

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

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O.A.No.1317/1993

DATE OF DECISION: 27.07.1993

Shri Kishori Lal Dogra Applicant(s)

Versus

Commissioner of Police & Others Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter *yes* or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

*Sud*  
(S.K. DHAON)  
VICE CHAIRMAN

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Regn.No.OA 1317/1993

Date of decision:27.07.1993

Shri Kishori Lal Dogra

...Petitioner

Versus

Commissioner of Police & Others

...Respondents

For the Petitioner ...Shri J.P. Verghese, Counsel

For the Repspondents ..Mrs. Meera Chhibber, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN  
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

JUDGEMENT(ORAL)

( By Hon'ble Mr. Justice S.K.  
Dhaon, Vice Chairman)

The petitioner, an Inspector in the Delhi Police, challenges the legality of the order dated 17.02.1993 passed by Shri Yudhbir Singh Dadwal, Additional Commissioner of Police (Operations), Delhi (hereinafter referred to as Shri Dadwal), whereby it was directed that departmental action under Section 21 of the Delhi Police Act, 1978 (hereinafter referred to as the Act) shall be taken against him (petitioner).

2. By the said order dated 17.02.1993 Shri Dadwal also directed that a regular departmental enquiry against the petitioner shall be conducted on day to day basis by Dr. Aditya Arya, DCP/ Indira Gandhi International

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Airport, Delhi (hereinafter referred to as the Airport).

3. A counter-affidavit has been filed on behalf of the respondents. A rejoinder-affidavit too has been filed. Though this application has not been formally admitted as yet, we are disposing of the same finally as there is an interim order staying departmental proceedings.

4. The material facts which emerge are these. On or before 21.1.1993 the petitioner was posted as the Station House Officer (herein after referred to as the SHO) at the Airport under the jurisdiction of Shri Dadwal. On that day, the Commissioner of Police passed a general order of transfer affecting 5 persons. One Shri Mahabir Singh Dahiya, the then SHO/Welcome was transferred to the Airport and the petitioner was transferred from the Airport to the Central District. In pursuance of the order of transfer dated 21.01.1993, Shri Mahabir Singh Dahiya took over as SHO at the Airport. The petitioner proceeded on leave which was granted to him by Shri Dadwal. On 09.04.1993, the petitioner for the first time joined at the Central District. From there, he was transferred on 25.01.93 as SHO, DAP where he is posted now.

5. The order of transfer, as material, reads:-  
"The following transfers/postings amongst Inspectors (Ex.)/SHOs are ordered with immediate effect.....They should be relieved at once with the directions to report their new assignments and compliance report sent to this Headquarter".

The simple argument is that the impugned order

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having been passed after 21.01.1993, Shri Dadwal had no jurisdiction to pass the same. According to the petitioner's counsel, on 17.02.1993 the petitioner stood transferred outside the jurisdiction of Shri Dadwal. Rule 14(4) of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as the Rules) governs the situation. The same may be extracted:-

"The disciplinary action shall be initiated by the competent authority under whose disciplinary control the police officer concerned is working at the time it is decided to initiate disciplinary action".

6. The question, therefore, is : was the petitioner on 17.02.1993 working under the disciplinary control of Shri Dadwal? For reasons stated hereafter, our answer is in the affirmative. Reading the order of the transfer as a whole, there can be no escape from the conclusion that it could not be intended by its author that it (the order) was to become effective and operative the moment it was passed. The mode of the execution of the order is indicated in the order itself. The order was to be given immediate effect by relieving "at once", the transferees were to be directed to report to their new assignments and compliance report was to be sent to the Headquarter. Undoubtedly, the order was not complied with in its entirety till 09.04.1993 when the petitioner for the first time took charge at the Central District. The petitioner, by his own act,

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did not allow the order to have its full play. He proceeded on leave with the sanction of Shri Dadwal even before he could be relieved from the Airport. The mere fact that Shri Mahabir Singh Dahiya took over at the Airport did not mean that the petitioner had been relieved. Thus, the petitioner was neither relieved before 09.04.1993 from the Airport nor did he report to the new assignment before that date. He, therefore, continued to be under the jurisdiction of Shri Dadwal between 21.01.1993 and 09.04.1993.

7. We may now again consider Rule 14(4). The crucial words in the Rule for the purpose of this case are "disciplinary control" and "working". Admittedly, the petitioner took leave from Shri Dadwal after 21.01.1993. He could not have applied to Shri Dadwal for leave and Shri Dadwal could not have granted him leave if he was not under the disciplinary control of Shri Dadwal. A member of the police force has got to be under the disciplinary control of some officer all the time during the tenure of his service. There can be no vacuum or hiatus so far as the disciplinary control is concerned. The Rule makes it clear that there should be a nexus between the work of a police officer and the officer who has disciplinary control over such an officer. It cannot be said that during the period of his leave, the petitioner ceased to be a member of the police force. Also, it cannot be said that during the said period <sup>he</sup> /was not working within the meaning of the Rule.

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Notionally and in the eye of law, a police officer on leave would be deemed to be working. Other-wise, the Rule will become inapplicable thereby leading to an anomalous situation. The situation would be that a police officer on leave would be immune from the operation of the Rule in so far as no officer will be competent to initiate disciplinary proceedings against him during the period when he is on leave. It follows that, for the efficient working of the Rule, it should be held that during the period when the petitioner was on leave, he was working under the disciplinary control of Shri Dadwal.

8. The clarification issued by the Home Department, Delhi Administration 45989 upon which reliance is placed by the learned counsel for the petitioner does not advance the petitioner's case. The substance of the alleged clarification is that the competent authority under whose disciplinary control the employee has been transferred alone would be competent to take action and the authority from whose control he has gone out would have nothing to do with him any longer in future. We have already indicated that the order of transfer become effect<sup>ive</sup> only on 09.04.1993 and the petitioner did not cease to be under the disciplinary control of Shri Dadwal on 17.02.1993.

9. We find no substance in the allegation of mala fides as contained in paragraph 4.9 (a, b & C). We have perused the same carefully

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and we are satisfied that, prima facie, no case of mala fide has been made out against Shri Dadwal.

10. The petitioner is no more under the jurisdiction of Shri Dadwal, therefore, that officer will have no jurisdiction to pass any order in the disciplinary proceedings. We have no doubt that the petitioner shall be dealt/ <sup>with</sup> fairly in the disciplinary proceedings by the competent authority.

11. With these observations, this O.A. is dismissed. There shall be no order as to costs.

*B. N. Dhoundiyal*  
(B.N. DHOUNDIYAL)  
MEMBER (A)  
27.07.1993

*S.K. Dhaon*  
(S.K. DHAON)  
VICE CHAIRMAN  
27.07.1993

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