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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.400/2002

New Delhi, this the 29th day of August, 2002.

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN  
HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Ex. Const. Ishwar Das  
S/O Late Prem Singh,  
R/O VPO : Bharoli (Kotiara),  
Tehsil-Dehra, Distt. Kangra (HP). . . . . Applicant  
( By Dr. S.P.Sharma, Advocate )

-versus-

1. Union of India through  
Secretary, Ministry of Home Affairs,  
North Block, New Delhi.
2. Commissioner of Police,  
Police Headquarters, I.P.Estate,  
New Delhi.
3. Dy. Commissioner of Police,  
X Bn. DAP, New Delhi. . . . . Respondents

( By Ms. Sumedha Sharma, Advocate )

O R D E R (ORAL)

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A) :

Applicant who was a Constable in Delhi Police has challenged the punishment of removal from service in disciplinary proceedings initiated against him vide office order dated 8.2.1995.

2. Brief facts of this case are that while posted in IX Bn. DAP applicant was detailed for duty at gate No.1 on 4.2.1995. He is alleged to have misbehaved and threatened Shri Mam Chand, ACP/IX Bn. who had cancelled his leave w.e.f. 4.2.1995. Consequently he was placed under suspension with the prior approval of the Deputy Commissioner of Police. Earlier on applicant was dismissed from service in another departmental enquiry vide order dated 14.4.1995. However, he was

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reinstated in service on intervention by the Court. The departmental enquiry in which applicant was removed from service had been kept in abeyance on account of applicant's dismissal in the earlier enquiry and was re-opened on 2.9.1997. The enquiry officer Shri M.J.S.Mattoo, ACP/IX Bn. completed the departmental enquiry and submitted his findings to the disciplinary authority holding applicant guilty of the charge. Applicant was transferred to X Bn. and as such the departmental enquiry was also transferred for finalisation to the disciplinary authority in X Bn. Applicant was supplied the findings of the enquiry officer and the defect pointed out by him about not examining the defence witnesses was removed and the new enquiry officer submitted supplementary findings in the enquiry on 20.8.1998. The supplementary findings were also provided to applicant on 1.9.1998 against which applicant did not make any representation. He was heard in Orderly Room on 23.10.1998 and thereafter the disciplinary authority passed the final orders on 30.10.1998 removing applicant from service (Annexure P-1).

3. The learned counsel of applicant assailed the punishment inflicted upon applicant on several grounds.

4. Firstly, the learned counsel stated that applicant has been subjected to double jeopardy because the allegations in the departmental enquiry in question were the same as of the previous departmental enquiry in which he had been awarded the punishment of dismissal from service as per order 14.4.1995 as affirmed by the appellate authority vide order dated 11.4.1996. In this behalf, the learned

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counsel stated that whereas in the present departmental enquiry, the allegation related to applicant's misbehaviour with Shri Mam Chand, ACP on 4.2.1995, an identical allegation had been levelled against him in the previous departmental enquiry. In this connection he drew our attention to Annexure P-3 colly. which is an order dated 11.4.1996 passed in appeal rejecting applicant's appeal against the order of dismissal from service made by the disciplinary authority, in which, among other things, it is stated, "On 4-2-95, the appellant Const. Ishwar Dass No.10964/ DAP misbehaved with Shri Mam Chand, ACP/9th Bn. DAP and was placed under suspension w.e.f. 4-2-95 vide DD No.9 and order dated 6-2-95." He further brought to our notice order dated 14.4.1995 (Annexure P-3 colly.) which is the final order in the previous departmental enquiry against applicant, in which it is stated, "On 4.2.95 the defaulter Constable misbehaved with Shri Mam Chand, ACP/Adj. 9th Bn. DAP and was placed under suspension with effect from 4.2.95 vide this office order No.260-322/DAP-9th Bn. dated 6.2.95. The E.O. completed the DE proceedings and submitted his findings on 21.2.95 holding the defaulter Constable guilty of the charge." The learned counsel stated that when the allegation of misbehaviour with Shri Mam Chand, ACP on 4.2.1995 had already been dealt with in the previous departmental enquiry against applicant and he had been awarded punishment of dismissal from service therein, holding an enquiry on the same charge once again constitutes double jeopardy, which is impermissible in law. In this regard, the learned counsel of respondents stated that applicant had not been charged.

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for misbehaviour with Shri Mam Chand, ACP on 4.2.1995 in the previous enquiry, therefore, the punishment of applicant's dismissal from service in the previous enquiry cannot be related to the present charge of misbehaviour with Shri Mam Chand, ACP. As a matter of fact, the present proceedings had been kept in abeyance and were re-opened as stated earlier only on reinstatement of applicant from dismissal on orders of the Tribunal relating to the previous disciplinary proceedings against applicant. The perusal of documents submitted by applicant, such as Annexure P-3 colly., reveals that applicant had been basically charged for misbehaviour with Shri M.L.Kararwal, ACP/II Bn. DAP and not for misbehaviour with Shri Mam Chand, ACP/IX Bn. on 4.2.1995. He was also not held guilty in that enquiry for misbehaviour on 4.2.1995 against Shri Mam Chand, ACP. The incident of misbehaviour against Shri Mam Chand on 4.2.1995 has merely been mentioned as applicant had been placed under suspension w.e.f. 4.2.1995 on the basis of his misbehaviour with Shri Mam Chand. Applicant's contention of double jeopardy is not at all established from the above discussion. The present enquiry was merely re-opened on reinstatement of applicant on Court's orders relating to punishment of dismissal from service in the earlier enquiry.

5. Secondly, the learned counsel of applicant stated that the enquiry officer in his findings (Annexure P-7) has stated that applicant had misbehaved with him as well, which amounts to misconduct and indiscipline with a senior officer and is unbecoming of a police

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officer. The learned counsel of applicant stated that with this allegation of the enquiry officer against applicant, the enquiry could not have proceeded with. In this regard, respondents have stated that applicant is habitual of misbehaviour with senior officers and as such he misbehaved with the enquiry officer as well during the course of the enquiry, but there is no illegality if the enquiry officer has proceeded with the enquiry despite applicant's misbehaviour with him. In our view too, there is no infirmity in the enquiry officer's continuing with the enquiry against applicant despite his misbehaviour against the enquiry officer as applicant had not been charged for misbehaviour against the enquiry officer. Also if the contention of the learned counsel of applicant is accepted, then it would be well nigh impossible to complete an enquiry when the charged officer starts misbehaving with the enquiry officer and the enquiry officer is changed on this frivolous ground. We also find that mention of misbehaviour with the enquiry officer in the enquiry report has not caused any prejudice to applicant as the same has not been taken into consideration while passing the final order in the disciplinary proceedings.

6. The learned counsel of applicant stated that the enquiry officer in his conclusion of his report has considered the previous record of applicant stating that he had misbehaved and committed act of insubordination and high indiscipline earlier for which he was dismissed from service and later on reinstated on directions of the Tribunal. We do not find any mention of such a plea in the pleadings of the O.A., therefore, this plea is unacceptable.

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7. Having regard to the reasons recorded and discussion made above, we have not discovered any infirmity in the impugned orders. Thus, the O.A. is dismissed. No costs.

V.K. Majotra

( V. K. Majotra )  
Member (A)

V.S. Aggarwal

( V. S. Aggarwal )  
Chairman

/as/