IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. (1) OA 277/92
(2) OA 342/92
(3) OA 376/92
(4) OA 415/92
(5) OA 416/92
(6) OA 417/92
(7) OA 418/92
(8) OA 419/92

Date of decision: 09.03.1992

(1) OA 277/92

Shri Purushottam Dass ...Applicant

Vs.

Union of India & Another ...Respondents

(2) OA 342/92

Shri Mahabir Singh ...Applicant

Vs.

Union of India & Another ...Respondents

(3) OA 376/92

Shri Durga Prasad ...Applicant

Vs.

Union of India & Another ...Respondents

(4) OA 415/92

Shri Roop Chand ...Applicant

Vs.

Union of India & Another ..Respondents

(5) OA 416/92

Shri Rajinder Singh Dahiya ...Applicant

Vs.

Union of India & Another ...Respondents

(6) OA 417/92

Shri Satya Prakash ...Applicant

Vs.

Union of India & Another ...Respondents

(7) OA 418/92

Shri Chiranji Lal Jatav ...Applicant

Vs.

Union of India & Another ..Respondents

(8) OA 419/92

Shri O.P. Yadav ...Applicant

Vs.

Union of India & Another ...Respondents

For the Applicants in the above OAs ...Shri Shaker Raju, Counsel with Shri J.K. Dass, Counsel

For the Respondents in the above OAs ...Shri N.S. Mehta, Counsel(only present on the first day of hearing (U.O.I.)

...Ms. Geeta Luthra with Ms. Pinky Anand, Counsel with Shri Dinesh Kumar and B.R. Parashar, Counsel (Delhi Administration)

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

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

2. To be referred to the Reporters or not? Yes

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha, Vice Chairman(J))

Common questions of law have been raised in this batch of applications filed by officers of the Delhi Police and it is proposed to dispose them of in a common judgment.

2. Two of the applicants are working as Inspectors, one as Additional Deputy Commissioner of Police and the others as Assistant Commissioners of Police. Apprehending that the

respondents would issue a charge-sheet to them for their alleged lapses in connection with the 1984 riots which occurred in the wake of assassination of Smt. Indira Gandhi, the late Prime Minister of India, the applicants have filed these applications. No charge-sheet has yet been issued to any one of them.

2. The Union of India through the Secretary, Ministry of Home Affairs has been impleaded as the first respondent and the Delhi Administration through its Chief Secretary as the second respondent. Shri N.S. Mehta, Senior Counsel appeared on behalf of the Ministry of Home Affairs and stated at the Bar that he is holding only a watching brief and that was the instructions received by him.

3. The pleadings in these cases are complete but the applications have not been admitted. We feel that the applications could be disposed of at the admission stage itself and we proceed to do so.

4. It is a matter of public knowledge that communal riots on a large-scale broke out in Delhi in the wake of assassination of the late Prime Minister of India, Smt. Indira Gandhi, on 31st October, 1984. Following this, the then Commissioner of Police, Delhi, appointed Shri Ved Marwah, the then Additional Commissioner of Police (CID) as an Inquiry Officer to make an inquiry into the alleged

administrative failure of the Police in controlling the riots and to point out cases of serious lapses and negligence on the part of the individual officers and to submit his report to him. Before Shri Marwah could submit his report to the Government, two Police Officers filed a suit in the Delhi High Court. Mr. Justice M.K. Chawla J. vide his judgment dated 25.11.1985 passed an interim order of injunction restraining Shri Marwah and the Commissioner of Police from publishing the impugned inquiry report or submitting the same to the Government. The learned Judge also took note of the fact that at that stage Justice Ranganath Misra, Judge of the Supreme Court, as he then was, had already been appointed as Commissioner to enquire about the circumstances under which the riots took place. The said Commission was holding the quasi-judicial proceedings and its report was likely to be published within a short period. In the circumstances, the learned Judge observed that he was of the opinion that "in case the inquiry report of Shri Ved Marwah, defendant No.1, is allowed to be published, the reputation and the career of the plaintiffs will be seriously damaged. The documents filed on record do indicate the names of the plaintiffs against whom disciplinary action is contemplated".

5. It appears that no appeal was filed against the aforesaid order by the Government of India or Delhi Administration or by Shri Ved Marwah.

