

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2361/2001

New Delhi this the 7th day of February, 2003.

Hon'ble Dr. A. Vedavalli, Member(J)
Hon'ble Sh. Govindan S. Tampi, Member(A)

Sh. Vijender Kumar,
(1601/E)
S/o Shri Surajmal,
R/o Village Karawal Nagar,
Delhi-110094. Applicant

(through Sh. Shyam Babu, Advocate)

Versus

1. Govt. of NCT Delhi through
its Chief Secretary,
'Players Building'
I.P. Estate,
New Delhi.
2. Commissioner of Police
Delhi,
Police Headquarters,
I.P. Estate,
New Delhi.
3. Jt. Commissioner of Police,
New Delhi Range,
Police Headquarters,
I.T.O., New Delhi.
4. Dy. Commissioner of Police
(East)
PS: Shahdara,
Delhi. Respondents

(through Ms. Rashmi Chopra, Advocate)

ORDER (ORAL)

Hon'ble Sh. Govindan S. Tampi, Member(A)

Heard the learned counsel for both the
parties.

2. In this OA Orders No.4400-20/HAP(E) dated
5.6.1998 passed by the Disciplinary Authority and Order
No.5223-26/SO/NDR dated 24.9.1999 passed by the
Appellate Authority are under challenge.

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3. Vijender Kumar, the applicant, a Constable with Delhi Police was placed under suspension on 30.5.1997 by the Dy. Commissioner of Police/East Distt. Delhi pending enquiry into his conduct, following which he was issued summary of allegations. It was alleged that while being posted at P.S. Kalyan Puri, he was deployed to perform pilot duty to Chief Minister, Delhi vide D.D.No.72-B, dated 22.5.1997 at 9.45 P.M. from Gazipur Red Light to Mayur Vihar, Phase-III with Motor Cycle K.P.-6 and wireless set but he had not responded to the messages ^{liberty 2} (showing) he did not perform his duty. It was also alleged that while Inspector Ram Kishan, Addl.SHO/Kalyan Puri was returned after performing the arrangement ^{of} duty, he found that KP-6 had informed E-59 that he had returned after seeing off the Chief Minister, Delhi which he felt was a lie. On reaching the Police Station he found that the present applicant ^{was} was present in reporting room. This information was recorded vide D.D.No.81-, at 11 P.M. dated 22.5.1997. On being asked about the happenings the applicant was found to be disrespectful and abusive. He reacted indecently and left the police station without cap & belt and was therefore marked absent by Duty Officer. He also made bogus call to PCR flying squad, Vig. Branch, PHQ etc. and was not available in the Police Station. On the applicant's denying the charges, DE proceedings were set in motion, in which the Enquiry Officer on 5.12.1998 held that the charge that the

applicant did not pilot the car-cade of C.M. Delhi from Red Light Gazipur Chowk to Mayur Vihar Phase-III stood proved, but ^{the E.O.} attempted to explain it away. The report however showed that ^{the allegation is} the applicant has uttered a lie that he had completed his duty, was not substantiated. Such was the position with the charge that he had made bogus calls. The Enquiry Officer further observed that the way adopted by the "Constable to make his signature on D.D.No.29-A without Mussana was not within the norms of discipline and the same have been proved by the PW-4 and PW-5." After perusing of the representations filed by the applicant ^{the} enquiry report the Disciplinary Authority held that he had not performed the duty which was assigned to him and that when asked to explain the position, he had misbehaved and logged wrong messages and also signed on his DD Register which was in violation of the Punjab Police Rules. Therefore the Disciplinary Authority imposed on the applicant the punishment of stoppage of annual increments for a period of three years with cumulative effect. This order being carried out in appeal, the Appellate Authority i.e Joint Commissioner of Police rejected the appeal holding that the pleas taken by the applicant were not convincing as wireless messages are matter of record in which time is of crucial essence and it was amply proved that he did not escort the C.M., Delhi, as he was expected to do and that he had later on misbehaved with his senior officers as well. These are the orders under challenge.

4. Sh. Shyam Babu, learned counsel for the applicant points out that the proceedings carried out by the department against the applicant were vitiated as they were not correctly done and it was clearly a case of no evidence. The applicant had correctly performed the duty which was assigned to him. Disciplinary Authority had also differed from the Enquiry Officer's report but without giving any note of disagreement and gone ahead to punish him. This was improper. Shri Babu further averred that the Disciplinary Authority had in his order stated that "On finding, when asked to explain, he misbehaved and logged wrong messages and also signed on his D.D. Register which was violation of the Punjab Police Rules" which was not based on the Enquiry Officer's findings. Perusal of the Enquiry Officer's report make it clear that the first charge was not proved. He drew our attention to the observations of the Enquiry Officer's report that the way in which the charged officer made his signature on D.D.No.29-A without Mussana amounted to indiscipline was not warranted, as the said ^{did not form} part of summary of allegations. Disciplinary Authority was therefore influenced by extraneous material ⁱⁿ with the Enquiry Officer's report. Finally the penalty imposed upon the applicant of stoppage of three increments with cumulative effect, ^{which} amounted to multiple punishment and was improper in view of the decision dated 17.09.2002 of the Hon'ble High Court of Delhi in the case of Shakti Singh Vs. U.O.I. & Ors (CWP No.2368 of 2000). The Appellate Authority

had passed his order by bringing additional factors and had not considered applicant's pleadings. In view of this he pleads that both the impugned orders should be quashed and set aside, granting full reliefs to the applicant.

