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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1865/2001

This the 10th day of April, 2002

HON'BLE SH. V.K. MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Const. Girender Kumar Sharma,
S/o Late Sh. L.R. Sharma,
R/o Block-O/28, Sector-12,
Greater Budh Nagar, Noida.
(By Advocate: Sh. Bhaskar Bhardwaj proxy for
Sh. Arun Bhardwaj)

Versus

1. Commissioner of Police,
P.H.Q., I.P. Estate,
I.T.O., M.S.O. Building,
New Delhi.
2. Dy. Commissioner of Police,
VII(8th) Bn. New Delhi.
3. Additional Commissioner of Police,
Armed Police, Delhi.
(By Advocate: Mrs. Sumedha Sharma)

ORDER (ORAL)

By Sh. Kuldip Singh, Member (J)

The applicant, a Constable, in Delhi Police has been imposed a penalty by Resp. No.2 of withholding of future increment for a period of one year with cumulative effect vide order Annexure-A. The applicant assails the same.

2. The facts in brief are that applicant who was issued a chargesheet in which it was alleged that the applicant was arrested in case FIR No. 765/97 dated 17.7.97 under Section 354/506 IPC Police Station Lajpat Nagar, New Delhi and remained in judicial custody for many days due to immoral activities with a girl, namely, Ms. Shalini Reddy. The applicant was also not only involved in the immoral activity but also concealed the facts of his arrest and involvement in the abovementioned case for more than 2 years from the department. A regular enquiry was held wherein applicant was held guilty for charge No.2 as to why he had informed after a

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long time to the department. On the said basis of the findings, the disciplinary authority awarded him penalty of withholding of future increment for a period of one year with cumulative effect. The applicant preferred an appeal. The appellate authority issued a show cause notice for enhancement of his punishment and awarded a punishment of forfeiture of his 2 years approved service permanently for a period of 2 years.

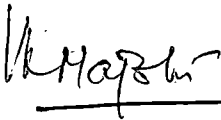
3. Challenging these orders, learned counsel for the applicant submitted that it has come in evidence that when the applicant was arrested the I.O. of the said case, namely, Sh. K.C. Kaushik who has been examined as PW-1 in the departmental enquiry has deposed before the enquiry officer with the applicant had informed/asked him that he is posted in 8th Bn. and the said I.O. informed the family of the applicant as well as duty officer around 12 o'clock midnight regarding arrest of the applicant. Counsel for the applicant submitted that once the applicant had informed the I.O. that he belongs to police force and he is posted in 8th Bn. and had also requested him to inform the duty officer and the I.O. has also deposed so before the enquiry officer so there was no lapse on his part in not informing his superiors about his arrest rather at the first available instance the applicant had informed the investigating officer about his identity and about his place of posting and had also requested him to inform the duty officer so there was no concealment on the part of the applicant with regard to his involvement and arrest in case FIR No. 765/97.

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4. In our view also, since the statement of I.O. Sh. Kaushik as made before the enquiry officer shows that the applicant has duly informed about the place of posting and Sh. Kaushik has further informed the duty officer of the applicant mainly because the DD Entry of the 8th Bn. was not available to the enquiry officer does not mean that the applicant has not informed about his arrest to the duty officer. So the findings recorded by the enquiry officer as well as order passed by the disciplinary authority and the appellate authority have been passed against the record and findings recorded by them are altogether contradictory to the evidence available on record and the contradiction is to such an extent which amounts to recording of perverse finding because even a lay man would say that the applicant had duly informed the I.O. about his identity and had also requested him to inform his duty officer about his arrest. So no fault will be found with the delinquent official.

5. Having regard to these reasons we find that the orders based on the findings recorded by the enquiry officer cannot be sustained and the same are liable to be quashed. Accordingly, we hereby quash the impugned orders dated 21.10.99 and direct the respondents to restore his pay within a period of 3 months from the date of receipt of a copy of this order. No costs.


(KULDIP SINGH)
Member (J)


(V.K. MAJOTRA)
Member (A)

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