6. On 26.04.1985, the Central Government appointed a Commission of Inquiry under Section 3 of the Commissions of Inquiry Act, 1952 to enquire into the allegations in regard to the incidents of organised violence which took place in Delhi following the assassination of Smt. Indira Gandhi and recommend measures which may be adopted for the prevention of recurrence of such incidents. The Commission was headed by Justice Ranganath Misra, Judge of the Supreme Court, as he then was. Justice Ranganath Misra Commission submitted its report to the Government on 23rd February, 1987. Justice Misra Commission's Report in OA 452/88(Sh.Chandra Prakash Dy Commissioner of Police) refers to the suit filed by the applicant and his colleague in the Delhi High Court mentioned above and the order of injunction passed by the learned Judge. The report also mentioned that no further steps appeared to have been taken by the Administration to get this injunction vacated or varied. A lot of criticism had been advanced in the written arguments before the Commission. In this context, the Commission has observed as follows:-

> "The criticism seems to be justified but with that part of the matter the Commission has indeed no further concern in view of the fact that elsewhere in this report, the Commission intends another inquiry to be conducted."

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7. Nevertheless, the Commission had made the following observations pertaining to the conduct of the Deputy Commissioners of Police who had moved the Delhi High Court:-

> "What is relevant for the purpose of this report is that two of the Deputy Commissioners of Police were apprehensive that there was likelihood of materials coming out against them if Shri Marwah proceeded with the inquiry and, therefore, they were anxious to rush to the court and obtain an order of interim injunction. The inquiry, as the Commission gathers, was not proceeding for other reasons even before the injunction from the High Court came, but if the injunction had not been there, quite likely some sort of inquiry could have been carried on in view of the fact that Shri Marwah had by then become Commissioner of Police and appeared to be in favour of an inquiry of this type. The tell tale circumstances, which the Commission is prepared to gather from the conduct of these two Deputy Commissioners of Police, is that they were afraid of facing the inquiry".

8. On 23rd February, 1987, the Delhi Administration issued two orders appointing two Committees with separate terms of reference. One Committee consisted of Justice Dalip K. Kapur, former Chief Justice of Delhi High Court and Kumari Kusum Lata Mittal, retired Secretary to the Government of India, to enquire into delinquency of individual Police Officers and men with respect to the riots and also good conduct of individual Police Officers and men and recommend such action as may be called for. The second Committee consisted of Justice M.L. Jain, a former Judge of the Delhi High Court and Shri R.N. Renison, a retired I.P.S. Officer, with the following

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terms of references:-

(a) To examine whether there were cases of omission to register or properly investigate offences committed in Delhi during the period of riots from 31.10.1984 to 7.11.1984;

(b) To recommend the registration of cases, where necessary, and to monitor the investigation thereof;

(c) To monitor the conduct of the investigation and the follow up of cases already registered by the Police and to suggest steps for effective action including fresh and further investigation, where necessary.

9. Shri Chandra Prakash, who was posted as Deputy Commissioner of Police, Anti-Corruption Branch of Delhi Administration ~~had~~ filed in this Tribunal OA 652/88 which was disposed of by judgment dated 16.06.1988. He had sought for the following reliefs:-

(a) The report of Justice Ranganath Misra Committee insofar as it refers/relates to the applicant, be quashed. Alternatively, the respondents be directed not to consider/rely upon/ act upon the said report, in any manner whatsoever insofar as the

applicant is concerned.

(b) Respondents 1 and 2 (i.e., the Union of India and Lt. Governor, Delhi) be directed to notify the appointment of respondents 5 and 6 (i.e., Justice D.K. Kapur Committee and Justice M.L. Jain Committee) under Section 11 of the Commissions of Inquiry Act, 1952 and also issue notification under Section [illegible] of the said Act conferring on the Committee additional powers contained in this Section, with immediate effect.

(c) The respondents be directed not to prepare/publish or consider/rely upon/ act upon any report by/of Justice D.K. Kapur Committee or Justice M.L. Jain Committee in any manner whatsoever till the right of hearing is granted to the applicant under the Commissions of Inquiry Act, 1952.

10. After hearing the learned counsel of both parties, the Tribunal rejected the application in limine on the

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basis of the following conclusions:-

(i) The Administrative Tribunals Act does not confer any jurisdiction, power or authority on the Tribunal to strike down the report, in whole or in part, of Justice Ranganath Misra Commission which had been duly constituted in accordance with the provisions of the Commissions of Inquiry Act, 1952. We refrain from expressing any opinion on the alleged objectionable portions in the report pertaining to the conduct of the applicant. Assuming that some of the portions of the report adversely affect the reputation of the applicant, the Tribunal is not the proper forum to seek redressal of his grievance, as in our view, it is not a service matter to be adjudicated upon by us.

