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Central Administrative Tribunal, Principal Bench

Original Application No.2716 of 2003

New Delhi, this the 13th day of May, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman

Hon'ble Mr. S.A. Singh, Member (A)

H.C. Krishan Pal
No.2539/DAP
S/o Shri Amar Singh
R/o 129A, Gobind Vihar,
Gali No.11, Karawal Nagar,
Delhi-94

....Applicant

(By Advocate: Shri Ashwani Bhardwaj)

Versus

1. Commissioner of Police,
Police Head Quarter,
Indraprastha Estate,
New Delhi
2. Joint Commissioner of Police
New Delhi Range
Police Head Quarter,
Indraprastha Estate,
New Delhi
3. Addl. Commissioner of Police
North East Distt, Delhi
Police Head Quarter,
Indraprastha Estate,
New Delhi

....Respondents

(By Advocate: Shri Harvir Singh)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant is a Head Constable in Delhi Police. Disciplinary proceedings had been initiated against him and the summary of allegations reads:

"It is alleged against you HC Krishan Pal No.155/NE that while you were posted as Driver to SHO/P.S. Seelampur, Delhi (Presently placed under suspension), one complainant namely Dharmender Sharma s/o Sh.M.D. Sharma R/o 34/412, Karawal Nagar, Delhi had submitted a complaint against you where in it is alleged that on 18.08.99 you HC Kishal Pal No.155/NE alongwith your two nephews quarrelled with the staff of a bus (which was maintained by the complainant) under the influence of liquor and snatched Rs.2000/- from the conductor of the bus. Subsequently an enquiry was conducted

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into the alleged complaint and on the findings of this vigilance enquiry as case FIR No.487/99 U/s 323/341/427/34 IPC was registered at P.S. Gokal Puri, Delhi against you HC Kishan Pal No.155/NE as well as against your two nephews namely Anil & Sunil. This case has been chargesheeted on 28.02.2002 and the same is now pending trial in the court. It is further alleged that, you HC Krishan Pal No.155/NE threatened the complainant Sh.Dharmender Sharma to change his statement in the court during his deposition in the above said case otherwise you will get him (complainant) implicated in a false case. Later, you HC Kirshan Pal No.155/NE tried to implicate the complainant (Sh.Dharmender Sharma) falsely in case FIR No.62/2002 U/s 279/304A IPC P.S. Seelampur as such you have misused your official power being a Driver to SHO/Seelampur and tarnished the image of the department.

The above act on the part of you Krishan Pal No.155/NE amounts to gross misconduct, negligence, remissness and dereliction in the discharge of your official duties which renders you liable for departmental action under the Delhi Police (Punishment and Appeal) Rules, 1980."

2. The enquiry officer held that the same stood proved. Resultantly the disciplinary authority on 10.1.2003 passed the following order:

"The charge against the delinquent is very serious in that he alongwith his two nephews damaged the buses of the complainant under the influence of liquor and snatched money from the driver. Later on he tried to implicate the complainant in a criminal case falsely. The prosecution evidence has established the misconduct of the delinquent. The delinquent produced two defence witnesses and, rightly, the E.O. has not given any given credence to their statements.

In his personal hearing before the undersigned, the delinquent has stated that so far as the allegation regarding framing the complainant in a false case was concerned, he was given a slip containing the vehicle No. by an unknown person at the gate of the police station. It is highly doubtful and improbable. Further it clearly smacks of malafide as the vehicle No. was that of the complainant, with who delinquent had previous enmity. Under these circumstances, the charge against the delinquent is fully proved, as has been done by the E.O.

Police is meant to uphold the law of the land and members of police force have onerous responsibilities. Such acts of settling personal scores and getting involved in criminal cases

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tarnish the image of the police as a whole and are highly unbecoming of police officers. I, therefore, impose a penalty of forfeiture of 5 years of his approved service permanently entailing reduction in his pay for Rs.4900 to Rs.4400/-. He is reinstated from suspension with immediate effect and his suspension period from 1.4.02 to date of this order is decided as period not spent on duty for all intents & purposes."

The appeal filed by the applicant was dismissed by the Joint Commissioner of Police on 10.7.2003.

3. By virtue of the present application, the applicant seeks to assail the orders passed by the disciplinary as well as the appellate authority.

4. The application is being contested.

5. Learned counsel for the applicant raised various pleas but for the present, we are not delving into the same. We are primarily concerned with a basic argument advanced at the Bar that provisions of sub-rule 2 to rule 15 of Delhi Police (Punishment and Appeal) Rules have been ignored or in other words, permission of the Additional Commissioner of Police had not been taken while initiating the disciplinary proceedings.

6. Sub-rule 2 to rule 15 of the Rules referred to above unfolds itself in the following words:

"15.(2) 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."

7. This clearly shows that necessary ingredients before sub-rule 2 to rule 15 of the Rules comes into play are -

(a) there should be a preliminary enquiry;

(b) it should disclose the commission of a cognizable offence of the subordinate rank;
and

(c) it should be in his official relations with the public.

8. If these ingredients are established, in that event only, departmental action can be taken after obtaining the permission of the Additional Commissioner of Police as to whether a criminal case should be registered and departmental enquiry should also be held.

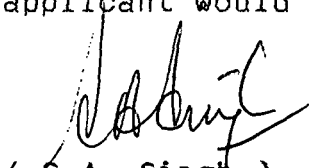
9. In the present case in hand, the record clearly reveals that Inspector Jagjeet Singh is alleged to have conducted the preliminary enquiry. The nature of the allegations which we have already reproduced above indicate that the alleged act is in relation to an act with the public persons. It also reveals that pertaining to the said act, a First Information Report has been recorded with respect to offences punishable under Sections 323/341/427/34 of the Indian Penal Code. In other words, a cognizable offence has found its way into the First Information Report. Thus it is patent that necessary

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ingredients of sub-rule 2 to rule 15 of the Rules referred to above are satisfied.

10. Counter reply clearly reveals that permission of the Additional Commissioner of Police has not been taken. The plea of the respondents that the said rule would come into play only in the Prevention of Corruption Act, must be stated to be rejected.

11. For these reasons, we allow the present application and quash the impugned orders. But we make it clear that nothing said herein is an expression of opinion on the other pleas that may be available to the applicant nor it would restrain the respondents to start a fresh enquiry, if deemed appropriate in accordance with law. The applicant would be entitled to the consequential benefits.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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