

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 242/2001

New Delhi, this the 5th day of February, 2002

(10)

HON'BLE SH. M. P. SINGH, MEMBER (A)
HON'BLE SH. SHANKER RAJU, MEMBER (J)

Head Const. Inder Pal
(PIS No. 28790339)
R/o B-44, Ram Vihar
Johari Pur Extn. Delhi-94.

Presently posted at :

5th Bn., DAP, New Police Lines
Kingsway Camp, Delhi-9.

....Applicant

By Advocate: *Shri Anil Singhvi.*

Versus

1. Govt. of NCT of Delhi
through Commissioner of Police
Police Headquarters
I.P. Estate, New Delhi.

2. Joint Commissioner of Police
New Delhi Range, PHQ
I.P. Estate, New Delhi.

3. DCP (East Distt.)
Shalimar Park, Bholanath Nagar
Shahdara, Delhi.

.... Respondents

By Advocate: *Shri George Paracken.*

ORDER (ORAL)

By Sh. Shanker Raju, Member (J)

Heard counsel for both the parties.

2. Applicant, a Head Constable has been proceeded against a preliminary enquiry on the complaint of one Sh. Kailash for alleged vacation and threatening to sell the house No. D-66, Dayanand Block, Shakarpur. On the basis of the findings of Inspector Teeka Ram, PW-7 Deputy Commissioner of Police ordered regular departmental enquiry.

3. Applicant impugns an order passed by the disciplinary authority on 13.10.97 imposing a major punishment of withholding of increment for 5 years with cumulative effect

and treating the period of suspension as not spent on duty.

The applicant has also impugned an order passed by the appellate authority upholding the punishment by the disciplinary authority by an order dated 12.1.2000.

4. Learned counsel for the applicant at the outset stated that the departmental proceedings are vitiated for violation of Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 which envisages approval of the Additional Commissioner of Police before holding the departmental enquiry in the event a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank having official relations with the public. In this backdrop, he stated that the applicant's involvement in the preliminary enquiry allegedly discloses a cognizable offence. Section 389/506 of the IPC as 506 of the IPC. As such it was incumbent upon the disciplinary authority to have obtained prior approval of the Additional Commissioner of Police. It is also stated that this ground taken by him has not been denied by the respondents. In this view of the matter further drawing our attention to the decision of the High Court in 2001 11 AD (Delhi) 169 in CW-3926 decided on 11.12.2000 in the matter of Pratidhi vs. NCT of Delhi & Ors. wherein it is stated that the same property matter was in issue against an order passed by the District Judge and there has been a categorical assertion that the maid living with children wanted to sell the property and it is not Kailash who wanted this property to sell. It is in this background asserted that initiated of DE shows non-application of mind by the authorities as well. Punishment has been imposed for a misconduct which he never committed.



5. On the other hand learned counsel for the respondents stated that the decision of the High Court was in different context and having regard to the findings on record the applicant has been rightly been held guilty of the charge. As regards Rule 15(2) that the respondents have not specifically denied the contention of the applicant.

6. We have carefully considered the rival contentions of the parties and also perused the departmental record furnished by the counsel for the respondents. It is not in dispute that the preliminary enquiry has been held by Inspector Teeka Ram who admitted his preliminary enquiry report in the departmental enquiry. On the basis of the preliminary enquiry a cognizable offence has been disclosed against the applicant in discharge of his duties and in relation with the public of threatening and extorting as mentioned by Kailash. In our considered view, on disclosure of a cognizable offence, it was incumbent upon the disciplinary authority to have sought prior approval of the Additional Commissioner of Police under Rule 15(2) *ibid*. Having failed to take the prior permission, the enquiry consequent orders are not legally sustainable and are liable to be set aside.

7. Having regard to the reasons recorded above, we partly allow this OA and set aside the punishment as well as appellate order and remand the case back to the respondents to resume the departmental proceedings from the stage of seeking prior approval of the Additional Commissioner of Police. While doing so, the respondents should also have regard to the decision of the High Court dated 11.12.2000. These directions

(4)

shall be complied with by the respondents within a period of 3 months from the date of receipt of a copy of this order. No costs.

S. Raju
(SHANKER RAJU)
Member (J)

M. P. Singh
(M. P. SINGH)
Member (A)

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