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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1310/2002

This the 10th day of January, 2003

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Naresh Kumar (D/1068)
S/o Shri Pir Singh Khanka,
R/o P-1, P.S. Karol Bagh,
New Delhi - 110 055

.... Applicant

(By Advocate : Shri Shyam Babu)

Versus

1. Govt. of N.C.T. Delhi
through its Chief Secretary
'Players Bldg.'
I.P. Estate,
New Delhi - 110 002
2. Joint Commissioner of Police,
(Southern Range)
Police Headquarters,
I.P. Estate,
New Delhi - 110 002
3. Deputy Commissioner of Police,
West District,
P.S. Rajouri Garden,
New Delhi

.... Respondents

(By Advocate : Ms. Jasmine Ahmed)


O R D E R

By Govindan S. Tampi, Member (A) :

Challenge in this OA is directed against the disciplinary authority's order dated 17.11.2000, imposing on the applicant the punishment of forfeiture of one year's approved service and the appellate order dated 24.01.2002 confirming the same by introducing a new charge.

2. Heard Shri Shyam Babu and Ms. Jasmine Ahmed, learned counsel for the applicant and the respondents.

3. Naresh Kumar (S.I.), the applicant, ^{was} proceeded against in terms of the summary of



allegations dated 03.03.2000, which was got approved by the enquiry officer from the disciplinary authority, on the charge that the applicant's negligence had resulted in the loss of an important file. *While* the enquiry report did not hold the charge as proved, the disciplinary authority without recording any note of disagreement, differed from the same and imposed on the applicant the punishment which was upheld by the appellate authority. It is pointed out in the OA that as the disciplinary authority differed from Inquiry Officer's report and went ahead with the proceedings, holding the charge as proved and finding the applicant guilty. While upholding the said order, the appellate authority added a further charge against the applicant. The grounds raised in the OA are that the disciplinary authority did not indicate any reason for differing from the findings of the Inquiry Officer and thereby denied the applicant an opportunity for effective representation, the appellate authority has introduced an altogether new charge, and that the enquiry authority had taken directions from the disciplinary authority and that the loss of file had not prejudiced the case of the respondents as the applicant had got a duplicate file prepared and completed the proceedings. Shri Shyam Babu, appearing for the applicant reiterated the above and also relied upon the decision of the Hon'ble Delhi High Court in CWP Nos. 2665/2002 and 4593/2001 filed by Commissioner of Police, challenging Tribunal's order in OAs filed by Constables Pramod Kumar and Jag Pravesh.

(3)

4. Reiterating the pleas raised by the respondents, Ms. Jasmine Ahmed pointed out that as the applicant's negligence while dealing with the case file, leading to its loss was an act of proven misconduct and the same has been, therefore, dealt with properly. Once the proceedings have been gone through carefully and that too after affording full opportunity for the charged officer, the Department's action cannot be called in question. OA deserved to fail, according to her.

5. On careful consideration of the matter, we find that the applicant has a case. It is observed that the entire proceedings have been initiated in connection with the loss of file from the applicant's office. Inquiry Officer, in his report, has stated that "though there is no doubt about the theft of the case file from the room of the delinquent S.I., but under the circumstances, he cannot be held responsible for the same as it was just an incident which could happen with anyone especially when there is no Govt. Almirah etc. for the safe custody of the files". The disciplinary authority had differed from the whole findings without recording any reason for the said disagreement and has passed the impugned order, thereby shutting out the door for effective explanation/representation by the applicant. This had clearly vitiated the proceedings. We also observe that while dealing with the appellate, the concerned authority had introduced a new element of charge, which reads as under:

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(4)

"However, when untraced report was filed in the Court, the presiding officer take cognizance. Undoubtedly, the appellant's negligence has caused irreparable damage to the case as there is no likelihood of success for want of the original documents which are so vital in a forgery case."

6. This could not have been permitted without putting the applicant on notice. Thus, both the disciplinary authority and the appellate authority had acted in a manner violating the principles of natural justice and thus vitiating the proceedings. Hon'ble Delhi High Court in CWPs 2665/2002 and 4593/2001, referred to above would cover the applicant's case. The orders passed by the above authorities have, therefore, to be quashed and set aside. In the circumstances of the case that the Department's interests have been safeguarded by the applicant by preparing the duplicate file, we do not think it a necessary to have the proceedings gone through once again.

7. In the result, the OA succeeds and is accordingly allowed. The impugned orders of 17.11.2000 and 24.01.2002 are quashed and set aside with consequential benefits to the applicant. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

Govindan S. Tampi
(GOVINDAN S. TAMPI)
MEMBER (A)

/sunil/