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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2760/2002

Friday, this the 25th day of October, 2002

Hon'ble Shri Justice V S Aggarwal, Chairman
Hon'ble Shri M P Singh, Member (A)

Mr. Surender
s/o Shri Mahavir Singh
PCR, East Zone

..Applicant
(By Advocate: Shri Rohit Sharma)

Versus

1. National Capital Territory of Delhi
through Secretary (Home)
Rajpur Road, Delhi
2. The Addl. Commissioner of Police (Armed Police)
NPL Kingsway Camp, Delhi-9
3. The Deputy Commissioner of Police
VIIth Bn. DAP
Delhi Police, Delhi

..Respondents

O R D E R (ORAL)

Justice V S Aggarwal:

The applicant, Shri Surender was a Constable in Delhi Police. In departmental proceedings that were initiated against him, the punishment as such was imposed by reducing his pay and the operative part of the said order reads:-

"I hereby order to reduce the pay of H.C. Anant Ram, No.353/NW (now 8717/DAP) and Const. Surinder No.1337/NW (now 8794/DAP) by five stages permanently for a period of five years with immediate effect entailing reduction in their pay from Rs.4135/- to Rs.3710/- P.M. and from Rs.3575/- to Rs.3200/- P.M. respectively in the time scale of their pay from the date of issue of this order. They will not earn increment during the period of reduction and on expiry of the period, the reduction will have the effect of postponing their future increments of pay."

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2. The applicant had challenged the said order by filing OA-2274/1999 in this Tribunal. On 19.12.2000, the application of the applicant assailing the said order had been dismissed. By way of judicial review, the applicant preferred Civil Writ No.6747/2001 which was disposed of on 14.12.2001 by the Delhi High Court. The Division Bench of the Delhi High Court permitted the applicant to withdraw the Writ Petition but allowed the request of the applicant to challenge the vires of Rule 16 (xii)(c) and Rule 21 of Delhi Police (Punishment & Appeal) Rules, 1980.

3. Learned counsel for applicant has urged vehemently that the provisions of Rule 16 (xii)(c) of the Delhi Police (Punishment & Appeal) Rules, 1980 are illegal and ultra vires of the provisions of the Constitution because principles of natural justice are being violated and, therefore, in terms of Article 14 of the Constitution when such a rule is framed, it must be held to be invalid.

4. For sake of facility, we take liberty of reproducing the relevant rules:-

"16 (xii)(c) - If the disciplinary authority, having regard to its finding on all or any of the charges and on the basis of the evidence adduced during the enquiry is of the opinion that any of the penalties specified in rule 5 (i to vii) should be imposed on the Police Officer, it shall make an order imposing such penalty and it shall not be necessary to give the Police officer any opportunity of making representation on the penalty proposed to be imposed."

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5. Perusal of rule 16 (xii) (c) of the above-said rule clearly shows that by and large it is based on proviso (2) to Article 311 of the Constitution which had been incorporated by virtue of the 42nd Amendment to the Constitution. The said relevant provision reads:-

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State-

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

6. It is not in dispute that in the case of Union of India & Another Versus Tulsiram Patel, AIR 1985 SC 1416, the said Amendment to the Constitution had been upheld. The radical change that was brought about in Article 311

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(2) of the Constitution, therefore, permitted the authorities to impose the punishment in terms of the Amendment referred to above.

7. Learned counsel for applicant distinguishes the same on the ground that in case of Article 311 of the Constitution, only three punishments, namely, dismissal, removal or reduction in rank are contemplated, while in Rule 16 (xii)(c) of the Delhi Police (Punishment & Appeal) Rules, 1980, it refers to the penalties contemplated in Rule 5 (i) to (vii) and consequently, such penalties which are not contemplated under Article 311 must be held to be invalid.

8. We find no reason to accept the said arguments. The reasoning would remain the same. If it is a penalty of dismissal or any other penalty that may be under consideration before the disciplinary authority, the principles of natural justice remain the same and would not confine to the nature of the punishment that may be awarded and, therefore, the argument of the learned counsel requires no further probing.

9. Some attempt has been made to urge that in the present case no show cause notice had been given before imposing the penalty in question, but we are not going into the said controversy for the simple reason that as pointed out above and mentioned at the risk of repetition, the earlier OA-2274/99 had been dismissed. The Writ Petition No.6747/2001 pertaining to the same has also been withdrawn.

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10. Resultantly, we hold that Rule 16 (xii)(c) of Delhi Police (Punishment & Appeal) Rules, 1980 cannot be declared to be illegal or ultra vires of the provisions of Constitution. OA must fail and is dismissed.


(M P Singh)
Member (A)


(V S Aggarwal)
Chairman

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