

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

OA NO. 1922/2001

OA NO. 1957/2001

✓ OA NO. 1982/2001

NEW DELHI THIS ^{16th}.....DAY OF SEPTEMBER 2002

HON'BLE DR.A. VEDAVALLI, MEMBER (J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

OA NO. 1922-2001

Const. Rattan Kumar,
No. 285/PTC, Delhi Police,
Jarodha Kalan, Delhi

.....Applicant

(By Sh. Yogesh Sharma alongwith RR Ahlawat,
Advocate)

VERSUS

1. The Commissioner of Police,
HQrs. Delhi Police Hqrs.
IP Estate, New Delhi
2. The Joint Commissioner of Police
Training, Delhi Police Hqrs
IP Estate, New Delhi
3. The Additional Commissioner of Police,
PTC, Delhi Police Jaroda Kalan,
New Delhi

.....Respondents

(By Shri Vijaya Pandita, Advocate)

OA No. 1957/2001

Sh. Rajendra Prasad S/o Sh. Harphool Singh
R/o C-94, Mohan Garden,
Navada, Najafgarh Road, New Delhi

.....Applicant

(By Sh. Yogesh Sharma alongwith R R Ahlawat,
Advocate)

VERSUS

1. N.C.T. Delhi though
the Chief Secretary,
Old Secretariate Delhi
 2. The Commissioner of Police,
HQrs. Delhi Police Hqrs.
IP Estate, New Delhi
 3. The Joint Commissioner of Police
Training, Delhi Police Hqrs
IP Estate, New Delhi
- 2

(18)

-2-

4. The Additional Commissioner of Police.
PTC, Delhi Police Jaroda Kalan,
New Delhi

.....Respondents

(By Shri Vijaya Pandita, Advocate)

OA 1982/2001

1. ASI Jai Prakash
Posted at Police Training College,
Delhi Police, Jarodha Kalan,
New Delhi

.....Applicant

(By Sh. Yogesh Sharma, Advocate)

VERSUS

1. N.C.T. Delhi though
the Chief Secretary,
Old Secretariate Delhi
2. The Commissioner of Police,
HQrs. Delhi Police Hqrs.
IP Estate, New Delhi
3. The Joint Commissioner of Police
Training, Delhi Police Hqrs
IP Estate, New Delhi
4. The Additional Commissioner of Police
PTC, Delhi Police Jaroda Kalan,
New Delhi

.....Respondents

(By Shri Vijaya Pandita, Advocate)

O R D E R

This combined order disposes of 3 (three) OAs which
are filed against the Disciplinary Authority's order dated
2.5.2000 and Appellate order dated 28.7.2000.

2. Heard Shri Yogesh Sharma alongwith
R.R. Ahlawat for the applicants and Shri Vijaya Pandita for the
respondents.

191

-3-

3. The applicants in the above 3 OAs were, along with two others, proceeded against under the provisions of Delhi Police (Punishment and Appeal) Rules 1980, by serving the following summary of allegations of 25.7.92, issued by the Assistant Commissioner of Police (Enquiry Officer):-

"The vehicle No. DBP/8162 Swraj Mazda of PTS Jharoda Kalan was off road and as such sent to Central Workshop for its mechanical inspection and defect report. The DCP/Prov. & Lines vide his office Memo No. 16085/HAMT dated 23.12.93 stated that on scrutiny of the case, it has been found that the vehicle has not been maintained properly as the vehicle has covered only 27425 Kms. after 1st overhaul, to the premature deterioration in the condition and ultimately its seizing. During enquiry it has come to notice that on 15.11.93, it was brought to the notice of SI Rajinder Pd. 921/D the then SI, MT by the MT staff that the engine of govt. vehicle No. DBP-8162 was giving excessive smoke while performing the duty on 12.11.93. But no one from MT staff PTS took initiative to get the vehicle checked and they continued to detail the above said vehicle for duties. Accordingly this vehicle was also detailed on 16.11.93 vide DD No. 88 driven by Ct. Rattan Kumar No. 243/PTS and 17.11.93 vide DD No. 76. HC Parveen Kumar No. 28/PTS (driver) was driving the vehicle on 17.11.93 when the vehicle has been overheated. As a result of which the engine of the vehicle seized and it became out of order.

