CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1999/2004

New Delhi, this the 15th day of February, **2005**

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

P.L.Suri
Inspector in Delhi Police
PIS No.13690002
R/o 358-B, Pocket-II
Mayur Vihar
Delhi – 91. ... Applicant

(By Advocate: Sh. Anil Singhal)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police
PHQ, IP Estate
New Delhi.

2. Addl. Commissioner of Police
PCR & Communication
PHQ, IP Estate
New Delhi.

3. Sh. A.K.Singh (EO)
DCP/PCR,
PHQ, IP Estate
New Delhi. ... Respondents

(By Advocate: Sh. Ajesh Luthra)

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant (**P.L.Suri**) is working as Inspector in Delhi Police. By virtue of the present application, he seeks setting aside of the order dated 25.4.2003 whereby the Additional Commissioner of Police had directed that a regular departmental enquiry can be initiated against him. Summary of allegations served are:

"SUMMARY OF ALLEGATIONS

ASI Amar Singh, No.1083/D while posted in East Zone SB was entrusted with the verification of personal particulars of applicants who applied for passport in the R.PO. Their P.P. forms were received in this office vide Dy. Nos. indicated against each in the enclosed list. He conducted the verification, submitted his enquiry reports in respect of all these applicants verifying their stay at the addresses given in their P.P. forms. These reports were forwarded as satisfied with the report of Area Officer by Inspr. P.L. Suri being Area Inspector. Accordingly, clear reports were sent to R.P.O., Delhi.

Later on, a re-verification of 351 cases passport enquiries made by ASI Amar Singh was got conducted. Out of these 351 cases, in 50 cases the enquiries conducted by ASI Amar Singh, No.1083/D and forwarded by Inspr. P.L.Suri, No.D-1/528 were found false/bogus.

The above facts clearly indicate that ASI Amar Singh No.1083/D had conducted false/bogus verification with ulterior motive without visiting the given addresses of the passport applicants as per required procedure, Inspr. P.L. Suri, No.D-1/528 failed to supervise and detect the same. Had he properly supervised the working of his ASI and re-verified certain P.P. forms, the real facts would have been detected at the initial stage and negative reports would have been sent in these cases to R.P.O.

The above act on the part of Inspr. P.L Suri, No.D-1/528 amounts to gross negligence, carelessness and unbecoming of a govt. servant in the discharge of his official duties, which render him liable for departmental action under the provision of Delhi Police (Punishment & Appeal) Rules, 1980."

2. The relevant facts alleged are that a preliminary inquiry had been conducted by the Assistant Commissioner of Police

H.V.A.Rathi. He had submitted his report on 25.7.2000. He reported that on re-verification it was found that certain cases inquired by ASI, Amar Singh were found to be bogus. So far as the applicant is concerned, there was nothing adverse against him. After a departmental inquiry, ASI Amar Singh had been dismissed from service vide order dated 12.2.2001. The applicant contends that vide the impugned order, a departmental inquiry is being initiated against him on the allegation that he failed to properly supervise the working of the ASI Amar Singh and detect the same though, according to the applicant, no such fact was proved in the preliminary inquiry. It is contended that the inquiry in the facts of the present case could not have been initiated. Hence, the present application had been filed.

3. The application has been contested. Respondents plead that ASI Amar Singh while posted in East Zone/SB was entrusted with the verification of personal particulars of certain persons. He had conducted the verification and submitted the reports. Later on, on verification, out of 351 cases, in 50 cases the enquiries made by ASI Amar Singh and forwarded by the applicant were found to be false/bogus. ASI Amar Singh had conducted false/bogus verification. The applicant is stated to have failed to supervise and detect the same. The above said act mainly is stated to be gross negligence and carelessness. It is denied that inquiry as such in the facts of the present case could not have been started.

4. We have heard the parties' counsel and seen the relevant record.

5. The learned counsel for the respondents, at the outset, took up a preliminary objection that as yet only summary of allegations have been drawn and no order has been passed by the disciplinary authority imposing any penalty and, therefore, the application is premature.

