

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No.
T.A.No.

883/1993

199

DATE OF DECISION 14/10/93

Sh.Kamal Singh

Applicant(s)

Versus.

Commissioner of Police, Delhi & ors. Respondent(s)

(For Instructions)

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

S.K.D.
(S.K.DHAON)
VICE-CHAIRMAN(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 883/93

Date of decision: 14/10/93

Shri Kamal Singh

.. Petitioner

vs.

Commissioner of Police
Delhi Police
& ors.

.. Respondents

For the petitioner

.. Sh.B.B.Raval, Counsel.

For the Respondents

..Sh. Vinay Sabharwal,
counsel.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUDIYAL, ADMINISTRATIVE MEMBER

JUDGMENT

(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman)

The petitioner, a Sub Inspector in the Delhi Police, is facing disciplinary proceedings under the Delhi Police Act, 1978 (the Act) and the Delhi Police (Punishment and Appeal) Rules, 1980 (the Rules).

2. On 8.2.1993, the Deputy Commissioner of Police/FRRO passed an order that the departmental proceedings under Section 21 of the Act should be held against the petitioner. He also ordered that the petitioner shall be dealt with departmentally by the Assistant Commissioner of Police of the DE Cell, Vigilance, Delhi to be nominated by the DCP/DE Cell, Vigilance, Delhi. On 19.3.1993 one Shri S.K. Indora, an Assistant Commissioner of Police issued a memorandum to the petitioner informing him that he (Sh. Indora) had been appointed

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to hold a departmental enquiry under Section 21 of the Act. Amongst other documents, a summary of allegations was annexed to the said memorandum. The summary of allegations contains^{by} the recital that the misconduct mentioned therein rendered the petitioner liable for departmental action under Section 21 of the Act. The legality of the aforesaid orders and the summary of allegations is being impugned on the ground that the same could neither be passed nor issued under Section 21.

3. In Section 2(g) of the Act, "Delhi police" or "police force", inter-alia, means the police force referred to in Section 3. Section 3 states that there shall be one police force for the whole of Delhi and all officers and subordinate ranks of the police force shall be liable for posting to any branch of the force including the Delhi Armed Police. Section 5, inter-alia, provides that subject to the provisions of the Act, the conditions of service of the members of the Delhi Police shall be such as may be prescribed. "Prescribed" means prescribed by Rules(2 (n)). "Rules" means Rules made under the Act. The expression " conditions of service" is wide enough to include disciplinary proceedings. However, the opening words of Section 5 make the conditions of service contained in the rules subservient to the provisions of the Act.

4. Sub-section(1) of Section 21 of the Act, inter-alia, states that subject

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to the provisions of Article 311 of the Constitution and the Rules, the different officers mentioned therein, may award to any police officer of subordinate rank any of the punishments enumerated thereunder. The punishments mentioned are numerous including dismissal and removal from service. The power to dismiss or remove from service etc. conferred upon the various officers is not absolute. It is conditional upon the fulfilment of the requirements of Article 311 and the Rules, if any. In Article 311 certain safeguards are enshrined. The first is that no order of dismissal and removal from service can be passed by an officer inferior in rank to the officer who appointed the Government servant concerned. The second is that no order of dismissal or removal from service or reduction in rank can be passed except without affording a reasonable opportunity to the delinquent Government servant." Reasonable opportunity" includes the furnishing of a charge-memo, appointment of an Inquiry Officer, if such an appointment is necessary, holding of inquiry either by the punishing authority or by the Inquiry Officer in accordance with the principles of natural justice and other procedural matters relating to disciplinary proceedings. Article 311 is confined to dismissal, removal or reduction in rank. The other punishments, as enumerated in Section 21, can be inflicted upon any police officer of subordinate rank only after complying with the principles of natural justice and the provisions of the Rules, if any. The rules are comprehensive and they embrace the principles of natural justice as well as other procedural safeguards. They are applicable even to the cases