During the enquiries it has also come to notice that the services of the above said vehicle was got done on 30.12.92, 6.3.93, 30.4.93, 15.7.93, 27.9.93 and 19.11.93 at Ashok Service Station Jharoda Kalan, Delhi as per inspection book of the vehicle but on enquiries it revealed that the entries on 6.3.93 and 15.7.93 are correct and others are forged. Owner of the service station denied his signatures on the forged entries and that no cash memos. were issued for the forged entries. It has also come to notice that some pages of the inspection book of the said vehicle were missing which clearly establishes the malafide intention on the part of the concerned MT staff. SI Rajinder Prasad No. 921/D, the then SI/MT, SI Jai Parkash No. 1500/D (Tech) and HC Rajinder Kumar No. 99/PTS the then HC/MT were not justified in sending the above vehicle for duties on 16.11.93 and 17.11.93. Before sending the vehicle for duty they should have got the vehicle in good working condition as they were responsible to maintain the vehicles in MT section. As such all i.e. SI Rajinder Parshad No. 921/D, SI Jai Parkash No. 1500/D, HC Rajinder Kumar No. 99/PTS and HC Parveen Kumar No. 28/PTS, and Ct Rattan Kumar No. 243/PTS (driver) are responsible for the damage caused to the above said vehicle due to their negligence. A loss of Rs. 35,000/- amount incurred on repair has been caused to the Govt. on this account.

-4

For the above said omission and commission on the part of the above mentioned police personnel and for such lapse they are liable for departmental action under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980."

On the denial of the charges an enquiry was held, in which the charges against the applicants were held to be proved. Agreeing with the findings of the EO and after considering the representations from the charged officer, Disciplinary Authority passed order on 2.5.2000 ordering recovery of Rs. 28,000/- equally from SI Rajindar Prasad, SI Jai Prakash and HC Rajinder Kumar and Ct. Rattan Kumar. *and censuring all of them* The Appeal filed against the Disciplinary Authority's order was rejected by the Jt. Commissioner of Police. Hence these O.As.

5. In somewhat identical pleas all the applicants assail the action of the respondents in the entire proceedings. According to them, the respondents have attempted to place the blame on the applicants for the alleged improper maintenance of a Govt. vehicle No. DBP-8162, Swaraj Mazda of PTS, Jharoda Kalan and have penalised them. The proceedings have been gone through on the basis of a preliminary inquiry, the details of which were not disclosed to the applicants, thereby committing gross violation of the principles of natural justice. Copies of the various statements relied upon were not made available to them so that they *could have* had a normal and reasonable chance for defending themselves and explaining their case. It was indeed a case of no evidence. Still the respondents have foisted the case on them through the improperly conducted enquiry, results of which were accepted by the disciplinary authority, who imposed on them the penalty of recovery of Rs. 7,000/- each as well as Censure. The same had been upheld by the Appellate authority by non-speaking orders, which did

-5-

not examine the various points and pleas raised by the applicant. The orders therefore deserved to be set aside with full consequential reliefs to them, plead the applicants.

6. The pleas of the applicants are stoutly resisted by the respondents who claim that their action has been throughout correct and legal and based on evidence brought on record. According to them, the applicants who were expected to take care of the Govt. vehicle had failed to do so resulting in an extra avoidable expenditure of Rs. 35000/- . Order of recovery of Rs. 7,000/- from four of the five persons concerned was just and fair, as the fifth person had been dealt with penalised in another case. There was no case at all for any interference in the matter as far as the respondents are concerned.

7. During the oral submissions Sh. Yogesh Sharma learned counsel for applicant submitted that one of the four who was involved in the proceedings alongwith the applicants i.e. Shri Rajinder Kumar had approached the Tribunal in OA 1645/2000 challenging the proceedings. The said OA has been allowed by setting aside the impugned orders but permitting the respondents to proceed in the matter, if so desired, in accordance with law. There was no ground at all to take a different view in this matter in these OAs also says Shri Sharma. He further states that the respondents have accepted the orders and had initiated action against Shri Rajendra Kumar separately. Shri Vijaya Pandita, learned counsel for respondents in his oral submission forcefully reiterated the respondents views, but he also agreed that OA 1645/2000, filed by Rajinder Kumar has been allowed by the Tribunal.

m

22

-6-

8. We have carefully deliberated upon the rival contentions. It is observed that all the three OAs relate to common proceedings initiated and finalised by the respondents, where in the maintenance and upkeep of departmental vehicles had become the object of consideration. Respondents have penalised four individuals including the applicants in the three OAs for their alleged misconduct relating to the poor maintenance of the departmental vehicle No. DBP-8162, Swaraz Mazda of PTS Jarodha Kalan, which according to them has resulted in the avoidable excess expenditure of Rs. 35,000/-. In addition, in the summary of allegations ^{the name of} one more person HC Parveen Kumar was ~~also~~ shown but as he had been dealt with and removed from service in different proceedings, he has not been penalised in this case. The proceedings were common, the enquiry was single and the Disciplinary Authority's order also was common. The appellate order also was dealt with in the same manner. It is seen that as against the alleged excess expenditure of Rs. 35,000/- only Rs. 28,000/- has been taken into consideration and the same had been apportioned as amount to be recovered from the four applicants as the fifth individual concerned, as stated earlier, has been dealt with separately. Perusal of the relevant papers would give the impression that the proceedings were not conducted in the manner as they should have been and violations of the requirements of ^{law} ~~matter~~ as well as of principle of natural justice had taken place. This would, to our mind, called for re-examination of the issue.