(ii) Likewise, it does not belong to the province of this Tribunal to call upon the respondents to clothe the Justice

D.K. Kapur Committee and Justice M.L. Jain Committee with powers under Sections 6 and 11 of the Commissions of Inquiry Act, 1952. The Administrative Tribunals Act does not confer any jurisdiction, power or authority on the Tribunal to issue an order of stay to forestall the inquiry by these Committees or to direct the manner in which the inquiry should be conducted. The jurisdiction of civil courts to adjudicate upon such matters has not been ousted by the Administrative Tribunals Act, expressly or by necessary implication.

(iii) The alternative relief prayed for appears to be anticipatory in nature. No one can surmise at this stage, whether and in what manner the respondents would act upon the recommendations contained in the reports submitted by the Commission/Committee. No one can

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predict at this stage as to the precise nature of action, if any, which is in the contemplation of the respondents.

(iv) If and when any disciplinary or other departmental action based on specific misconduct is initiated against a Government servant, it will be open to the aggrieved person to seek appropriate reliefs from the Tribunal. That stage has not been reached in the present case.

11. The matter had assumed public importance, as is evident from the 37th report presented on 12.9.1991 of the Committee on Government Assurances appointed by the Rajya Sabha. It is clear from the evidence given by the Secretary, Ministry of Home Affairs and the Chief Secretary, Delhi Administration before the said Committee that the Kapur-Mittal Committee had submitted its report to the Lt. Governor of Delhi on 1.3.1990 but that it was not a joint report. There are two separate reports given individually by Ms. Mittal and Mr. Justice Kapur. There was a fundamental difference of approach between them and their findings were totally different. Mr. Justice Kapur felt that the Committee should have proceeded as a judicial forum, that it should have obtained

evidence and that it should have given an opportunity of hearing, particularly to the officers who were likely to be indicted under Section 8 of the Commissions of Inquiry Act. Ms. Mittal's approach was that it was basically an administrative Committee which was to get hold of the material on which further action should be based. She felt that the opportunity of hearing could be available at the subsequent stage; as far as the Committee was concerned, it had to lay its hands on the papers which were before the Ranganath Misra Commission or before the Marwah Committee. In Ms. Mittal's report, she had examined the occurrence of riots, Police Station-wise. She went into the conduct of the various Police Officers. She came out with clear cut findings that some officers deserve commendation; that the fault of some officers was so grave that their services should be terminated under Article 311(2)(b) of the Constitution; that there were officers against whom departmental action should be taken with major penalty, minor penalty and so on and there were a certain number of officers whose role should be investigated further and she had given the exact charges against those persons. She had also indicated the supporting material which could be used for sustaining a departmental action. Mr. Justice Kapur had

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not gone to the point of kdentifying officers and pinpointing either a good action or a delinquent action of the officers.

12. The Chief Secretary of the Delhi Administration stated before the Parliamentary Committee on Assurances that "the Delhi Administration had come to the view that the report of Mr. Justice Kapur was not well founded and that Ms. Mittal's report provided a good enough number of cases to start action upon"(emphasis supplied). He further stated that "the Delhi Administration had decided to forward the report to the Ministry of Home Affairs for their definite view that Ms. Mittal's report should be made the basis for action and Article 311(2)(b) should not be resorted to but normal course of departmental proceedings could be followed"(emphasis supplied).

13. The Secretary, Ministry of Home Affairs stated before the Parliamentary Committee that "the moment his Ministry received a precise report of the Delhi Administration, his officers would be put on the job and they would quickly examine whether the Central Vigilance Commissioner had to be consulted and then they would decide according to the All India Services (Discipline & Appeal) Rules etc., and that the whole procedure would be set in motion.

14. The Chief Secretary, Delhi Administration informed the Parliamentary Committee that in six cases Ms. Mittal had recommended termination of service without inquiry; in 14 cases she recommended for commendation of the role of the Police Officers concerned; and for 34 officers she recommended departmental proceedings for major penalty. In 31 other cases, she had advised further investigation by looking into the original records.

15. It is in the above factual back-ground that we have to consider the reliefs sought in the present applications. The learned counsel for the applicants took the stand that there is an imminent threat of charge-sheet being issued to them on the basis of the findings of the report submitted by Ms. Mittal which, according to them, was prepared without giving them an opportunity of hearing. Another ground of attack is that the contemplated disciplinary action now for an incident which occurred in 1984 is highly belated and that no satisfactory explanation has been given by the respondents for such inordinate delay.

