

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1138/2002

New Delhi, this 26th day of May, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
 Hon'ble Shri C.S. Chadha, Member(A)

Const. Charanjeet Singh
 B-127, Fateh Nagar
 Tilak Nagar, New Delhi .. Applicant
 (Shri Anil Singal, Advocate)

versus

1. Commissioner of Police
 Police Hqrs., IP Estate, New Delhi
 2. Jt. Commissioner of Police(Intelligence)
 PHQ, IP Estate, New Delhi
 3. DCP Special Cell (SB)
 PHQ, IP Estate, New Delhi .. Respondents

(Shri Ram Kumar Dhillon, Advocate)

ORDER(oral)

Shri C.S. Chadha

The applicant is a Driver (Constable) in Delhi Police and he was charge-sheeted for unauthorised absence from duty from 10.5.1997 to 15.5.1997. The charge-sheet also included the fact that by previous records it was found that he was a habitual absentee, having been punished by ten different earlier orders. The Enquiry Officer found the charge as 'proved', especially in view of the applicant's own admission dated 28.5.1997, according to which it was found that the applicant had himself apologised for his absence and had requested to be pardoned for his mistake. After the charge was proved by the Enquiry Officer, he was awarded the punishment vide Annexure A/3 dated 30.12.97, which was apparently served on the applicant on 1.1.1998. Thereafter, he filed an appeal on 16.4.98, which was rejected on 26.5.98 as being time-barred because the time available to prefer the



appeal is 30 days from the date of the punishment order. Thereafter, he filed a revision which was returned to him on the ground that the power of revision had been taken from the Commissioner of Police. He has now filed this OA against the punishment order as well as the appellate order.

2. In matter of disciplinary proceedings, the Tribunal does not go into appreciation of facts. It is not a court of appeal. All that the Tribunal can look into is whether there has been any serious irregularity in conducting the enquiry, any violation of principles of natural justice and whether the disciplinary authority and the appellate authority have applied their mind in a logical manner while taking the decision or not. Although the applicant has raised many issues regarding the facts of the case, we would not like to dwell into those facts due to the reasons mentioned above. The only procedural error pointed out by the learned counsel for the applicant in conducting the enquiry is that although the applicant was served with charge-sheet with a list of only three witnesses, the 4th witness was also examined to prove the confessional statement made by the applicant on 28.5.1997, in which he had admitted that he had absented himself. It has, therefore, been argued that the said statement cannot be taken on record and since the Enquiry Officer gave his conclusion based on this confessional statement alone, the applicant should have been absolved of the charges against him.



3. The learned counsel for the respondents has pointed out that under the Delhi Police (Punishment & Appeal) Rules, 1980, there is a provision that the Enquiry Officer can examine any additional witness if he deems fit. There should be no objection if the additional witness is examined, if the applicant is duly informed beforehand and he is given opportunity to cross-examine the witness. We find from the records that the applicant was given due notice before examination of PW-4 that he would be examined. We also find that the applicant had an opportunity to cross-examine the said 4th witness. It is true that in all fairness, applicant should have been informed about the fact which the additional witness would prove in his examination-in-chief but this was not done. Therefore there has been a material irregularity inasmuch as the delinquent official was not informed beforehand about the fact which the additional witness would prove. However, what is material is whether such a lapse had led to miscarriage of justice or had caused prejudice to the applicant's defence. We find that the additional witness had simply proved that the applicant submitted the apology letter/confessional statement on 28.5.97. It cannot be said that the applicant had been taken by great surprise because the applicant had himself signed the said letter. If in fact he had any claim that he had not signed that letter, the first question he would have asked the additional witness would have been about the veracity or correctness of that confessional statement and he should have questioned him whether the signature on that letter was really his or not. We find that no such cross examination was made by the applicant. Further, what is more important is that this argument was



never raised by the applicant either in his representation on being served the show cause notice or in his appeal. The first occasion on which he raised this argument that he had not signed the confessional statement/apology letter is only at the stage of filing the OA. Learned counsel for the applicant tried to defend applicant's case by stating that there the applicant was not well conversant with law and therefore could not raise that issue. We are not in agreement with the learned counsel for the simple reason that representations of the applicant have earlier been drafted apparently by his lawyer and these could not have been written by the applicant himself as they are all in English in legal language. The fact he had no recourse to legal advice cannot absolve him of the fact that he did not raise this issue about the confessional statement being forged/not signed by him prior to the filing of this OA.

4. Another important issue in the whole case is whether we should entertain this OA at all on the ground of limitation at the time of appeal. What is being challenged before us is not only the order of punishment but also the appellate order. Obviously the appeal was time-barred. Even in the OA, the applicant has not shown any valid reason for the delay in filing the appeal. Since the appeal was rightly rejected as time-barred, we would not like to entertain any remedy against the appellate order. The appellate order at Annexure A/4 clearly mentions that the order of punishment was served on the applicant on 1.1.98 and he should have filed the appeal by 31.1.98 in accordance with Rule 23 of the Delhi



Police (Punishment & Appeal) Rules, 1980. He had filed his appeal on 16.4.98 and it was time-barred by three and half months. Any consequential order of the Joint Commissioner of Police (Intelligence), Delhi in rejecting the appeal cannot be faulted and we cannot entertain any OA without sufficient explanation for the delay. However, in the interest of justice, such a delay could have been overlooked if there is any gross violation of principles of natural justice. The fact that the applicant had been dealt with, as mentioned above, in terms of the statement in which the applicant has confessed to his mistake and asked to be pardoned and further fact that he had been earlier punished on 10 occasions and the said issue was part of the charge-sheet, we find no reason to interfere with the appellate authority's order as well as the original punishment order. The OA is therefore dismissed. No costs.



(C.S. Chadha)
Member(A)



(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

/gtv/