9. In this context, we observed that HC Rajindra Kumar who had been penalised alongwith three applicants in this case and similarly dealt with by imposing the penalty of

→

23

OA 1922, 1957+1982/2001

-7-
recovery of Rs. 7,000/- alongwith CENSURE had filed OA No. 1645/2000. The same is found to have been disposed of by the Tribunal on 16.7.2000 by another Bench in which one of us (Sh. Govindan S. Tampi) was also a member. The circumstances being the same and the proceedings identical there are no appreciable grounds for us to take a different view while dealing with these three OAs. Relevant portion of the Tribunal orders dated 16.7.2000 is reproduced below:

"5. We have carefully considered the rival contentions of the parties and perused the material on record.

6. On perusal of the summary of allegation as well as the charge, we are of the confirmed view that the same suffers from an inherent defect and illegality as the material particulars regarding the negligence of the applicant have not been specified. There has not been any specific particulars as to the omission or commission of the applicant which had resulted in Govt. vehicle being damaged and repaired incurring the loss of Rs.35,000/- (Rupees thirty five thousand only). The negligence of the applicant has been presumed on the basis that as the vehicle has been utilised on duty despite being not in good working conditions. In this regard it is relevant to mention that MT staff consist of Sub Inspector and a Sub Inspector of MT, ASI of Technical Division and the applicant. This has not been specified as to when the vehicle was reported to the applicant, who in turn allowed it to go on road despite defects. It has also not been brought in the summary of allegation as to the defect being pointed out by the Driver of the vehicle to the applicant. As such mere allegations against the applicant holding him responsible for negligence without any specific role to be assigned to him vitiates the enquiry, summary of allegation as we understood the lacuna of material particulars. In our considered view and also in absence of the material particulars being incorporated in the summary of allegation there has been a denial of reasonable opportunity to the applicant to defend in DE and more particularly keeping in view the findings of the Enquiry Officer, where in the conclusion no specific role has been assigned to the applicant to come to the conclusion of guilty against him. We are of the view that the enquiry has been vitiated on this count and in this view of ours we are verified by the ratio of Transport Commissioner, Madras case (supra). Specifying the exact particulars in detail in the summary of allegation put to the delinquent officials is also a mandatory requirement under Rule 16(i) of the Delhi Police (P&A) Rules, 1980. As respondents have also not specifically controverted the contentions of the applicant. To this regard,

-3

24

we are of the view that being a mandatory, procedural requirement its non-compliance has vitiated the enquiry. The applicant has been prejudiced in his defence.

6. In the result and having regard to the discussions made above, we accordingly partly allow the present OA and set aside the impugned order of punishment as well as the appellate order. As a result the respondents are directed to refund the recovered amount to the applicant. However, it would be open to the respondents, if so advised to take up the departmental proceedings from the stage of summary of allegation by incorporating the necessary relevant details of the alleged mis-conduct and to complete the same within a period of three months from the date of receipt of a copy of this order. No costs."

10. We have also been informed that the ^{above} decision of the co-ordinate Bench of Tribunal in the said OA has already been accepted by the respondents and acted upon. We therefore ^{agree with} ~~agree~~ that the decision of the Co-ordinate Bench ^{is} ~~is~~

BA 1645/2800 and adopt the same for disposing of these OAs as well as we have also come to the independent conclusion that the impugned orders have to fail on account of their being vitiated by procedural irregularities. We order accordingly.

11. In the above view of the matter the OAs succeed and are accordingly allowed. The impugned orders passed by the Disciplinary Authority dated 2.5.2000 and Appellate Authority dated 28.7.2000 are quashed and set aside with consequential relief. This order would not however, preclude the respondents from proceeding against the applicants in accordance with rules and regulations, if so advised. No costs.



Gopinathan S. Tampi
Member (A)

(Dr. A. Vedavalli)
Member (J)

Patwal/

Attested
U. K. Bhatnagar
14/9/01

Court Officer
Court No. 111