

(5)

Central Administrative Tribunal, Principal Bench

O.A. No.2149/2001

New Delhi this the 6th day of February, 2001

Hon'ble Mr. M. P. Singh, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Mahender Singh
HC No.624/NW
P.S.:- Shalimar Bagh,
New Delhi.

- Applicant

(By Advocate : Shri Anil Singal)

Versus

1. Commissioner of Police,
Police Head Quarters,
IP Estate, New Delhi.
2. Additional Commissioner of Police,
Armed Forces, New Police Lines, Delhi.
3. DCP Ist Bn. DAP
Through Commissioner of Police,
Police Head Quarters,
IP Estate, New Delhi.

- Respondents

(By Advocate : Shri Ram Kwar)

ORDER (ORAL)

Hon'ble Mr. Shanker Raju, Member (J) :

Applicant, who is working as Head Constable, assails an order of punishment dated 28.8.1997 whereby he has been awarded a major punishment of withholding of next increments for a period of two years with cumulative effect and the suspension period from 9.1.1997 to 12.5.1997 is decided as not spent on duty. The appellate order dated 4.2.1998 upholding the aforesaid punishment has also been assailed.

2. The applicant on 20.12.1996, while posted at C.P. Reserve duty in New Police Lines, was performing the duties of Head Constable/Kot. One Constable Shri Hans Raj gave in writing to the applicant that Magazine of

Rifle No.4576 issued to him was lost during the duty on 21.12.1996 and he undertook to search and trace out the magazine and deposit the same in Kot failing which he would be held responsible in accordance with Rules. This written statement of the undertaking of Constable Hans Raj was also signed by him as witness. On receipt of this written statement, it is alleged that the applicant accepted the Rifle without magazine & 10 rounds and kept it in the Kot without lodging any report in this regard in the daily diary and has also failed to apprise this fact into the notice of his senior officers. Hence by concealing the facts, he committed gross misconduct & also acted with negligence.

3. Both the Constable and Head Constable (applicant) have been prosecuted against by a common disciplinary inquiry. Disciplinary authority, on the basis of the findings of the Inquiry Officer, held them guilty of the charges and imposed the aforesaid penalty. Against the aforesaid order of the disciplinary authority, an appeal was preferred by the applicant, which was rejected by the appellate authority. Constable Hans Raj, i.e., Co-defaulter preferred a revision petition against the order of the appellate authority and the revisionary authority by taking lenient view while exercising the powers of revision modified the punishment of withholding of next increments for a period of two years with cumulative effect to that of censure.

4. Learned counsel for the applicant, Shri Anil Singhal, has stated that on a secret information that magazine of Rifle No.4576 was missing during the duty, PW10 Shri T.P. Singh, Inspector, conducted a preliminary enquiry and has recorded statements including the applicant's statement and this witness has proved his report in the departmental enquiry. In this view of the matter, it is stated that the evidence given by the applicant has been used against him, which is not permissible and is in violation of Article 20 (3) of the Constitution of India and places reliance of a decision of the co-ordinate Bench of the Tribunal in OA No.2760/1999 decided on 16.2.2001 in the case of Constable Jag Pravesh and Union of India and Ors.

5. Learned counsel for the applicant further stated that being promoted as Constable on account of seniority under C-II list, the applicant is not eligible to be posted as Head Constable Kot as such he is not entitled to perform such duties.

6. Learned counsel for the applicant has also assailed the order on the ground that in the similar circumstance co-defaulter Shri Hans Raj had filed a revision petition against the order of the appellate authority and the punishment has been reduced to that of 'censure'. But the revision petition of the applicant has been turned down which shows that the applicant has been treated differently which cannot be countenanced under the Articles 14 and 16 of the Constitution of India.

7. On the other hand, learned counsel for the respondents, strongly rebutting the contentions of the applicant, stated that the applicant is promoted as Head Constable and whenever he is posted, it is expected from him to follow the Rules and guidelines. Having been apprised of the fact that Constable Hans Raj lost Magazine of Rifle No.4576, it was his duty to enter this fact in the Daily Diary which was very much available with him and there upon the same was to be apprised to the senior officials but as he has failed to perform his legal duty, he has acted in dereliction of Rules.

8. As regard the discrimination in punishment is concerned, it is stated by the respondents that the applicant cannot claim equality with Constable Hans Raj and there is no violation of Articles 14 and 16 of the Constitution of India as Constable Hans Raj, on receipt of the appellate authority's order, immediately preferred a revision petition, but the applicant has not chosen to file a revision petition and now after a lapse of two years, he has decided to file a revision petition. As such cannot be allowed to take a stand that he has been discriminated.

9. As regard, the preliminary fact-findings inquiry is concerned, though it is stated that no preliminary inquiry was held, yet it is stated that the explanation of the applicant was taken in the fact-finding inquiry but has never been used against him as he has been held guilty on account of serious

misconduct and dereliction of duties on the basis of the evidence recorded during the course of the departmental inquiry.


10. We have carefully considered the rival contention of the parties and perused the material place on record.


11. So far as the plea of the applicant regarding violation of Article 20 (3) of the Constitution of India is concerned, we find from the perusal of the findings that the official who has conducted fact-finding inquiry has been examined as PW10, who exhibited his report. But from the inquiry findings, we do not find any material to establish that the said admission of the applicant has been used against him while holding him guilty of the charge. As such the ratio cited by the applicant where the observation of the co-ordinate Bench applies mutatis mutandis to this case. Hence, the contention of the applicant is rejected.

12. As regards the imposition of punishment is concerned, having not been placed equally, the applicant cannot take resort to Articles 14 and 16 as two unequals can be treated equally. Having preferred a revision petition, Constable Hans Raj has exercised his right and the revisionary authority after taking lenient view had reduced the said punishment to censure, whereas the applicant, who failed to exercise his right of revision petition, has now come after a

lapse of two years, when the revisionary power has already been abrogated, he cannot take resort to the same at this belated stage. Apart from this, in disciplinary proceedings, the scope of Articles 14 and 16 of the Constitution of India is very limited. Here the co-defaulter Hans Raj lost Magazine of his Rifle No.4576 and that fact has not been recorded in the Daily Diary by the applicant and also not reported to the higher officials by the applicant. In this view of the matter, misconduct and negligence as alleged against the applicant is not similar to that of co-defaulter. In our considered view applicant has not been meted out any differential treatment. Hence the plea of the applicant is rejected.

12. In this view of the matter and having regard to the reasons recorded above, we feel that the present OA is liable to be dismissed. Accordingly, the present OA is dismissed. No costs.


(Shanker Raju)
Member (J)


(M.P. Singh)
Member (A)

/ravi/