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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2729/2001
OA NO. 2667/2001
OA NO. 2724/2001

This the 24th day of February, 2003

HON'BLE SH. V.K. MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

OA No. 2729/2001

Surender Kumar Sand,
Inspector No. D-1/196,
R/o 225, P.S. Ashok Vihar,
New Delhi-110 052.

Presently Posted At
Operation Cell,
PS Ashok Vihar, New Delhi. Applicant

(By Advocate: Shri Anil Singhal)

Versus

1. Lt. Governor of Delhi
Through Commissioner of Police,
Police Headquarters,
IP Estate, New Delhi.

2. Joint Commissioner of Police,
Northern Ranmge, PHQ,
IP Estate, New Delhi.

3. DCP (Central Distt.),
Darya Gang, Delhi. Respondent

(By Advocate: Shri George Parackin)

OA No. 2667/2001

Banay Singh,
Sub Inspector No. D-897,
Presently posted in VIIth Bn DAP,
New Delhi. Applicant

(By Advocate: Shri Anil Singhal)

Versus

1. Commissioner of Police,
Police Headquarters,
IP Estate, New Delhi.

2. Joint Commissioner of Police,
Armed Police, New Police lines,
Delhi.

3. Naresh Kumar,
(Then DCP III-Bn DAP)
Now DCP Vth Bn. DAP,
New Police lines,
Kingsway camp, Delhi-9. Respondents

(By Advocate: Sh. George Parackin)

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OA No. 2724/2001

Banay Singh,
Sub Inspector No. D-897,
Presently posted in VIIth Bn DAP,
New Delhi. Applicant

(By Advocate: Shri Anil Singhal)

Versus

1. Commissioner of Police,
Police Headquarters,
IP Estate, New Delhi.

2. Joint Commissioner of Police,
Armed Police, New Police lines,
Delhi.

3. Naresh Kumar,
(Then DCP III-Bn DAP)
Now DCP Vth Bn. DAP,
New Police lines,
Kingsway camp, Delhi-9. Respondents

(BY Advocate: Sh. George Paracken)

ORDER

By Sh. Kuldip Singh, Member (J)

By this common judgment we will decide the three OAs which have common point of law.

2. In these three OAs all the applicants had been awarded the punishment of censure by the respondents. Applicants have submitted that Rule 6 of Delhi Police (Punishment & Appeal) Rules is ultra vires to Delhi Police Act as well as to the Constitution of India as there is no provision in it for holding enquiry in any circumstances for awarding minor penalty though the holding of enquiry is necessary for awarding even minor penalties. Learned counsel for applicants submitted that even under the CCS Rules which have provisions for awarding minor penalties, an option to the delinquent official is given whether he wants a detailed enquiry whereas under the Delhi Police rules no such option is available and there can be certain cases where the formal

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enquiry is necessary in order to arrive at an appropriate finding and to do justice even for awarding minor penalty. In support of his contentions, the learned counsel for the applicant has also relied upon judgment reported in 2002 (3) ATJ 354 Kunhikannan Nambiar vs. Govt. of Kerala whereby Hon'ble Kerala High Court while interpreting the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960 has observed that a formal enquiry must be held and principles of natural justice must be followed even at the time of imposition of minor penalty, even if the Rule does not provide such an enquiry. The Hon'ble Kerala High Court observed as under:-

> Under R.16 of the CCS (CCA) Rules, a formal enquiry is not a must. The procedure prescribed under R.15 for imposing major penalty contemplates a formal enquiry necessitating the examination of witnesses and production of documents with opportunity to the accused employee to cross examine witnesses and adducing his own evidence. But this does not mean that a minor penalty can be inflicted on the accused employee irrespective of the nature of the allegations and the evidence required to prove those allegations. There may arise, in minor penalty proceedings also, the necessity to adduce evidence; without such evidence the charges cannot be held to have been established against the employee. The need to adduce evidence arises in the peculiar facts and circumstances of the case, the nature of the allegations levelled against the delinquent employee and the defence pleaded in his written statement. It cannot be said as an absolute rule in all cases, where a minor penality alone is proposed to be imposed on the delinquent employee, the the ordeal of an enquiry can be done away with. It is true that the penalty to be imposed is a relevant factor but equally important is the nature of the allegations as also the facts to be established to substantiate the charges. When charges are found no complicated facts or those involving serious allegations, it will be arbitrary to find the employe quilty, without holding an enquiry. A meaningful application of the principles of natureal justice and the doctrine of reasonable opportunity to the accused employee come into play on such occasions.

