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Central Administrative Tribunal, Principal Bench

Original Application No. 1818 of 2002

New Delhi, this the 5th day of February, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Malhotra, Member (A)

HC Daya Kishan,
(PIS No. 28740129)
R/o Vill. Bindapur,
PO: Uttam Nagar,
New Delhi-59

.... Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Addl. Comm. of Police,
(PCR & Communication), PHQ,
IP Estate, New Delhi.

2. Addl. DCP (PCR)
Police Head Quarters,
IP Estate, New Delhi

.... Respondents

(By Advocate: Mrs. Jasmine Ahmed)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

A departmental enquiry had been initiated against Daya Kishan and another. The charge against the applicant pertained to the following:

"I, Khazan Singh Insp/North Zone/PCR charge you HC Balwan Singh No. 101/ND, 191/PCR and H.C. Daya Kishan No. 111/ND, 1408/PCR that while you were posted as MHC(R) at P.S. Parliament Street, New Delhi Distt., New Delhi during the period from 18.10.96 to 22.9.1997 and 23.8.1995 to 2.10.1995 respectively, you remained sitting on the medical papers of Const. Om Pal No. 722/ND who remained on medical rest from 26.9.94 to 18.12.97. You also did not bother to send the same paper to the concerned branch/office for further necessary action. Due to this, the medical period of Const. Om Pal No. 722/ND (now 3392/DAP) could not be regularised.

The above act on the part of you HC Balwan Singh No. 191/PCR and H.C. Daya Kishan No. 1408/PCR amounts to gross misconduct, negligence and dereliction in the discharge of your official duties which renders you liable to be punished under the provisions of Delhi Police

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(Punishment and Appeal) Rules, 1980."

2. The enquiry officer had returned the findings that the charge has been proved. Acting on basis of the same, the disciplinary authority on 1.8.2001, had imposed a penalty in the following words:

"Keeping in view the overall facts and circumstances of the case I, Dr. P.S. Bhushan, Addl. DCP/PCR, Delhi hereby order that the pay of HC Balwan Singh, No.191/PCR is reduced by one stage from Rs.4305/- P.M. to Rs.4220/- P.M. in his time scale of pay for a period of one year with immediate effect. The pay of HC Daya Kishan, No.1408/PCR is reduced by one stage from Rs.4700/- P.M. to Rs.4600/- P.M. in his time scale of pay for a period of one year with immediate effect. It is further directed that they will earn increment of their pay during the period of reduction and that on the expiry of this period the reduction will have not effect of postponing his future increments of pay."

The appeal was dismissed by the Additional Commissioner of Police on 23.5.2002.

3. By virtue of the present application, Head Constable Daya Kishan seeks quashing of the orders passed by the disciplinary authority and of the appellate authority. Needless to state that respondents have contested the application.

4. The position in law is not subject-matter of controversy. In normal circumstances, in judicial review, this Tribunal will not interfere in any finding of fact arrived at by the disciplinary authority. The exceptions to the said rule would be where the findings are totally based on no evidence on the record, are totally perverse or

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no reasonable or prudent person can come to such a finding which can be described to be erroneous.

5. Learned counsel for the applicant contends that his case falls in the exceptions. He has drawn our attention to the other co-delinquent who had been served with a similar charge by the disciplinary authority i.e. Deputy Commissioner of Police, Rashtrapati Bhawan. Keeping in view the nature of evidence on the record in case of the applicants, the appellate authority had quashed the penalty imposed on him i.e. Constable Raghbir Singh. Needless to state that Raghbir Singh referred to, had been served with a similar charge. Our attention has further been drawn to the statement made by Constable Om Pal, P.W.I. During his cross-examination, he admitted in unambiguous terms that he remained admitted in the Hospital upto 2.10.95 and no medical papers had been given to the Duty Officer, Police Station, Parliament Street. He had further stated that the medical papers had been misplaced by his brother. We have already reproduced the charge that had been served on the applicant. This pertained to the fact that he kept sitting on the medical papers of Constable Om Pal who was on medical rest and did not send those papers for further necessary action.

6. If the papers had been lost and had not been given to the concerned person, we fail to understand as to how it could be inferred that the applicant was sitting over those papers. Resultantly, it must be held that there was no material on the record to come to such a finding,

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which cannot thus be sustained.

7. Resultantly we accept the present application and quash the impugned orders. As a necessary corollary, it follows that applicant would be entitled to the resultant consequential benefits.

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(S.K. Malhotra)

Member (A)

VS Ag
(V.S. Aggarwal)

Chairman

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