

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1133/1999

New Delhi this the 15th day of March, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

ASI Raghubir singh No.4588/D
S/O Chandu Lal,
R/O Vill. Raza Pur, Sector 9,
Rohini, Delhi-85.

... Applicant

(By Shri Deepak Verma, proxy for Shri Shankar Raju,
Advocate)

-Versus-

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi.

2. Commissioner of Police,
Police Headquarters, I.P.Estate,
M.S.O. Building,
New Delhi.

3. Sr. Addl. Commissioner of Police
(Operations), Police Headquarters,
I.P.Estate, M.S.O. Building,
New Delhi.

4. Deputy Commissioner of Police,
Police control Room,
Police Headquarters,
I.P.Estate, M.s.O. Building,
New Delhi.

... Respondents

(By Shri D.S.Jagotra, proxy for Shri Ajesh Luthra,
Advocate along with ASI Jarnail Singh, Departmental
Respresentative)

O R D E R (ORAL)

Shri Justice Ashok Agarwal:

An order passed by the Commissioner of Police on
6.5.1998 setting aside the order passed by the
appellate authority reducing the penalty imposed by
the disciplinary authority of forfeiture of two years'
approved service to one of censure and restoring the
aforesaid penalty imposed by the disciplinary



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authority, is impugned in the present O.A. The Commissioner of Police has purported to act as reviewing authority under the provisions contained in Rule 25(B)(iii) of Delhi Police (Punishment & Appeal Amendment) Rules, 1994. The validity of Rule 17(2) of the Bombay Police (Punishment & Appeal) Rules, 1956 which is pari materia to Rule 25(B) of the Delhi Police (Punishment & Appeal amendment) Rules, 1994 was the subject matter of consideration before the Hon'ble Supreme Court in the case of **State of Mysore & Ors. v. H.D.Kolkar**, AIR 1974 SC 19. The Supreme Court has, inter alia, held as under :

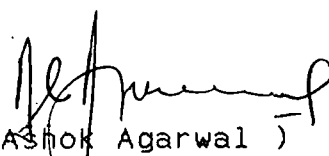
"10. It is clear from the language of clause (c) of Section 25(2) that only rules and orders which could be made under that clause are rules and orders for the exercise of the power conferred by Section 25(2)(a). The words "the exercise of any power conferred by this sub-section shall be subject always to such rules and orders as may be made by the State Government" in Section 25(2)(c) would indicate that the Government have no power to make any rule or order arrogating to themselves a power of revision over an order of punishment passed under Section 25(2)(a). What is made subject to the rules or orders to be passed or made by government is "the exercise of any power" conferred under clause (2)(a) of Section 25. Sub-section (2)(c) of Section 25 can only mean that the Government will have power to pass rules or orders for regulating the procedure or such other matters for the exercise of the power conferred by sub-section (2)(a) of Section 25 by the officers mentioned therein. The power to enhance the punishment is a power which can be exercised only after the concerned Officer has exercised his power under S. 25(2)(a). In other words, rules or orders can be made by Government under S. 25(2)(c) only for guiding him either in the matter of procedure, or the manner of arriving at a decision. It is obvious from the language of Section 25(2)(c) that while the power exercisable under Section 25(2)(a) is subject to the rules and orders made by Government, the decision which comes into being after the exercise of that power is not subject to the


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supervision of the Government by framing a rule or making an order in that behalf. Once the exercise of such power results in the imposition of a punishment, the punishment becomes final subject only to an appeal which is authorised by S. 27. The consequence is that Rule 17 (2) of the Rules, by which the Government sought to acquire power to call for the records and to revise orders passed under S. 25(2)(a) and to enhance the punishment imposed, was clearly beyond its competence."

2. If one has regard to the aforesaid decision of the Supreme Court, it is clear that the impugned order passed by the Commissioner of Police enhancing the punishment imposed by the appellate authority is beyond his competence. Aforesaid impugned order passed by the Commissioner of Police on 6.5.1998 [Annexure A-3] is accordingly quashed and set aside and the one issued by the appellate authority on 6.10.1997 [Annexure A-12] is restored.

3. Present O.A. is accordingly allowed in the aforestated terms. There shall, however, be no order as to costs.


(Ashok Agarwal)
Chairman


(V. K. Majotra)
Member (A)

/as/