16. As against the above, the stand of the respondents is that the applications are premature. According to them, there is no order which has been impugned in the present proceedings. No charge-sheet has been issued to the applicants. In case the respondents

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decide to issue a charge-sheet, the applicants will have ample opportunity to defend themselves in the inquiry to be held against them and they will have to exhaust the remedies available to them under the relevant service law before filing an application in the Tribunal. In this context, the learned counsel for the respondents relied upon the provisions of Sections 19 and 20 of the Administrative Tribunals Act, 1985. The learned counsel for the respondents also drew our attention to an order passed on 28.02.1992 by a Division Bench of the High Court in C.W.No.906/92 wherein Shri Jai Pal Singh & Others who are members of the Delhi Police had sought for protection in this regard. The Delhi High Court dismissed the Writ Petition on the ground that it was premature.

17. At the outset, it may be stated that any order passed by the Delhi High Court in regard to a service matter after the Constitution of the Central Administrative Tribunal on 1.11.1985, is a nullity in law. Perhaps the provisions relating to the constitution of this Tribunal and the ouster of the jurisdiction of the High Court in service matters contained in the Administrative Tribunals Act, 1985 were not brought to the notice of the Delhi High Court.

18. To our mind, the contentions raised by the learned counsel for the respondents are devoid of any substance. Section 19(1) of the Administrative Tribunals Act, 1985, provides, inter alia, that a person aggrieved by any order pursuant to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance(emphasis supplied). Section 19 does not state that the person should be aggrieved by any formal order. Even a decision taken by the respondents which prejudically affects the service conditions of an employee could form the subject matter of an application. In emergent situations, the requirement of exhaustion of departmental remedies, envisaged in Section 20, could also be waived by the Tribunal. This is clear from the language of Section 20(1) of the Administrative Tribunals Act, 1985, which provides that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

19. In a case where there was no particular order of the respondents challenged but the applicant was

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aggrieved by lack of promotional avenues, this Tribunal has entertained applications and given suitable relief (Vide 1990(3) SLJ CAT 411 (Arvind Kumar Raizada Vs. Union of India) to which both of us are parties). In an exceptional case like the proposal to appoint a person to a high level post, the Tribunal has held that it can entertain an application even without a formal order having been passed by the respondents and without complying with the provisions of Section 20 of the Administrative Tribunals Act, 1985 (Vide Dr. R.M. Acharya and Others Vs. Union of India and Others, 1991(1) SLJ CAT 122 to which both of us are parties).

20. In a case where the applicant was seeking relief against the imminent application or non-application of recruitment rules, the Madras Bench of the Tribunal has held that even if no specific order has actually been communicated to a prospective applicant, an application under Section 19 would be maintainable(Vide The Heavy Alloy Penetrator Factory Employees National Union Vs. the Officer-in-Charge, 1991(2) SLJ CAT 33).

21. In the instant case, the Delhi Administration appears to have taken a decision to resort to departmental proceedings against the alleged erring police personnel in the light of the report submitted by the truncated

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Kapur-Mittal Cimmittee, as is seen from the 37th report of the Committee of the Government Assurances appointed by the Rajya Sabha, referred to above.

22. In law, a fact finding inquiry like the one conducted by the said truncated Committee, may even be held ex-parte, for it is merely for the satisfaction of Government. Wanchoo J., as he then was, delivering the judgment on behalf of a Constitution Bench of the Supreme Court in the well known case of Champaklal Vs. Union of India, AIR 1964 SC 1854 at 1862 has, however, observed that "usually for the sake of fairness, explanation is taken from the servant concerned even at such an inquiry". We respectfully reiterate the same view.

23. Admittedly, no charge-sheet has been served on the applicants, as apprehended by them, and on that ground they are not entitled to the reliefs sought by them. They have, however, prayed for any other relief, as this Tribunal may deem just and proper in the facts and circumstances of the case. With regard to this prayer, we order and direct as follows:-

(i) Subject to the direction given in (ii) below, the respondents would be at liberty to take appropriate action in accordance with law against any of the

applicants who may be alleged to have committed any lapse or misconduct in connection with the 1984 riots.

(ii) In case the truncated Kapur-Mittal Committee's report forms the basis of such action, or if the name or names of any of the applicants figure in the said report, the respondents shall, in all fairness, give a copy of the said report to them before proceeding to take any action against them. The interim orders passed in these cases are hereby vacated with the aforesaid observations and directions.

24. We do not consider it necessary for the disposal of these applications to go into the merits of several contentions advanced before us including the inordinate delay involved. We make it clear that these issues have been left open.

There will be no order as to costs.

Let a copy of this order be placed in all the 8 case files.

(D.K. CHAKRAVORTY)
MEMBER (A)
09.03.1992

(P.K. KARTHA)
VICE CHAIRMAN(J)
09.03.1992

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