# 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)

#### VERSUS

- Lt. Governor of Delhi Rajniwas, Delhi.
- 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)

## ORDER (ORAL)

## By Hon'ble Shri Govindan S. Tampi,

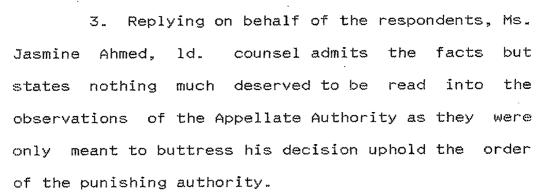
Heard Shri Arun Bhardwaj and Ms. Jasmine Ahmed, learned counsel for the applicant and the respondents respectively.

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 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 obey the orders and in fact misbehaved with the SI and tried even to assault him. On the applicant's denying charges, D.E.proceedings were initiated against in which the Enquiry Officer held the charge as Accepting the findings of the Officer, the disciplinary authority i.e. Deputy Commissioner of Police passed the impugned order dated 17-8-1998, directing that two years' approved service forfeited permanently. the applicant be immediate effect for a period of two years. The same, disposed & by was being carried in appeal, appellate authority i.e. the Additional Commissioner of Police, by order dated 26-11-1998, rejecting Revision Petition filed by the applicant, was appeal. Police of Commissioner the rejected by While pleading the case of 31-5-2000/8-6-2000. by the applicant, a few points have been raised One of he man learned counsel both on facts and in law. 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 subsequent miconduct of the applicant like alleged 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 Besides, Shri Arun Bhardwaj, the chargesheet. counsel alleges that the Enquiry Officer himself assumed the role of the Presenting Officer and had at the time of the enquiry, introduced an witness, 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.



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 thee 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 record, it has been proved that the appellant disobeyed the lawful orders of his senior officers and behaved in 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 be biased against the appellant. Further Soban Singh (PW-4) has deposed in his Inspr. on 10-6-96 statement that he called appellant to deploy him on duty but he was found absent and could not be traced out in premises. P.S. Subsequently appellant misbehaved with the pujari of the temple of NPL and a sweeper of L.G. House. It <u>seems that he habitually misbehaves with staff</u> and other people. In this case the appellant rightly been punished by the Disciplinary Authority and I, therefore, see no reason to interfere in it. Hence the appeal 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



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 inescapable conclusion that the revision order the 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 exercising any powers under review. Ιt would, therefore, suffice, if the orders are set aside 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, application succeeds substantially and is accordingly disposed of. The revision order 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 the same afresh, consider without taking consideration any extraneous matter, which did not specifically form part of the chargesheet or summary

(12)

applicant/appellant will also 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.

(GOVINDAM) S. TAMP:

(DR. A.VEDAVALLI) MEMBER (J)

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