

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(12)

O. A. No. 220/2002

Date of Decision 6.1.2003

Ct. Raghvinder Singh ... Applicant

Sh. Anil Singal ... Advocate for the Applicant

VERSUS

Commissioner of Police & ... Respondents
Ors.

Shri R.K. Dhillon Advocates for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V. Srikantan, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A. No.220/2002

New Delhi, this the 6th day of January, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V. Srikantan, Member (A)

Const. Raghvinder Singh
PIS No.28892732
R/o V & P.O.: - Hasan garh,
P.S. Sampala, Distt.: - Rohtak,
Haryana.
(By Advocate : Shri Anil Singal)

.... * Applicant

Versus

1. Commissioner of Police,
Police Head Quarters,
IP Estate, New Delhi.

2. Sp. Commissioner of Police,
(Intelligence), PHQ,
IP Estate, New Delhi.

3. D.C.P. Special Cell (SB),
PHQ, IP Estate, New Delhi. Respondents
(By Advocate : Shri Ram Kumar Dhillon)

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J) :

Heard both learned counsel for the parties.

2. This application has been filed by the applicant against the impugned orders issued by the disciplinary authority dated 29.5.2002 ^{and 18/} appellate authority's order dated 7.9.2000 rejecting the application submitted by him. ^{In} the revisionary authority's order dated 1.6.2001, ^{wherein} it is stated, inter alia, that as the Commissioner of Police, Delhi has no longer revisionary powers, the petitioner was informed that he will be at liberty to move the Court against the order of punishment of disciplinary authority and rejection order of appellate authority.

YB.

3. In the circumstances of the case, the only penalty orders which are relevant to the issues raised in the present application are disciplinary authority's and the appellate authority's ¹⁸ orders.

4. One main ground taken by the learned counsel for the applicant is that both the disciplinary authority as well as the appellate authority have referred to the past misconduct and punishment awarded to the applicant by them, which have been referred to by the competent authorities. The relevant portion of the disciplinary authority's order on this point reads follows:-

"Previously, Const. Raghuvinder Singh, No. 7357/DAP was dismissed by the DPC/North Distt. Vide his office order No.12008907-RAP-North dated 31.10.97, on the allegations of his unauthorized absence and later on he was re-instated in his appeal as previously record shows that he is a habitual absentee and incorrigible type of person and he is not mended himself so far. The above act on the part of Ct. Raghuvinder Singh, No. 7357/DAP liable to unbecoming of a police officer and grave misconduct on his part and therefore, I do not find this incorrigible type of person to retain in service further more."

5. The relevant portion of the appellate authority's order on the above referred point reads as under:-

"I have also gone through the past service record of the appellant, previously also. He has been awarded a major punishment of forfeiture of three years approved service permanently for his unauthorised absence and one censure. Not learning from this, the appellant again absented himself willfully and unauthorisedly in the instant case. However, there is one more DE pending against dismissed from the force in the instant case. The charge levelled against the appellant has been fully proved in the DE proceedings. However, the quantum of punishment i.e. dismissal from service

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awarded to him by the Disciplinary Authority for remaining absent from duty appears to be disproportionate. Therefore, taking little lenient view, I modify order of dismissal and award him punishment of removal from service."

5. Learned counsel for applicant has submitted that the aforesaid portions of the impugned orders issued by the respondents are contrary to the provisions of Rule 16 (xi) of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as Rules). He has relied upon the judgement of the Tribunal in the case of Constable Satish Kumar Vs. UOI and others (OA 139/1998) decided on 16.11.2000, copy placed on record. He has prayed that the penalty orders may, therefore, be quashed and set aside as the respondents have failed to comply with the provisions of the Rules.

6. The above submissions have been controverted by the respondents' learned counsel Shri Ram Kumar Dhillon who has submitted that the past record of the applicant has been merely referred to, to show his incapability to continue with a disciplined force like the Delhi Police, but that is not the basis of the punishment as the departmental inquiry proceedings held for his unauthorised absence stood proved. He has, therefore, prayed that the OA may be dismissed.

7. Rule 16 (xi) of the Delhi Police (Punishment & Appeal) Rules, 1980 reads as under:-

"if it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules."

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8. A perusal of the impugned orders show that the previous record of the applicant has been taken into account by the authorities while imposing the severe penalty of dismissal, which has been modified from dismissal from service to removal from service. However, it cannot be held that the punishment of removal from service is not a severe punishment which has been awarded to the applicant taking into account the previous bad record and punishments that have been awarded to the applicant in addition to the fact that according to the respondents, the departmental inquiry proceedings in question stood proved against the applicant. Learned counsel for the applicant has contended that on the charges levelled against the applicant in the departmental inquiry proceedings in question, the punishment is severe. Shri Anil Singal, learned counsel has relied on the judgement of the Hon'ble Gujarat High Court in the case of Bhim Sing Sardar Sing Vs. District Supdt. of Police and others (1982(2) SLP (629). Further, a perusal of the impugned penalty orders passed by the disciplinary authority as well as the appellate authority no doubt has left little room to show that the past conduct of the applicant has not been taken into account by the authorities while imposing the penalty orders, which is contrary to the provisions of the rules.

9. In the present case it is seen that the appellate authority vide impugned order dated 7.9.2000 has modified the disciplinary authority's order dated 29.5.2000 under Rule 25 of the Rules. The appellate authority has powers to pass such orders as mentioned in clauses (a) - (f) which read as under:-

Yours

(R)

"(a) confirm the impugned order, or
 (b) accept the impugned order, or
 (c) reduce the punishment, or
 (d) disagree with the disciplinary authority and enhance the punishment after issue of a fresh show cause notice to the appellate and affording him a reasonable opportunity (including personal hearing if asked for) against the proposed enhancement.
 (e) remit the case to the authority which made the order or to any other authority to make such further enquiry as it may consider proper in the circumstances of the case; or
 (f) pass such other orders as it may deem fit."

10. In the present case, the appellate authority has mentioned in his order that the quantum of punishment i.e. dismissal from service awarded by the disciplinary authority for remaining absent from duties appears to be excessive and, therefore, taking a lenient view he has modified the order to removal from service. However, for the reasons given above the order passed by the appellate authority cannot be sustained as he has also taken into account the past misconduct and punishments awarded to the applicant which is contrary to the provisions of Rule 16(xi) of the Rules.

11. In the above facts and circumstances of the case, the appellate authority's order dated 7.9.2000 is quashed and set aside with a direction to the appellate authority to pass appropriate order in accordance with the Rules and observations made above.

12. We respectfully follow the judgement of this Tribunal in the case of Satish Kumar (supra). However, in the facts and circumstances of the case, we do not consider it necessary to quash the orders passed by the disciplinary authority as the appellate

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authority has modified the earlier order passed by the disciplinary authority which has merged with his order.

13. In the above facts and circumstances of the case, the OA partly succeeds. Accordingly appellate authority's order dated 7.9.2000 is quashed and set aside with a direction to the appellate authority to pass appropriate orders in accordance with Rule 25 read with Rule 16 (xi) of the Delhi Police (Punishment & Appeal) Rules, 1980. This shall be done within three months from the date of receipt of a copy of this order with intimation to the applicant. No order as to costs.

V. A
(V. Srikantan)
Member (A)

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Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)