

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 1641/2001

New Delhi, this the 5th day of February, 2002

Hon'ble Dr. A.Vedavalli, Member (J)  
Hon'ble Shri Govindan S.Tampi, Member (A)

Ct. Rajkumar, 4444 DAP  
5th Bn DAP  
Kingsway Camp NPL  
Delhi.

...Applicant

(By Advocate Shri Arun Bhardwaj)

V E R S U S

1. Lt. Governor of Delhi  
Rajniwas, Delhi.
2. Commissioner of Police  
Police Head Quarter  
I.P.Estate, New Delhi.
3. Additional Commissioner of Police  
Armed Police, Kingsway Camp  
Delhi.
4. Deputy Commissioner of Police  
5th Bn DAP  
Kingsway Camp  
Delhi.

...Respondents

(By Advocate Ms. Jasmine Ahmed)

O R D E R (ORAL)

By Hon'ble Shri Govindan S.Tampi,

Heard Shri Arun Bhardwaj and Ms. Jasmine Ahmed, learned counsel for the applicant and the respondents respectively.

2. It is alleged that the applicant who is working as a Constable in Delhi Police, while attached to Police Station, Kalkaji, was on the night of 9/10-9-1996, detailed to perform night patrolling duty near 'L' Block Gurudwara from 1:00 AM t 5:00 AM, near which place, a gruesome murder had taken place on the very night. Staff attached <sup>to</sup> Police Station, Kalkaji had been specifically put on alert. The applicant who was directed by SI Virender Kumar Jain, to keep a

watch on the House No.20, Kalkaji, flatly refused to obey the orders and in fact misbehaved with the SI and tried even to assault him. On the applicant's denying the charges, D.E.proceedings were initiated against him in which the Enquiry Officer held the charge as proved. Accepting the findings of the Enquiry Officer, the disciplinary authority, i.e. Deputy Commissioner of Police, passed the impugned order dated 17-8-1998, directing that two years' approved service of the applicant be forfeited permanently, with immediate effect for a period of two years. The same, being carried in appeal, was <sup>disposed of</sup> ~~disposed~~ by the appellate authority i.e. the Additional Commissioner of Police, by order dated 26-11-1998, rejecting the appeal. Revision Petition filed by the applicant, was rejected by the Commissioner of Police on 31-5-2000/8-6-2000. While pleading the case of the applicant, a few points have been raised by the learned counsel both on facts and in law. <sup>One of the main</sup> ~~points~~ <sup>points</sup> point raised is that the Appellate Authority had disposed of the appeal on extraneous grounds which did not form part of the chargesheet or even referred to by the disciplinary authority. In the penultimate para of the appellate order, reference is made to the alleged subsequent <sup>mis</sup>conduct of the applicant like alleged misbehaviour with a Pujari of the Temple and Sweeper had been cited, which were not at all relevant in the case under examination and were not cited in the chargesheet. Besides, Shri Arun Bhardwaj, ld. counsel alleges that the Enquiry Officer himself had assumed the role of the Presenting Officer and had at the time of the enquiry, introduced an witness, who was not included in the list of witnesses cited. The

learned counsel also came up with a few legal pleas impinging on the interpretation of certain provisions.

3. Replying on behalf of the respondents, Ms. Jasmine Ahmed, ld. counsel admits the facts but states nothing much deserved to be read into the observations of the Appellate Authority as they were only meant to buttress his decision uphold the order of the punishing authority.

4. We have carefully considered the matter and we find that the applicant has a case. Penultimate para of the appellate order dated 26-11-1998 reads as below :-

"I have gone through the appeal, comments, DE file and the service record of the appellant. I have also heard the appellant in O.R. The appellant did not raise any fresh plea except what he has already stated in his plea.

From the documents/evidence available on record, it has been proved that the appellant disobeyed the lawful orders of his senior officers and behaved in a very rude/indisciplined and offensive way which cannot be tolerated in a disciplined force. There is no reason why SI Virender Jain (PW-2) should not be believed who does not seem to be biased against the appellant. Further Inspr. Soban Singh (PW-4) has deposed in his statement that on 10-6-96 he called the appellant to deploy him on duty but he was found absent and could not be traced out in the P.S. premises. Subsequently the appellant misbehaved with the puari of the temple of NPL and a sweeper of L.G. House. It seems that he habitually misbehaves with staff and other people. In this case the appellant has rightly been punished by the Disciplinary Authority and I, therefore, see no reason to interfere in it. Hence the appeal is rejected." (emphasis added)

It is seen that the portion emphasized did not form a part of the chargesheet or summary of allegations. Nor was it at all mentioned in the DE proceedings. Ld. counsel for the respondents points out that the above remarks were used by the appellate authority only to bolster his case to uphold the punishing

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authority's order. This clearly means that the appellate authority travelled beyond the scope of the appeal and passed his order, which was, therefore, vitiated. It has, therefore, to be set aside.

5. Revision Authority's order is also intriguing in that it does not refer to the appellate order, but only deals with the original punishing authority's order and, therefore, the appellate order, which was vitiated, had been given the stamp of approval without any examination. Revision order is also, therefore, liable to be set aside.

6. In the above circumstances, we are led to the inescapable conclusion that the revision order dated 30-5-2000/6-8-2000 and the appellate order would call for interference and deserve to be set aside for being re-considered and re-decided. However, we are advised that the Commissioner of Police is not exercising any powers under review. It would, therefore, suffice, if the orders are set aside and remanded to the appellate authority to decide the appeal afresh, confining himself to the articles of charge, specifically mentioned in the chargesheet/summary of allegations.

7. In the above view of the matter, the application succeeds substantially and is accordingly disposed of. The revision order dated 31-5-2000/8-6-2000 and the appellate order dated 26-11-1998 are quashed and set aside and the matter is remanded to the appellate authority with directions to consider the same afresh, without taking into consideration any extraneous matter, which did not specifically form part of the chargesheet or summary

of allegations or the DE proceedings. The applicant/appellant will also<sup>kk</sup> at the liberty to raise additional points, if any, which have formed the part of the OA by submitting before the appellate authority, copies of this OA and the order. This exercise shall be completed within three months from the date of the receipt of a copy of this order. No costs.

(GOVINDAN S. TAMPI)  
MEMBER (A)

/vks/

A. Veda Valli

(DR. A. VEDAVALLI)  
MEMBER (J)