

(29)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2723/2001
M.A. NO. 2237/2001

New Delhi this the 14th day of February, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S.TAMPI, MEMBER (A)

Const. Gulbir Singh (520/DAP)
S/o Shri Hoshiyar Singh,
Aged 33 years
R/o F-78, Gali No.2, Ganga Vihar,
Delhi-110094.

... Applicant

(By Shri Shyam Babu, Advocate)

vs.

1. Union of India
through Secretary,
Ministry of Home Affairs,
North Block,
New Delhi
2. Addl. Commissioner of Police,
PCR & Communications
Police Headquarters,
I.P. Estate,
New Delhi-2
3. Addl. Dy. Commissioner of Police,
Police Control Room
Sarai Rohilla,
Delhi.

..... Respondents

(By Shri Ajay Gupta, Advocate)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

Applicant Gulbir Singh is a Constable in Delhi Police. Departmental proceedings had been initiated against him and the summary of allegations against him indicated the following assertions:-

" It is alleged against Const. Gulbir

Ag

Singh No. 707/N that while he was posted at PS Kashmere Gate, Delhi had proceeded on 8 days Casual Leave vide DD No.29-B dated 11.5.96 PS Kashmere Gate, Delhi. He was due back on 20.5.96 but he did not turn up. As such he was marked absent vide DD No.26-B dated 20.5.96. An absentee notice was also sent at his native place vide No.8526-28/SIP-North dated 31.5.96 to join his duty at once but he has not turned up and still running absent unauthorizedly and wilfully without any intimation. It is further alleged that the Const. is absconding to avoid his arrest in case FIR No.331/96 U/S 384/170/506/34 IPC PS Hauz Khas. This reflects the gross misconduct and shabby conduct of a Police Officer and gives very bad image in the eyes of public. Thus he has contravened the provision of rule 19(5) of CCS (Leave) Rules, 1972 and SO No.111 on the subject, clearly contravention of CCS (Conduct) Rules, 1964.

The above said acts on the part of Const. Gulbir Singh No.707/N amounts to gross misconduct, negligence, dereliction, most irresponsible behaviour in the performance of his official duties and unbecoming act of a member of disciplined force for which he is liable to be dealt with departmentally under Delhi Police (Punishment & Appeal) Rules, 1980."

The Additional Deputy Commissioner of Police agreed with the findings of the Inquiry Officer which were against the applicant and imposed the following penalty upon him:-

"Thus the question for second medical does not arise. The E.O. has rightly proved the charge against the defaulter and I find no reason to differ with the Enquiry Officer. Therefore, I Rajesh Khurana, Addl. DCP/PCR hereby order that two years approved service in respect of Const. Gulbir Singh, No. 707/N (now 2724/PCR) be forfeited permanently for a period of two years. Therefore, the pay in respect of Ct. Gulbir Singh, No. 2724/PCR is reduced by two stages from Rs.3425/- P.M. to Rs.3275/- P.M. in the time scale of pay for a period of two years from the date of issue of this order. 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 increments of pay. His suspension period w.e.f. 25.6.96 to 26.8.96 is decided as not spent on duty for all intents and purposes. His absence period w.e.f. 20.5.96 to the date of resuming his duty is also decided as dies-non on the principle of 'No work No pay'."

The applicant preferred an appeal which was dismissed by the Additional Commissioner of Police on 8.12.1999.

2. The applicant preferred OA No. 967/2000 assailing the order of the disciplinary authority as well as appellate authority. On behalf of the respondents, an objection was taken that the application was not maintainable under Section 19 of the Administrative Tribunals Act, 1985 read with Rule 4 and Form 1 of Appendix A of the Central Administrative (Procedure) Rules, 1987. The said application was accordingly dismissed as not maintainable by an order passed by this Tribunal on 27.2.2001. The applicant on 3.10.2001 had filed the present application afresh again seeking quashing of the order passed by the disciplinary authority as well the appellate authority accompanied by an application seeking condonation of delay in filing of the said application. Both, the application seeking condonation of delay as well as the Original Application are being contested.

3. In the Misc. Application No. 2723/2001

M Ag

seeking condonation of delay, the applicant has pleaded that the earlier OA No.967/2000 was dismissed as not maintainable because it was not signed and verified by the applicant. It was a procedural irregularity which could have been cured. Therefore, a fresh Original Application in these circumstances has been filed and delay in this regard is claimed to be condoned.

4. We have already referred to in brief the fact that the earlier Original Application filed by the applicant had been dismissed as not maintainable.

5. Under Section 21 of the Administrative Tribunals Act, 1985, an application which is filed after the period of limitation prescribed, can be entertained and delay condoned if the applicant satisfies this Tribunal that he had sufficient cause for not making the application within the said period.

6. In the present case, the applicant had earlier filed the application within the time which as already referred to above was dismissed as not maintainable. It was on technical ground. Once that is the position, the stand so taken in the earlier application which was not maintainable, in the absence of any mala fide or other cause which

MS Ag

may prompt us to say otherwise, we find no reason as to why the delay should not be condoned. We find, therefore, that there is sufficient cause for not making the application within time. This is coupled with the fact that the applicant was taking necessary steps in this regard right in earnest. We accordingly condone the delay.

7. On behalf of the respondents, it was urged that when the second application would not be maintainable, the first order passed by this Tribunal will operate as res judicata. Even on the said count, the plea necessarily has to be rejected. Reasons are obvious. There is no adjudication of the rights of the applicant in this regard. Once the rights have not been adjudicated and the application was dismissed on technical ground that the same was not signed and verified by the applicant, a fresh application necessarily would not be barred.

8. On merits of the matter, our attention was drawn towards a decision of the Delhi High Court in the case of **Shakti Singh v. Union of India & Ors.** in Civil Writ Petition No.2368 of 2000 and batch rendered on 17.9.2002. Therein Rule 8(d)(ii) of the Delhi Police (Punishment & Appeal) Rules, 1980 had come up for consideration before the Delhi High Court. The question for consideration was

MS Ag 

identical, namely as to whether, if there is punishment of forfeiture of service whether additional punishment in the form of reduction in pay could be imposed or not thereby stopping the future increments. The Delhi High Court had concluded that this tantamount to double punishment in violation of Rule 8(d)(ii) of the Delhi Police (Punishment & Appeal) Rules, 1980.

9. Identical is the position herein. Therefore, necessarily, the impugned orders have to be quashed.

10. Accordingly, we allow the present application and quash the impugned orders. However, the disciplinary authority would be competent to pass a fresh order from the stage the penalty was imposed, if deemed appropriate.

11. Nothing said herein should be taken as an expression of opinion on the merits of the matter.

No costs.

Announced.

(Govindan S. Tampi)
Member (A)

MS/


(V.S. Aggarwal)
Chairman