

Original Application No. 2215 of 2001

New Delhi, this the 18th day of April, 2002

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Aziz Ahmed (No. 2907/PCR)
PIS No. 28892234
R/o 8/8 Nehru Nagar,
New Delhi-110 065

Presently Posted at

East Zone, PCR,
Vivek Vihar, Delhi.

-APPLICANT

(By Advocate: Shri Anil Singal)

Versus

1. Commissioner of Police,
Police Head Quarters,
I.P. Estate, New Delhi.
2. Additional Commissioner of Police,
PCR & Commn., PHQ,
I.P. Estate, New Delhi.
3. Additional Dy. Commissioner of Police,
PCR, Police Head Quarters,
I.P. Estate, New Delhi.

-RESPONDENTS

(By Advocate: Shri Ajay Gupta)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant in this case has assailed the order of punishment Annexure A-5 and the order passed by the appellate authority, Annexure A-6 as well as the order passed by the revisional authority, Annexure A-7. By the impugned orders the pay of the applicant was reduced from Rs.3500/- p.m. to Rs.3300/- p.m. in the time scale of pay for a period of 2 years from the date of issue of the order. It is further stated in the order that he will not earn increments of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing his future

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increments. The appellate authority has rejected the appeal of the applicant.

2. The applicant was proceeded departmentally on the following allegations:-

" It is alleged against Constable Aziz Ahmad No.7556 DAP (under suspension) that he was detailed to perform duty with PP Shri M.J. Rao as PSO while temporarily attached with Security Unit. He performed his duty from 2 PM to 8 PM on 19.12.1994 and from 8 PM to 2 PM on 20.12.1994. On 21.12.1994 he was on duty rest and on 22.12.1994 he was supposed to be on duty at 2 PM but he did not turn up and was marked absent vide DD No.49/B dated 22.12.1994 'E' Block New Delhi. He resumed his duties vide DD No.49-B dated 21.2.1995 'E' Block, New Delhi after absenting himself for a period of 42 days, 3 hours. Later on it was found that Constable Aziz Ahmed No.7556/DAP had been arrested in case FIR No.280 dated 19.12.1994 under Section 148/149/332/353/186/380/307 IPC and 135 R.P. Act 1951 P.S. Punhana District Gurgaon (Haryana) and remained in J.C. from 22.12.1994 to 31.1.1995.

The above act on the part of Constable Aziz Ahmed No.7556/DAP amounts to misconduct, negligence, indiscipline and a conduct unbecoming of police officer, which render him liable for Departmental action under Section 21 Delhi Police Act, 1978".

2. In order to challenge the impugned orders the applicant submitted that in this case the entire enquiry is vitiated because the Inquiry Officer has illegally cross examined the prosecution witnesses.

3. It is further submitted that the enquiry is vitiated on the ground that for imposing the punishment in question, the respondents proved and relied upon extraneous charges like not informing the department that at the time of his arrest or in between the period and leaving the station without permission which does not found mention in the summary of allegations. According to the allegations the applicant was supposed to be on

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duty with effect from 22.12.1994 from 2.00 P.M. onwards but he did not turn up and was marked absent and he resumed duty vide DD No.49-B dated 22.12.1994. He resumed duty vide DD No.49-B dated 2.2.1995 after absenting himself for a period of 42 days 3 hours and he remained in judicial custody from 22.12.1994 to 31.1.1995.

4. It is also submitted that the charges framed against the applicant are that he remained absent for the period in question and later on it was also found that he was involved in a criminal case and the orders passed by the disciplinary authority also show that the disciplinary authority had agreed with the Inquiry Officer to the extent that "the defaulter had committed a misconduct and he being a uniformed..... should have abstained from indulging in nefarious activities like the did which finally resulted in registration of a criminal case against him. This conduct of his is absolutely unbecoming of a Police Officer".

5. The appellate authority while turning down the appeal of the applicant has observed as under:—

" The plea of the appellant that he was falsely arrested in the case due to party politics is not tenable at this stage because the case is still pending and the appellant has not been acquitted in a criminal case. Hence the punishment awarded to the appellant is fully justified and I find no reasons to interfere with the orders of the disciplinary authority. The appeal is rejected".

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6. The learned counsel for the applicant after referring these comments of the disciplinary authority as well as of the appellate authority submitted that the punishment awarded to the applicant does not relate to the charges framed against the applicant.

7. As regards the involvement of the applicant in a criminal case is concerned, he has been acquitted and as regards the period of absence is concerned, there is nothing in the charge which may show that the applicant was unauthorisedly absent.

8. On the contrary, the applicant was prevented to resume duties as he was detailed in judicial custody as he was arrested by the Police of Gurgaon so the counsel for the applicant submitted that none of the charges stand proved.

9. In our view also the findings recorded by the Inquiry Officer only show that it has been proved beyond any doubt that the applicant remained absent from 22.12.1994 to 2.2.1995 without any information as he has failed to inform but informed the department after absenting himself for 42 days and 3 hours and has not taken any pain to inform the department at the time of his arrest or during the intervening period. In our view though the charge is stated to have been proved against the applicant but the findings recorded by the Inquiry Officer itself are contrary to the summary of allegations supplied to the applicant because in the charge nowhere it was said that the applicant had not informed with regard to his absence. The summary of allegations only

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show that he absented himself and later on it was found that he was arrested in a criminal case. The order of disciplinary authority also show that the disciplinary authority had held him liable to be punished on the ground that the applicant had committed a misconduct as he being a (uniformed man), should have abstained himself from indulging in nefarious activities which finally resulted in registration of a criminal case against him. The appellate authority had also turned down the appeal on the ground that the criminal case was still pending and now since the applicant is stated to have been acquitted, so the applicant is entitled to be reinstated.

10. As regards non-informing to the authorities about his absence is concerned, since the applicant was in judicial detention because of that he could not inform the authorities about his absence.

11. The fact that the applicant was under the judicial custody that itself shows that he was reasonably prevented to inform the authorities about his absence. Thus the findings record by the Inquiry Officer are perverse in nature and the disciplinary authority has relied upon the same for awarding punishment to the applicant.

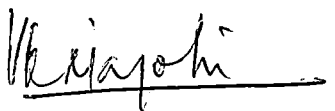
12. As regards the other reasons on which the applicant had been punished, i.e., about his indulging in nefarious activities are concerned, the judgment of the Learned Additional Sessions Judge placed on record which at Annexure A-13 would show that the applicant had



been falsely involved in the said case and since he has been acquitted, so punishment of the applicant on that score also cannot be sustained.

13. Hence, we are of the considered opinion that the applicant had been wrongly proceeded so the initiation of enquiry itself is to be quashed and consequently, based upon this, all the orders passed subsequently are also liable to be quashed. We hereby quash the orders and direct the respondents to restore her pay as if the impugned order of punishment is a non-est one. Applicant's pay be restored to the stage from which it was reduced. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs.


(KULDIP SINGH)
MEMBER (JUDL)


(V.K. MAJOTRA)
MEMBER (A)

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