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7. Rule 4(iv) of the Rules defines the disciplinary authority to mean the authority competent to award punishment as prescribed in the Act. Rule 6 provides that the authority competent to award punishment to the rank of Inspector and below is the Deputy Commissioner of Police and above and the authority competent to award punishment to the rank of Constable to Sub-Inspector is the Assistant Commissioner of Police. Sub-rule(4) of Rule 14 states that 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. In sub-rule(2) of Rule 15, it is laid down that in cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held. In sub-rule (i) of Rule 16 power has been conferred upon the disciplinary authority to appoint an Inquiry Officer . The same sub-rule authorises the Inquiry Officer to furnish a summary of charges to a delinquent employee.

8. The only flaw relied upon by the petitioner is that neither the aforesaid orders were passed nor summary of charges was issued under the relevant rules but were said to have been issued under Section 21.

9. There is no dispute that the aforesaid orders had been issued by the authority competent

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to do so and there is also no dispute that the summary of charges was issued by the authority competent to do so. Assuming instead of Section 21 of the Act, the relevant Rules as aforementioned should have been recited in the aforesaid orders and the summary of charges, no invalidity can be attached to the orders and the summary of charges merely because a wrong provision of law has been referred to in them. It is now well settled that a reference to wrong provision of law will not invalidate the order (see **MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD Vs. BEN HIRA BEN MANILAL- 1983 (2) SCC 422**).

10. Section 134 of the Act inter-alia provides that no order or direction made and no act done under any provision of the Act or any rule or regulation made under the Act, or in substantial conformity with the same, shall be deemed illegal, void, invalid or insufficient by reason of any defect of form or any irregularity of procedure. The shortcomings relied upon by the petitioner are really not of any substance but are of mere form. A reference to a wrong provision in them should be considered to be either a defect of form or a procedural irregularity. Section 134, therefore, cures the defect, if any, in the aforesaid orders and the summary of charges.

11. Reliance is placed by the learned counsel for the petitioner upon a circular dated 23.8.1993 from the Additional Commissioner of Police/Admn. Delhi to DCP/Spl.Br.etc. in which it is recited that legally it is wrong to say that a defaulter should be dealt with departmentally under Section 21. The holding of departmental action has been

authorised under Rule 15 while the procedure for holding the departmental enquiry has been provided under Rule 16. Therefore, while ordering departmental action it should either be stated that the defaulter should be dealt with departmentally under the Rules or that departmental action should be taken in accordance with the Rules for punishment as envisaged under Section 21. Even if the contents of the said circular are technically correct, the non-observance of the same will not invalidate the aforesaid orders and the summary of charges.

12. It is next contended that, on 8.2.1993, Shri S.K.Jain, Deputy Commissioner of Police/ F.R.R.O was really not a member of the Police force and, therefore, he was not competent to initiate disciplinary proceedings. In this connection, reliance is placed upon Schedule III to the Act. The said Schedule relates to Section 150 which provides that the Police force functioning in Delhi immediately before the commencement of the Act shall be deemed to be the Police force constituted under the Act. This Schedule, in our opinion, has no relevance as it is not the petitioner's case that Shri S.K. Jain cannot be considered to be the Deputy Commissioner of Police as immediately before the commencement of the Act as he was not functioning as Superintendent of Police or the Inspector General of Police.

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13. Reliance is also placed upon the Notification dated 22.12.1978 purported to have been issued under Section 8 of the Act which empowers the Administrator to appoint one or more Deputy Commissioners of Police or Assistant Commissioners of Police for the purpose of the Act. In the counter-affidavit filed on behalf of the respondents, it is stated that the Foreign Regional Regulation Officers(F.R.R.O) have been designated as Deputy Commissioners of Police in the Delhi Police by the President of India. We, therefore, repel the submission that Sh.S.K. Jain was not competent to direct that the disciplinary proceedings should be held against the petitioner.

14. This application fails and is dismissed but without any order as to costs.

B. N. Dhaon
(B.N.DHOUNDIYAL)
MEMBER(A)

S.K. Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)

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