

Item No.R-5

O.A. No.2749/2001

8.5.2003

Present : Shri Sachin Chauhan, learned counsel for
applicant

Mrs. Sumedha Sharma, learned counsel for
respondents

The sole submission made by the learned
counsel for the applicant is pertaining to the penalty
of dismissal awarded to the applicant. According to
the learned counsel, it is disproportionate to the
alleged dereliction of duty because the applicant has
since been acquitted of the said heinous offence.

For the reasons to be recorded separately, we
hold that the penalty of dismissal from service, in
the facts and circumstances, is disproportionate to
the dereliction of duty. Keeping in view the totality
of the facts of the present case, the disciplinary
authority would be competent to pass any other order.

(GOVINDAN S. TAMPI)
MEMBER (A)

(V.S. AGGARWAL)
CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A. No.2749 OF 2001

New Delhi, this the 8th day of May, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Ex. Constable Riaz Hussain No.1837/N
S/o Shri Fayyauddin
R/o Village-Angad Pur, P.S. - Binoli,
District-Meerut, Uttar Pradesh.

....Applicant

(By Advocate : Shri Sachin Chauhan)

Versus

1. Union of India,
Through Its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Joint Commissioner of Police,
Northern Range,
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.
3. Addl. Dy. Commissioner of Police,
North District, Civil Lines,
Delhi.

....Respondents

(By Advocate : Mrs. Sumedha Sharma)

O R D E R (ORAL)

Justice V.S. Aggarwal, Chairman :

Applicant (Riaz Hussain) had joined the Delhi Police in August 1991 as a Constable. Disciplinary proceedings had been initiated against him for being absent for 81 days and not informing the department regarding his involvement in a criminal case. The inquiry officer returned the finding that the charge was substantiated. As a result thereto, the disciplinary authority imposed the extreme penalty of removal from service on the applicant. His appeal and revision failed. By virtue of the present

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application, he seeks quashing of the said orders with consequential benefits.

2. The application has been contested.

3. Some of the admitted facts can conveniently be delineated. The charge framed against the applicant was:-

"I, Inspector Surender Kumar Sand E.O. (Addl. S.H.O., P.S. Chandini Chowk, Delhi, charge you - Constable Riyaj Hussain No.1837/N PIS No.28910789, while posted in P.S.Subzi Mandi, proceeded on 1+1 day C.L. vide D.D.No.27, dated 18.4.1996. You were due back on 1.5.1996 but you did not turn up thus you were marked absent. However, you have resumed your duty on 5.5.1996 vide D.D.No.31-B PS Subzi Mandi after absenting yourself for a period of 4 days wilfully and without any intimation to the Competent authority.

Thereafter, you again proceeded on 26+4 days Earned Leave vide D.D.No.68-B dated 10.5.1996. This time too, instead of joining duty absented yourself. Later you sent a telegram for extension of the leave for 23 days on the pretext of the sickness of your wife. You resumed your duty vide D.D.No.55-B dated 20.9.1996 P.S. Subzi Mandi after absenting yourself for a period of 81 days wilfully and unauthorisedly.

Apart from this, it was revealed that during the period of your leave/absence, you committed a rape in the night between 28/29.4.96 with a minor girl namely Khairu Nisha. In this regard a case Vide No.45/96 U/S 376 I.P.C. PS Binoli Distt. Meerut (UP) was registered against you. However, you had escaped from the spot and later surrendered in the Court on 13.5.1996 where you were remanded to Judicial Custody and remained there till 16.9.1996. However, you have been acquitted in this case. In this way, instead of informing the department about your involvement in the abovesaid criminal case being a member of disciplined force. You have tried to conceal the fact. You also did not

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disclose about your involvement in the above said case at the time of resuming your duty. You had also taken false pretext of the sickness of your wife just for the concealment of the facts.

The above act on your part amounts to gross misconduct, dereliction in performance of Govt. duties and unbecoming of a member of disciplined force which renders you liable for punishment under the Delhi Police (Punishment & Appeal) Rules, 1980."

In the meantime, the applicant who was facing a trial in the court of Sessions at Meerut for offences punishable under Section 376 of the Indian Penal Code had been acquitted. The earlier application filed by the applicant, OA No.440/1999 had been disposed of by this Tribunal on 4.12.2000 and the matter was remitted to the appellate authority to dispose of the appeal by giving proper reasons in the light of the observations that had been made. The appellate authority thereafter had passed a detailed order dismissing the appeal.

4. The only submission made by the learned counsel for the applicant was that in the peculiar facts of the present case, the punishment of dismissal from service is disproportionate to the alleged dereliction of duty keeping in view the facts which are not in controversy.

5. According to the learned counsel, the applicant has since been acquitted and, therefore, he cannot be held to be guilty of any heinous offence. He was in custody and, therefore, at best what can be

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attributed to him was that he did not inform the department about his being in custody. Needless to state that the respondents' learned counsel insisted that in a disciplined force like the Delhi Police such absence or acts cannot be taken lightly.

5. At the outset, we deem it necessary to mention that the scope for interference by this Tribunal with respect to the quantum of punishment awarded is limited. It is within the domain of the concerned authority to pass an appropriate order of penalty to be imposed on such officials. We know from the decision of the Supreme Court in the case of *B.C.Chaturvedi v. Union of India and Ors.*, JT 1995 (8) S.C.65 that only in cases where the punishment shocks the conscience of the Tribunal, it could interfere, but normally, the Tribunal will not substitute its own conclusions and impose some other penalty. The Supreme Court held:-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate

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authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

It is in the light of the aforesaid that the facts of the present case have to be examined because we are of the considered opinion that in the facts of the present case that have precipitated, the extreme penalty of dismissal cannot be termed to be just and proper and it is totally disproportionate ~ to the alleged dereliction of duty.

7. Perusal of the charge framed clearly shows that the applicant had proceeded on Earned Leave and during that period he is alleged to have committed the offence referred to above. He was in custody in District Meerut. He remained in custody till 16.9.1996. Since he has been acquitted by the court of Sessions at Meerut, therefore, the alleged dereliction of duty on his part is not informing the department about his involvement in the crime besides there was four days' earlier absence from duty. It has been explained that since the applicant was named as an accused in a heinous crime, he could not inform the department. It has to be remembered that for substantial period, the applicant was in custody. It is in this back-drop that the abovesaid facts prompted us to conclude that dereliction of duty though it exists and is serious in a disciplined force but is not one in which extreme penalty of dismissal from service could be imposed. The human conduct on the

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part of the applicant keeping in view the abovesaid facts cannot take a hind seat. Therefore, we are of the considered opinion that in the facts of the case, it would not be appropriate to impose the extreme penalty.

8. Resultantly, we allow the application and quash the impugned orders but direct that it would be within the power of the disciplinary authority to impose any other punishment in accordance with law. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

'Sns'

(V.S. AGGARWAL)
CHAIRMAN