6. We know from the decision of the Supreme Court in the case of **SHRI CHANAN SINGH** v. **REGISTRAR, CO-OPERATIVE SOCIETIES, PUNJAB AND OTHERS,** AIR 1976 SC 1821 that when a show-cause notice is served, the petition challenging the same ordinarily would be premature. In the cited case, the disciplinary proceedings were dropped by the inquiry officer who was not competent to impose the punishment. The same were revised by the competent authority and a fresh show cause notice was issued. It was held that such a show cause notice could not be challenged. The petition was dismissed as premature. The Supreme Court held:

> "5. Other obstacles in the way of granting the appellant relief were also urged before the High Court and before us, but we are not inclined to investigate them for the short reason that the writ petition was in any case premature. No punitive action has yet been taken. It is difficult to state, apart from speculation, what the outcome of the proceedings will be. In case the appellant is punished, it is certainly open to

him either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to. It is not for us, at the moment, to consider whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to the competent authority under the rules is the proper remedy, although these are issues which merit serious consideration.

6. We, are satisfied that, enough unto the day being the evil thereof, we need not dwell on problems which do not arise in the light of the view we take that there is no present grievance of punitive action which can be ventilated in court. After all, even the question of jurisdiction to re-open what is claimed to be a closed enquiry will, and must, be considered by the Managing Director. On this score, we dismiss the appeal but, in the circumstances, without costs."

7. Similarly in the case of **STATE OF UTTAR PRADESH** v. **SHRI BRAHM DATT SHARMA AND ANOTHER,** AIR 1987 SC 943, a show cause notice had been served to a Government servant called upon to show cause. The same was challenged and the Supreme Court held that the purpose of issuing the show-cause notice is to afford an opportunity of hearing and thereafter a final decision has to be taken. Interference, at this stage, by the Court was held to be not called for and petition was stated to be premature. The Supreme Court held:

"9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been

issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not to have interfered with the show cause notice."

8. The same principle was carried forward in the case of **UNION OF INDIA & ORS.** v. **UPENDRA SINGH,** 1994 (2) SLJ 77. The Supreme Court held that the inquiry has to be held by the disciplinary authority and granting relief at the initial stage is not permissible and to that effect, therefore, the petition would be premature. The Tribunal should not interfere with the truth or correctness of the charges. The findings recorded were:

"6. In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interference 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 for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The

function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Ors. v. M/s Gopi Nath & Sons and Ors. (1992 Supp.(2) S.C.C. 312). The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus:

> "Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

7. Now, if a Court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is un-understandable how can that be done by the Tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of

charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate."

9. No different was the view expressed in the case of **THE EXECUTIVE ENGINEER, BIHAR STATE HOUSING BOARD** v. **RAMESH KUMAR SINGH & ORS.**, JT 1995 (8) SC 331. In the cited case, a show cause notice had been issued. The High Court had entertained the Petition. The Supreme Court held that it would be premature because there was no attack on the vires of the statute nor there was any fundamental rights violated. The findings of the Supreme Court are reproduced for the sake of facility.

"10.We are concerned in this case, with the entertainment of the Writ Petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a "nullity" or totally "without jurisdiction" in the traditional sense of that expression – that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorized. In such a case, for entertaining a Writ Petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will

certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India."

10. Similarly in the case of **UNION OF INDIA AND ANOTHER** v. **ASHOK KACKER**, 1995 SCC (L&S) 374, the charge-sheet was being impugned without waiting the decision of the disciplinary authority. The Supreme Court held that it is premature. The findings of the Supreme Court are:

"4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had refused to the Tribunal, we do not consider it necessary to require the tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him."

11. In the case of **MANAGING DIRECTOR, MADRAS METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD AND ANOTHER** v. **R. RAJAN AND OTHERS,** (1996) 1 SCC 338, the Supreme Court held that no interference was called for at an interlocutory stage of the disciplinary proceedings. The findings of the Supreme Court are:

> "7. As rightly held by the learned Single Judge and the Division Bench, no interference was called for at an interlocutory stage of the disciplinary proceedings. The enquiry was no doubt over but the competent authority was yet to decide whether the charges against the respondents are established either wholly or partly and what punishment, if any, is called for. At this stage of proceedings, it was wholly unnecessary to go into the question as to who is competent to impose which punishment upon the respondents. Such an exercise is purely academic at this stage of this disciplinary proceedings. So far as the learned Single Judge is concerned, he did not examine the regulations nor did he record any finding as to the powers of the General Manager, the Board or the Government, as the case may be. He merely directed that in view of the statement made by the learned counsel for the Board, the punishment of dismissal shall not be imposed upon the respondents even if the charges against them are established. When the respondents filed writ appeals, the Division Bench was also of the opinion that this was not the stage to interfere under Article 226 of the Constitution nor was it a stage at which one should speculate as to the punishment that may be imposed. But it appears that the Board insisted upon a decision on the question of power. It is because of the assertion on the part of the appellants (that the Managing Director has the power to impose the penalty of compulsory retirement) that the Division Bench examined the question of power on merits. The said assertion of the Managing Director that he has the power to impose the punishment of compulsory retirement probably created an