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3. The reading of this paragraph would go to show that what the Hon'ble High Court observed was that if the charges contain complicated facts which involve serious allegations, it is only in those cases it will be arbitrary to hold the employee guilty without holding an enquiry. But it does not rule that in all the cases where the enquiry is not held and the delinquent official is awarded a punishment in a summary manner as per the rules, then also it violates the principles of natural justice, or the punishment awarded would be bad. Counsel for the applicant had tried to compare these rules with Delhi Police Rules also as both do not provide for holding any enquiry.

4. We have given our thoughtful consideration to the matter involved. As per the contention of the learned counsel for the applicant that Rule 6 which does not provide for holding of enquiry is violative of principles of natural justice and is ultra vires to Delhi Police Act as well as the Constituion of India. We find that this contention has no merits. In this connection, we may mention that Rule 5 prescribes authorised punishment and under the punishment head Rule 5 (viii) prescribes punishment of censure. Rule 6 provides classification of punishments and authorities competent to award them. Rule 6 (ii) which is relevant for the purpose of the present case is reproduced herein below:-

> "Punishment mentioned at Sl. No. (viii) shall be called "Minor punishment" and may be awarded by the authorities specified in sub-section (i) of Section 21 of the Delhi Police Act, 1978 after serving a show cause notice giving reasonable time to the defaulter and considering his written reply as well as oral deposition if any for which opportunity shall be afforded on request." (emphasis supplied)

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5. Thus, Rule 6 (ii) clearly says that before imposing a penalty of censure the charged officer has to be given a show cause notice. He has to be given a reasonable time to give his written reply and he may also request for oral depositions for which opportunity shall be afforded to him Thus, we find that this rule affords sufficient opportunity to the delinquent official for making his representation including oral depositions and it cannot be said to violate any principles of natural justice.

6. We may further mention that under the CCS Rules, there are four penalties which are minor penalties as well as under Kerala Civil Service Rules, there are four penalties which are minor penalties, but under the Delhi Police Rules, there is only one penalty under the head minor penalty, which is 'censure' and as per rules this penalty is not to take effect for very long period. It automatically vanishes as per the standing order of the Delhi Police Rules and even for awarding that punishment sufficient precautions have been taken to afford reasonable opporunity to the delinquent official. Thus, we find that this procedure to award penalty of censure is in no way ultra vires of the provisions of Delhi Police Act or the provisions of Constitution of India. Hence, we hold that the procedure as mentioned in Rule 6 (2) for awarding minor penalty of censure is quite appropriate and it has sufficient safeguards to provide reasonable opportunity and to carry out the principles of natural justice, and the same cannot be quashed.

7. However on facts also, the counsel for the applicant can challenge the award of censure in all the three cases.

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OA-2729/2001

In the case of Sh. Surender Kumar Sand the applicant had been issued a show cause notice vide Annexure A-1 for award of penalty of censure and vide Annexure A-2 the applicant was awarded punishment. Though before the disciplinary authority the applicant did not file any reply nor made a request for personal hearing, an ex parte order was passed confirming the show cause notice and penalty of censure. However, the applicant preferred an appeal before the appellate authority but the appellate authority also rejected his appeal. Thereafter the applicant preferred a revision before the Commissioner of Police which was not entertained, as Commissioner informed him that he no longer had revisionary powers. However, the learned counsel appearing for the applicant submitted that the facts would disclose that the applicant had lodged a DD when certain persons met him at the Police Station and reported that one of their colleague have been falsely implicated in a case under Pb Excise Act and false FIR has been registered, even the case property had not been deposited in the Mal Khana. The learned counsel for the applicant submitted that while recording the DD applicant had not shown any insubordination. He was duty-bound to record the DD and also to check the case property of a case which had been registered a day earlier in the Paharganj area. Appeallate order also shows that the applicant had checked the Mal Khana and recorded that no case property was deposited. Hence he has made DD entry to this effect in the Roznamcha. The appellate authority observed that to lodge a DD entry about non-deposit of the case property in Malkhana would affect the fate of the criminal case adversely in the court of law Therefore, he confirmed the

