before the enquiry officer, it is not clear when were such instructions given by the ACP to the staff of P.S. Dev Nagar. He (ACP, Pahar Ganj) had simply answered, during his examination in the D.E. case, that he did not recollect at which place, date, time and hour did he direct the applicant that a preliminary enquiry was essential in the case and for that, both the parties should be brought to the police station for personal hearing by the ACP.

9. It is possible to draw an inference on the basis of the above that hypothetically the FIR could have been registered before the instructions were given by the ACP. If the instructions were given by the ACP for not registering the FIR before it had been actually recorded, the question of willful disobedience of the instructions does not arise. However, there is a larger question whether it is proper for a senior officer to give such instructions to his subordinates which violate the law i.e. in this case directions not to record the FIR till he had met the

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parties. It is also not clear how any prejudice could be caused to the case of the police under Sections 107/151 Cr.P.C. by mere registering of the FIR. It can also not be alleged that this is one sided FIR because the other party always has the right to get its complaint also registered.

10. In view of the above, it is held that there has not been proper appreciation of facts in the departmental enquiry and as a result, the order passed in the departmental enquiry by the Joint Commissioner of Police on 6.11.2002 withholding the next increment of the applicant for a period of one year temporarily having no effect of postponing future increments is liable to be quashed. The order of the Commissioner of Police dated 4.8.2003 rejecting the appeal of the applicant is also liable to be quashed. Accordingly, both the above referred orders are quashed. However, there is no need to pass an order for fixing personal responsibility of respondents no.4 to 6 as has been prayed by the applicant. No order as to costs.



(L.K. Joshi)
Vice Chairman(A)



(P. SHANMUGAM)
Chairman

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