> impression in the mind of the Court that the Board has already decided to impose the said punishment upon the respondents and probably it is for the said reason that they examined the said question on merits. (Insofar as the respondents are concerned, it was their refrain throughout that the Board had already decided to impose the punishment of dismissal/compulsory retirement upon them and that the enquiry and all the other proceedings were merely an eye-wash).

Same was the view expressed by the Supreme Court in the case of **STATE OF PUNJAB AND OTHERS** v. **AJIT SINGH,** (1997) 11 SCC 368 and in the case of **AIR INDIA LTD.** v. **M. YOGESHWAR RAJ,** 2000 SCC (L&S) 710.

12. The said principles have been put up in concise form by the Delhi High Court in the case of **THAN SINGH** v. **UNION OF INDIA & ORS.**, 2003 III AD (DELHI) 658. The Delhi High Court held that grounds upon which the correctness of the chargesheet can be questioned are:

(i) If is not conformity with law.

(ii) If it discloses bias or pre-judgment of the guilt of the charged employee.

(iii) There is non-application of mind in issuing the charge-sheet

(iv) If it does not disclose any misconduct.

(v) If it is vague.

(vi) If it is based on stale allegations.

(vii) If it is issued mala fide."

13. It is these pleas which only can be raised while considering the contentions of the applicant. Thus, with the above said limited scope, we are proceeding to consider the dispute raised at the Bar.

14. On behalf of the applicant, it was contended that there is a delay in serving the chargesheet and, therefore, the impugned order should be quashed. The learned counsel relied upon the Circular of 30.8.1971. It had been issued by the Inspector General of Police, Delhi and in exercise of power under Section 42 of the Police Act, 1861, the following amendments had been effected in the Punjab Police Rules in Para 16.38. It reads:

> "In the said rule under 16.38 P.P.R. for misconduct for a defaulter police Officer Departmental enquiry should be initiated within three months of the complaint against the defaulted Police Officer and notice should be given in written at least one month before the commencement of the departmental action. This has been stressed in the decision of the Honourable Supreme Court ruling contained in case Criminal Appeal No.240 of 19—(sic) Pritam Singh App v/s State of Haryana decided vide No:-168 March 1971 that "No Departmental enquiry can be initiated after the time limit of three months. The proceedings after the expiry of the said period are required to be set aside."

15. He further relied upon the decision of this Tribunal in OA No.2719/99 (**Prem Kishore Gupta** v. **Govt. of NCT of Delhi**), decided on 22.2.2001.

16. We find that, in the peculiar facts, the said contention of the learned counsel must fail. This is for the reason that under the Delhi Police Act, 1978, on commencement of the Act, enactment specified in Schedule-II ceases to be in force in Delhi. This includes the Police Act, 1861. However, all Rules and Standing Orders, which are consistent with the provisions of Delhi Police Act, have been saved.

17. Under the Delhi Police Act, there is no provision corresponding to Section 42 of the Police Act and, therefore, the amendments that were effected under Punjab Police Rules in para 16.38, necessarily will also be inconsistent with the provisions of the Act. It cannot, therefore, be held that there is any such limitation as referred by the learned counsel.

18. It is true that in the case of **Prem Kishore Gupta (supra)**, a Bench of this Tribunal had relied upon the decision in the case of **PRITAM SINGH** v. **STATE OF HARYANA**, (1971) 1 SCC 653. As one glances through the said decision, it is obvious that this Tribunal had come to the conclusion that there has been undue delay on the part of the respondents in conducting the departmental proceedings. In fact, the Tribunal noted that the Police Act, 1861 has ceased to apply, therefore, the ratio deci dendi of the decision would only be that in case there is an inordinate delay, which would cause prejudice, proceedings could be quashed

and that the applicant could take advantage of Section 42 of the Police Act, 1861 or Para 16.38 of the Punjab Police Rules.

