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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./TAX No. 402/1992

Decided on: 19th Feb 1997

Shri Prakash ChandApplicant(s)

(By Shri Shanker Raju Advocate)

Versus

U.O.I. & OthersRespondent(s)


(By Shri Anoop Bagai Advocate)

CORAM:

THE HON'BLE SHRI JUSTICE B.C. SAKSENA, VICE CHAIRMAN

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter ⁴² or not?
2. Whether to be circulated to the other Benches of the Tribunal? ²


(K. MUTHUKUMAR)
MEMBER (A)

Central Administrative Tribunal
Principal Bench: New Delhi

OA 402/92

New Delhi this the 19th day of February 1997

13

Hon'ble Mr Justice B.C.Saksena, Vice Chairman (J)
Hon'ble Mr K.Muthukumar, Member (A)

Shri Parkash Chand
S/o Dh. Dhunda Ram
R/o 433 Jawala Nagar
Farash Bazar
Shahdra, Delhi-32.

...Applicant.

(By advocate: Shri Shankar Raju)

Versus

1. The Secretary
Minsitry of Home Affairs
Govt. of India
New Delhi.
2. Commissioner of Police, Delhi
Police HQs
M.S.O.Building
I.P.Estate
New Delhi.
3. Additional Commissioner of Police
New Delhi Range
Delhi Police Headquarters
M.S.O.Building, I.P.Estate
New Delhi.
4. Deputy Commissioner of Police
East District, Shalimar Park
Vishwas Nagar, Delhi.

...Respondents.

(By advocate: Shri Anoop Bagai)

O R D E R

Hon'ble Mr Justice B.C.Saksena, Vice Chairman (J)

The facts giving rise to the filing of this OA in short are that the applicant who was working as Head Constable was proceeded against departmentally on the basis of certain charges. By order dated 17.9.87, a punishment of forfeiture of 5 years approved service and reduction in pay was awarded to him by respondent No.4. It was also provided that the period of suspension would be treated as period not spent on duty by order dated 17.12.87. The appeal preferred by the applicant was rejected and the revision petition was also

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rejected. The applicant challenged the order of punishment as also the order passed on his appeal and revision petition. He has further prayed that the order dated 5.1.87 by which departmental enquiry was initiated against him be set aside.

2. We have heard learned counsel for the parties and have persued the pleadings on record. Learned counsel for the applicant submitted that if the summary of allegations and the memo of charges are put in juxtapose position, it would appear that the allegation against the applicant as given in the summary of allegations has completely been changed in the charge-memo. The learned counsel submitted that on the basis of the allegation in the summary of allegations, no evidence was recorded to support the allegation against the applicant as levelled in the charge-memo, copy of which is annexed as Annexure A-3. His submission was that this has resulted in violation of Rule 10 (3) of the Delhi Police (Punishment & Appeal) Rules 1980. Learned counsel for the respondents could not make any substantial reply ^{to} this plea. He submitted that the allegation against the applicant in the summary of allegations is not different from the allegation in the charge-memo. We are not impressed by this submission. A comparative reading of the two documents would clearly show that the allegation of the charge levelled against the applicant in the charge-memo was totally different from that indicated in the summary of allegations. Learned counsel for the applicant's plea that no evidence was recorded to support the allegation in the charge-memo is clearly made out. That being so, the findings of the Disciplinary Authority and the Enquiry Officer are clearly based on no evidence.

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3. Learned counsel for the applicant next submitted that the allegation in the summary of allegations would go to show that a cognizable offence has been committed by the applicant or made out and, therefore, under Section 15 (2) of the Delhi Police (Punishment & Appeal) Rules, departmental enquiry under such circumstances could have been ordered after obtaining prior approval of the Additional Commissioner of Police as to whether a criminal case should be registered or investigated or departmental enquiry should be held. No such prior approval admittedly had been obtained from the Additional Commissioner of Police concerned.

4. Respondents in the counter reply stated that in a preliminary enquiry, commission of an offence cannot be said to have been disclosed and, therefore, rule 15 (2) is not attracted. We are unable to agree with this argument. The summary of allegations clearly goes ^{to} /show the commission of a cognizable offence on the basis of the allegations contained therein. Learned counsel for the applicant was right in submitting that on the basis of the allegations, commission of a cognizable offence punishable under Section 389 I.P.C read with Section 120 (b) can be said to have been made out.

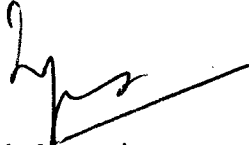
5. Since no prior approval had been obtained, we are persuaded to quash the order dated 5.1.87 whereby departmental enquiry was initiated against the applicant. As a result of the conclusion on the first submission made by the learned counsel for the applicant, the order of punishment and the orders passed on the applicant's appeal and revision petition deserve to be set aside and accordingly set aside. The OA succeeds and is allowed. The order dated 17.12.87 is

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also set aside. In other words, all the reliefs claimed by the applicant are granted.

There is no order as to costs.



(K. Muthukumar)
Member (A)



(B.C. Saksena)
Vice Chairman (J)

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