

(7)

Central Administrative Tribunal
Principal Bench

O.A. No. 2187 of 2001

New Delhi, dated this the 29th January, 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Hd. Const. Guru Dutt No. 173/NE,
S/o Shri Ram Dass,
Qr. No. B-108, Gali No.5,
Haider Puri, Shahdara,
Delhi. . . Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Joint Commissioner of Police,
New Delhi Range,
Police Headquarters, I.P. Estate,
New Delhi.
3. Dy. Commissioner of Police,
North East District,
Seelampur, Delhi. . . Respondents

(By Advocate: Shri Amit Rathi proxy
counsel for Shri Devesh Singh)

ORDER (Oral)

S.R. ADIGE, VC (A)

Applicant impugns Disciplinary Authority's order dated 18.2.1999 (Annexure A-1) and Appellate Authority's order dated 16.9.1999 (Annexure A-2).

2. Applicant was proceeded against departmentally vide order dated 5.2.1998 on the allegation that on 6.5.1997, one under trial prisoner was brought from Central Jail for producing him in the Court of Addl. Sessions Judge. The under trial prisoner was produced under the custody of Const.

Satbir Singh, upon which it was noticed that the under trial prisoner was talking with his relative and applicant accepted some money from them for providing illegal facility. Applicant also tried to give some money to Const. Satbir Singh who, however, refused to accept the same from applicant.

3. The E.O. in his findings dated 14.7.98 (Annexure A-3) held the charge to be proved beyond doubt. A copy of the E.O's findings was furnished to applicant for representation, if any and applicant submitted his representation on 4.8.1998.

4. Thereafter the Disciplinary Authority after perusing the materials on record and agreeing with the findings of the E.O., issued the impugned penalty order dated 18.2.1999 forfeiting three years approved service of applicant for a period of three years permanently entailing proportionate reduction in his pay immediate effect, during which period he would not earn any increment; and upon the expiry of which his future increments would stand postponed.

5. Applicant's appeal was rejected vide appellate order dated 16.9.1999 giving rise to the present O.A.

6. We have heard applicant's counsel Shri Chauhan and Respondents' proxy counsel Shri Amit Rathi.

7. Although various grounds have been taken in the body of the O.A., the main ground stressed by applicant's counsel Shri Chauhan is that there has been a violation of Rule 15 (2) Delhi Police (Punishment & Appeal) Rules, in as much as although a preliminary enquiry was held which disclosed the commission of cognizable offence by applicant in his official relations with the public, prior approval of the Additional Commissioner of Police was not obtained as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.

8. In this connection Shri Chauhan has invited ^{attention} to the deposition of PW-3 Inspector Ganpat Ram, P.G. Cell/N.E. who was entrusted with the conduct of the preliminary enquiry, and during the course of that enquiry he recorded the statement of SI Vinod Kumar, Hd. Const. Ravinder Kumar and Const. Satbir Singh. It requires to be noted that no materials have been shown to establish that prior approval of Additional Commissioner of Police was taken as per Rule 15 (2) Delhi Police (Punishment & Appeal) Rules before initiating the D.E. against applicant.

9. Several rulings have been cited by Shri Chauhan on the point that non-compliance of Rule 15(2) D.P. (P&A) Rules is an infirmity serious enough to vitiate the entire disciplinary proceedings. One such ruling is dated 18.5.2001 in O.A. No. 671/2000 Hd. Const. Bhagwan in which one

of us [Hon'ble Mr. S.R. Adige, Vice Chairman (A)] was a party. Other rulings relied upon by Shri Chauhan including the Tribunal's order dated 6.12.1990 in O.A. No. 874/89 Bachi Singh Vs. Union of India & Others against which an SLP filed in the Hon'ble Supreme Court was dismissed on 10.9.1991.

10. Nothing has been shown to us by Respondents' counsel whether the aforesaid ruling in Bhagwan's case (supra) or indeed any of the other rulings relied upon by Shri Chauhan have been stayed, quashed or set aside.

11. Under the circumstances the O.A. succeeds and is allowed to the extent that the impugned orders of the Disciplinary Authority and the Appellate Authority are quashed and set aside. Applicant is ordered to be restored to his increments with other consequential benefits, flowing therefrom and admissible in accordance with rules and instructions as if the impugned orders had not been passed. These directions should be implemented within three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

karthik

S.R. Adige

(S.R. Adige)
Vice Chairman (A)