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Central Administrative Tribunal, Principal Bench

Original Application No.314 of 2002

New Delhi, this the 7th day of February, 2002

Hon'ble Mr. Justice Ashok Agarwal, Chairman  
Hon'ble Mr. M.P. Singh, Member(A)

Shri Hardayal Singh  
S/o Shri Lachhman Dass  
R/o Quarter No. 946, Sector-I  
R.K. Puram,  
New Delhi

....Applicant

(By Advocate: Shri N. Safaya with Ms. Sushma Amberdar)

Versus

1. Commissioner of Police  
Police Head Quarter  
I.P. Estate, New Delhi
2. Additional Commissioner of Police  
Police Head Quarter  
I.P. Estate, New Delhi
3. Deputy Commissioner of Police  
Police Head Quarter  
I.P. Estate, New Delhi

....Respondents

O R D E R (ORAL)

By Justice Ashok Agarwal, Chairman

In disciplinary proceedings initiated against the applicant, a penalty of dismissal from service has been imposed upon him by Shri Kishan Kumar, Dy. Commissioner of Police being the disciplinary authority. Aforesaid order of the disciplinary authority is annexed at Annexure A-1. The same is dated 21.5.98. After passing of the aforesaid order, a further order is issued by Shri S.K. Jain, Additional Commissioner of Police, (HQ) Delhi on 7.7.98 which recites as under:

"This is in continuation to this Hdqrs. order No.13820-80/CR-III/PHQ dated 21.5.98, the suspension period w.e.f. 18.7.85 to the date of dismissal in respect of HC (Dvr.) Hardyal Singh No.179/PHQ may please be treated as period not spent on duty as per provisions of FR-54.

2. Aforesaid order is annexed at Annexure A-2.
- N.A.

Applicant has carried the aforesaid order in appeal which has been decided by Shri S.K.Jain, Additional Commissioner of Police (Establishment), Delhi on 15.3.99 whereby the appeal has been dismissed and the order of penalty has been maintained. Aforesaid orders are impugned by the applicant in the present OA.

3. It has inter alia been pointed out by Shri N.Safaya, the learned advocate appearing on behalf of the applicant that the order at Annexure A-2 of 7.7.98 which is an order passed in continuation of the order of dismissal from service issued by the disciplinary authority, has been passed by Shri S.K.Jain, Addl. Commissioner of Police and the appeal of the applicant has also been decided by the very same authority namely Shri S.K.Jain. Shri S.K.Jain, in the circumstances, has acted both as a disciplinary authority as also the appellate authority. When he issued the order at Annexure A-2, he has gone through the order of dismissal from service and after considering all the facts and circumstances of the case, has issued the said order. *He has accordingly stepped in the shoes of the disciplinary authority.* <sup>L</sup> He having acted as a disciplinary authority, could not have acted also as the appellate authority. Aforesaid order of the appellate authority, in the circumstances, in any event is liable to be quashed and set aside.

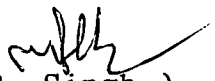
4. In our judgement, the contention advanced is well-founded and deserves to be accepted. The order of the appellate authority, we find is liable to be quashed and

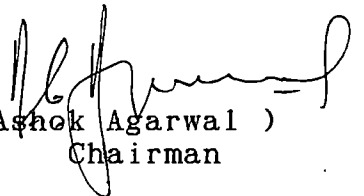
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set aside as the very same authority has acted as the disciplinary authority as also the appellate authority. An individual cannot be a judge of his own cause. In the circumstances, the aforesaid lacuna is glaring and there can possibly be no defence to the contention which has been advanced. In the circumstances, we find that this is a fit case where the aforesaid order of the appellate authority is liable to be quashed and set aside even without issue of notices. The same is accordingly quashed and set aside. Respondents will, however, be at liberty to have the appeal decided by another competent appellate authority.

5. At this stage, learned counsel seeks liberty to take additional grounds in his appeal. Applicant may take such grounds as may be available to him and the appellate authority may deal with the same in accordance with law.

  
( M.P. Singh )  
Member(A)

  
( Ashok Agarwal )  
Chairman

/dkm/