5. Replying on behalf of respondents, Ms. Rashmi Chopra learned counsel states that the Enquiry Officer has specifically proved that the applicant who was detained for patrolling duty for the Chief Minister on the date failed to do so. There was infact no difference of opinion between the Enquiry Officer and Disciplinary Authority in this regard. With reference to the second aspect raised in the order the learned counsel states that the Disciplinary Authority had recorded thus on the basis of the facts brought on record and therefore furnishing of the note of disagreement was not called for. According to Ms. Chopra, the punishment imposed on the applicant was commensurate with the gravity of the misconduct committed by the applicant and tdhe penalty could not at all have been more lenient. OA in the circumstances is without any basis and deserved to be dismissed, she argued.

6. We have carefully considered the matter. We find that in terms of the summary of allegations issued to the applicant, he had failed to perform pilot duty to the Chief Minister on 22.5.1997 at 9.45 P.M.

from Gazipur Red Light towards Mayur Vihar Phase-III forr which he had detailed and had returned to the Police Station Kalyan Puri, stating that he had completed his work which was not correct. He had also misbehaved with his seniors. A perusal of the Enquiry Officer's report shows that except of the portion that the applicant who was detained for pilot duty did not perform the task, ~~the~~² other charges were not proved. Disciplinary Authority has indicated that he was in agreement with the findings of the Enquiry Officer but had in ^{the}penultimate paragraph of his order had adopted a totally different stand. The relevant portion reads as under:-

" I have carefully gone through the findings of the EO, DE file, representation submitted by the defaulter constable and other relevant record on the DE file in the light of facts and circumstances of the case. He was also heard in O.R. on 25/3/98 but during personal hearing he did not raise any cogent plea except going through whole gamut of evidence, I am of the considered opinion that the defaulter has erred out the following two counts:-

- (i) He has not performed the duty which was assigned to him i.e. for providing the pilot to the Chief Minister's cavalcade.
- (ii) On finding, when asked to explain, he misbehaved and logged wrong messages and also signed on his DD register which was violation of the Punjab Police rules.
(emphasis supplied)

On the above two faults, Const. Vijender Singh No.1601/E is required to be punished, hence, I order to impose the penalty of stoppage of annual increments (Next) for a period of three years with

cumulative effect. As regards his suspension period w.e.f. 23/5/97 to 18/11/97, the same is treated as period not spent on duty."

7. The portion of the finding related to non-performance of the pilot duty, assigned to him^{is} shown to have been proved by the Enquiry Officer. In this ^{aspect} ~~task~~ the Enquiry Officer and the Disciplinary Authority are of the same view. However, the second finding of the Disciplinary Authority with regard to the applicant's misbehaviour, logging of wrong and bogus messages are shown by the Enquiry Officer to have not been substantiated. Thus on this aspect we find that there is a disagreement between the Enquiry Officer and the Disciplinary Authority, which should have been communicated to the applicant at the time of supplying the Enquiry Officer's report which the Disciplinary Authority had failed to do, thereby denying the applicant the opportunity of putting up a proper defence. As pointed out by the Hon'ble Supreme Court in the case of Punjab National Bank Vs. Kuni Behari Mishra [1998(7)SCC 84], there has been violation of the procedure and of the principles of natural justice by the Disciplinary Authority which has vitiated the proceedings. We further find that the Appellate Authority had also recorded his personal findings in the matter by drawing references to wireless messages, which are found ^{not} to have been substantiated in the Enquiry

Officer's report, and which therefore cannot be supported. We also find that the Enquiry Officer had recorded that the "manner adopted by the Constable to make his signature at DD No.29-A without Mussana was not within the norms of discipline" which again did not form part of summary of allegations and as such Enquiry Officer had, in our view brought in extraneous material into consideration. Cumulatively, all the above vitiated the proceedings.

8. In view of the above, we are inclined to accept the plea of the learned counsel for applicant that there has been a failure to adhere to the principles of natural justice, which has vitiated the proceedings and the orders issued in furtherance thereof. The orders are, therefore, liable to be quashed and set aside. However, at the same time, we would like to leave the matter to the respondents for re-examination and issue of fresh orders, if so advised.

9. In the above view of the matter the OA succeeds and is accordingly disposed of. The impugned orders No.4400-20/HAP(E) dated 5.6.1998 and Order No.5223-26/SO/NDR dated 24.9.1999 are quashed and set aside and the matter is remanded to the respondents. The Disciplinary Authority shall proceed from the stage of supplying the Enquiry Officer's report along with his note of disagreement to the applicant so that he would have a chance of making any effective representation and

pleadings his case properly. While doing so, the Disciplinary Authority shall also ignore the portion of the Enquiry Officer's findings ^{referred above in para 7} which had not been mentioned in the summary of allegations. After receipt of the applicant's representation he may pass the necessary order in accordance with law. This exercise shall be initiated by the respondents within two months from the date of receipt of a copy of this order. No costs.

(Govindan S. Tampi)
Member(A)

A. Vedavalli
(Dr. A. Vedavalli)
Member(J)

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