19. Confronted with this position, the learned counsel for the applicant contended that there should have been a joint inquiry with the other delinquents. Normal rule is that joint inquiry, in case there is a joint culpability, can be directed. But if joint inquiry is not held, that does not effect the merits of the case. One must show that prejudice has been caused. Otherwise also, departmental action against the co-delinquent was admittedly that he had conducted some bogus verifications. So far as the applicant is concerned, it is purported to be alleged against him that he failed to supervise and detect the bogus verification. Therefore, even the charge is not identical and when no prejudice is shown, we have no hesitation in repelling the said argument.

20. Another limb of the argument was that in the preliminary inquiry, the applicant had been exonerated and consequently departmental inquiry could not be initiated against him. The learned counsel relied upon the decision of this Tribunal in the case of **RAJESH KUMAR** v. **GOVT. OF NCT OF DELHI & OTHERS**, OA No.2546/2003, decided on 18.12.2003. This Tribunal had recorded:

> "8. Reading of both together clearly shows that a preliminary enquiry basically is a fact finding enquiry to establish the nature of the

> default: to judge quantum of the default and to collect the evidence, if any. Obviously, we would hasten to add that in normal circumstances if the preliminary enquiry itself exonerated a particular person, the disciplinary authority is certainly competent to take a view to the contrary. However, if no view to the contrary has been taken, in that event, on certain assertions on which the preliminary enquiry exonerates a delinquent from the alleged misconduct, it would be improper to refer to the same or incorporate the same in the summary of allegations/charge as the case may be."

21. The view so taken can be reiterated because a preliminary inquiry is a fact finding inquiry. Its purpose is to establish the nature of the default and collect the evidence and judge the quantum of the default.

22. In the present case before us, the report of the Assistant Commissioner of Police, neither exonerated the applicant nor stated anything against him. The inquiry basically was pertaining to conduct of the Assistant Sub Inspector. Thus, it cannot be taken that the applicant has been exonerated. In that event, the learned counsel again relied upon the plea that there is an inordinate delay in initiation of the proceedings.

23. The Supreme Court has repeatedly held that where there is an inordinate delay which causes prejudice in terms that the applicant concerned cannot defend the case properly, the inquiry should not be so initiated.

24. To the same effect is the decision of the Supreme Court in the case of **STATE OF MADHYA PRADESH** v. **BANI SINGH AND ANOTHER,** 1990 (2) SLR 798 where there was a delay in initiation of the departmental proceedings. In that matter also, a delay of 12 years occurred to initiate the departmental proceedings. The Supreme Court deprecated the said practice of initiation of departmental proceedings after so many years. The findings of the Supreme Court are:

> "4. The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in irregularities, and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case, there are not grounds to interfere with the Tribunal's orders and accordingly we dismiss the appeal."

However, the delay can always be explained and if no prejudice is caused, indeed, the inquiry need not be quashed.

25. In the present case before us, the applicant himself pleads that he had conducted the required inquiries as per the guidelines. When such is the plea raised, indeed, it is obvious that the applicant is not being prejudiced or he could claim that because of delay of about three years, he will not be able to defend the case properly.

26. Lastly, it was argued that it was at best an error of judgment and strong reliance indeed was placed on the decision of the Supreme Court in the case of **UNION OF INDIA AND OTHERS** v. **J. AHMED**, (1979) 2 SCC 286. The facts therein were little different. Shri J.Ahmed was a member of the Indian Administrative Service. He was posted as Deputy Commissioner and District Magistrate in Nowgong District, Assam. There were large scale disturbances. He was served with charges that he failed to take the effective preventive measures. He did not show leadership qualities and did not personally visit the seen of the disturbance. The Supreme Court held that if a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct. A disregard of an essential condition of the contract of service may constitute misconduct. The Supreme Court held:

> "11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due

and faithful discharge of his duty in service, it is misconduct (see *Pierce v. foster [17 QB 536, 542]).* A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (indicator Newspapers ((1959) 1 WLR 698)].* This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur (61 Bom LR 1596),* and *Satubha K. Vaghela v. Moosa Raza (10 Guj LR 23).* The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

> Misconduct means, misconduct arising from ill motive; acts of negligence; errors of judgment, or innocent mistake, do not constitute such misconduct."

27. We do not intend to dwell into this controversy because this question is yet to be adjudicated during the course of the inquiry and expression of opinion in this regard will be not proper.

28. On totality of the facts, at the initial stage, we find no ground to interfere. The application must fail and is dismissed. We make it clear that nothing said herein is any expression of our opinion on the merits of the matter.

(S.K.Naik)
Member (A)

(V.S.Aggarwal)
Chairman

/NSN/