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punishment of censure on the applicant. This reasoning by the appellate authority is a baseless reasoning. Mere observation by the Appellate Authority that applicant's conduct would adversely affect the case in the court of law is not enough to award the punishment. The SHO of an area also has a duty to see to it that no false case is registered. Innocent people are not falsely implicated. If the SHO does not take case of false case then he will be acting against the Moto of Delhi Police which say Police in service of people. Thus, we are of the considered opinion that the basis on which the show cause notice has been issued are itself bad and same observes to be quashed. Accordingly, we quash the show cause notice and set aside the impugned orders. OA is allowed.

OA-2667/2001

So far as this case is concerned, applicant who was detailed for duty for production of high risk under-trial prisoners at H.D. Lock-up was noticed busy with studying Law book in front of the office I/C N.D. Lock-up despite the circulation of strict instruction in this regard that none of the staff would indulge in reading newspaper, books, magazine etc. as well as carrying or listening to radio, transistor, tape-recorder etc. while on duty and entire devotion should be paid to the duty. Thus, the applicant had violated the instructions of senior officers and show cause notice had been issued to him as to why his conduct be not censured after affording him a reasonable opportunity of representing in appeal also. As regards the facts, it is admitted even by the applicant when he was heard by the appellate authority that he was reading some material at the relevant time.

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2. However, the learned counsel for the applicant submitted that the instructions issued by DCP IIIrd Bn. prohibiting carrying of transistor, tape recorder, newspaper, books, magazine etc. by Police personnel while on duty are bad in law because the regulations under the Delhi Police Act can be issued by Commissioner of Police and not by DCP. Counsel for applicant then submitted that Annexure A-4, which is the order prohibiting the Police personnel to carry reading material is in the nature of regulations and it could not have been issued by the DCP. In our view, this contention of the learned counsel for applicant has no merits because 'Regulation' as per Aiyar's Judicial Dictionary at page 966 means :

> "An old name for Acts or laws promulgated by the legislative authority. The only difference that is noted between the old Regulations and the present Acts is that the former were less concisely drafted and preceded by a detailed exposition of the objects and purpose of the enactment while the Acts have short preambles.
>
> Regulation ordinarily means prescription of rules for control of conduct. (Municipal Commr. v. Haji Ismail, AIR 1967 Punj 32)."

4. Whereas the order prohibiting the police personnel to carry such material on duty goes to show that it has been issued only to ensure that the personnel must pay full attention to their duty, particularly while they are carrying high risk trial prisoners and this order cannot be said to be a 'Regulation' in the judicial terms. Thus, we find that this contention of the learned counsel for the applicant has no merit. On facts, since it has been admitted by the applicant himself before the appellate authority that he was reading some material, that calls for confirmation of

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show cause notice as he has violated the order issued by the DCP. No interference is called for in this OA. OA is, accordingly, dismissed.

OA-2724/2001

In this case a show cause notice was issued to the applicant to the effect that it was noticed that he had not resumed his duty upto 7.45 p.m. despite being night I/C Tihar Jail Guard Room. He was called upon to explain the reasons for not reporting on duty till 7.45 p.m. and he submitted his reply which was not found satisfactory. So a notice was issued to him and after going through his reply as well as his oral submissions the show cause notice was confirmed and he was awarded punishment of censure. Against this, an appeal was also preferred. The appeal was dismissed.

2. We have heard the learned counsel for the parties and gone through the record. As far as providing of opportunity as per Rule 6(2) is concerned the same has been properly afforded to the applicant and applicant has availed of the same. Though the applicants' counsel tried to challenge the order of punishment of censure on facts & evidence of the case, since we are not to re-appreciate evidence facts, we find that the procedure for award of this penalty is properly followed. Therefore, no interference is called for. Accordingly, this OA is dismissed.

In the result, OA 2729/2001 is allowed, OA 2667/2001 and OA 2724/2001 are dismissed as stated above.

(KULDIP SINGH)
'sd' Member (J)

(V.K. MAJOTRA)
Member (A)

Attested
Bajwa
24-2-2003