

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2371/2001

New Delhi this the 8th day of October, 2002.

HON'BLE MR. M.P. SINGH, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Rajender Singh,
Constable,
Old No.666-NE,
New No.7956 DAP,
Vth Batalion,
R/o B-94/2, Kondli Colony,
New Subzi Mandi,
Delhi-110 096.

-Applicant

(By Advocate Shri A.K. Soni)

-Versus-

1. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi-110 002.
2. The Deputy Commissioner of Police,
North-East District,
Delhi.

-Respondents

(By Advocate Shri Mohit Madan)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns punishment order dated 26.8.98 forfeiting his five years' approved service permanently for a period of five years with consequences and treatment of suspension period as not spent on duty. Applicant also impugns the appellate order dated 21.6.99, reducing the punishment to permanent forfeiture of three years' approved service.

2. Though applicant, who has been proceeded against in a departmental enquiry on the allegations of leaving the check post at Bhopura Border, disobeying the lawful order of the incharge and demand of Rs.200/- as an entry fee and non return of register and money of Tanker Driver.

3. Enquiry Officer after recording of evidence and submissions of defence by the applicant though proved the charge against the applicant of disobeying the lawful orders of the incharge but exonerated him from the charge of demand of entry fee and taking money with register from Tanker Driver due to lack of independent witness.

4. Applicant preferred a representation against the finding. Thereupon the disciplinary authority imposed upon him a major punishment also on the ground of entry fee and taking away the money with register. The appeal preferred against the order reduced the punishment.

5. Though several contentions have been taken by the learned counsel for the applicant to assail the impugned orders, but at the outset, stated that although the enquiry officer exonerated him of the charge of taking entry fee of Rs.200/- and also taking away Rs.1250/- alongwith register from the Tanker Driver yet the disciplinary authority imposed upon him a major punishment proving the said charge without following the due process of law as prescribed under Rule 16 (xii) of the Delhi Police (Punishment & Appeal) Rules, 1980. It is stated that applicant has been greatly prejudiced in the matter of his defence and could not rebut the aforesaid charge, as no show cause notice and reasonable opportunity was afforded to him before the disciplinary authority imposed the punishment.

6. On the other hand, respondents' counsel Sh. Mohit Madan denied the contentions and at the outset though not disputed the illegalities cropped up in the

departmental proceedings but stated that the ground of disagreement has not been taken by the applicant in his petition and as such the same cannot be allowed to raise for the first time in the OA.

7. We have carefully considered the rival contentions of the parties and perused the material on record. In view of the decision of the Apex Court in Rattan Lal Sharma v. Managing Director, 1993 SCC (L&S) 1106 a legal plea can be raised at any stage even if it is not taken in the pleadings, subject to the condition that it does not involve any complicated question which requires probe.

8. In the light of the aforesaid ratio we find that the issue regarding disagreement by the disciplinary authority on the charge for which the applicant was exonerated is apparent on the face of the record and requires no probe. In these circumstances we allow this plea to be raised by the applicant.

9. Having regard to the decision of the Apex Court in Punjab National Bank & Ors. v. Kuni Behari Misra, JT 1998 (5) SC 548 and in the light of the provisions of Rule 16 (xii) the disciplinary authority is bound to record its tentative reasons before disagreeing with the findings of the enquiry officer and in that event he has to serve a show cause notice to the delinquent official and on his reply a final order is to be passed. As this procedure was not adopted in the present case the impugned order cannot be sustained. It is not disputed that the applicant was exonerated from the charge by the enquiry officer of the charge of demanding entry fee and

retaining money as well as register from the Tanker Driver. Disciplinary authority recording its own reasons proved the charge and punished the applicant. He has not followed the due procedure with the result this additional material could not be put to the applicant and he has been deprived of a reasonable opportunity to defend. This is not in consonance with the principles of natural justice and fair play.

10. In the result, OA is partly allowed. Impugned orders are quashed and set aside. However, this will not preclude the respondents, if so advised, to take up the proceedings from the stage of following the due procedure of law and thereupon to pass a final order, in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

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(M.P. Singh)
Member (A)