CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.396/99
O.A.No.1505/99

New Delhi this the 3rd day of November, 1999

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE-CHAIRMAN(J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

OA-396/99

Ex. Constable(Driver) Pawan Kumar,
No.11986/D.A.P.,
S/o Shri Bhoop Singh,
R/o Village & P.O. Ladrawan,
District Jhajar, Haryana. ...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

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

2. Lt. Governor of Delhi,
5, Raj Niwas Marg,
Delhi-54.

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

4. Sr. Addl. Commissioner of Police,
A.P. & T,
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.

5. Dy. Commissioner of Police,
Xth Bn, Kingsway Camp,
New Police Lines,
Delhi. ...Respondents

(By Advocate Shri Arun Bhardwaj, through proxy counsel
Shri Bhaskar Bhardwaj)

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Inspector Sunder Dev
D-2000,
S/o Shri Kishan Lal,
R/o H.No.61, Village Malik Pur,
Delhi-9. ...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

1. Union of India,
through its Secretary,
Ministry of Home Affairs,

North Block,
New Delhi.

2. Lt. Governor of Delhi,
5, Raj Niwas Marg,
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3. Commissioner of Police,
Police Headquarters, I.P. Estate,
M.S.O. Building,
New Delhi. ...Respondents

(By Advocate Shri Raj Singh)

ORDER

By Reddy, J.-

As these two cases involve the same question of law, they are disposed of by a common order.

2. In these two cases, the validity of Rule 25 B of Delhi Police (Punishment and Appeal) Amendment Rule, 1994 is under challenge. As the facts in each case are slightly different, they are stated, in brief, as under:

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3. The applicant is a Constable in Delhi Police. At the time of filing an applicantion for appointment as a Constable (Driver) in Delhi Police in 1991, there was a criminal case registered against him. The applicant was placed under suspension on the allegation that he enrolled himself in the Delhi Police as a Constable by suppressing the fact that the criminal case was pending against him. After the departmental inquiry was conducted the inquiry officer found that the charge was established. Meanwhile, he was tried by the Judicial Magistrate in the criminal case pending against him and he was acquitted by the judgment dated 5.6.1995. Nevertheless, the disciplinary

authority agreeing with the findings of the inquiry officer imposed a major punishment of withholding of two increments for two years with cumulative effect. The applicant had not preferred an appeal against the above order. But the respondent suo moto issued a show cause notice dated 2.5.1996 under Rule 25 B of the Delhi Police (Punishment and Appeal) Rules (Annexure A-3) (for short, the Rules) as to why the punishment should not be enhanced to the extent of removal from service and his suspension period should not be treated as not spent on duty. The applicant was asked to give his explanation within 15 days. After the applicant submitted his explanation the respondent passed the impugned order dated 17.9.1997 removing the applicant from service. Aggrieved by the above order the applicant filed the above O.A.

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4. The applicant in this case is a Sub Inspector and on certain allegations, a departmental enquiry was ordered against him. But the Senior Additional Commisioner of Police on 23.12.1996 ordered to drop the departmental inquiry on the ground that it was initiated after one year from the date of preliminary inquiry report. The applicant was later on promoted as Inspector in the promotion list 'F' w.e.f. 28.12.1996. It is his grievance that after a period of two and a half years the applicant was served with the impugned order whereby the order dated 23.12.1996 dropping the proceedings against him was reviewed under Rule 25 B of the Rules and ordering

departmental inquiry from the stage of issue of summary of allegations. The above order is under challenge in the present O.A.

5. In both the OAs, the learned counsel for the applicants Shri Shankar Raju, questions the validity of the Rule 25 B on two grounds, viz.:

i) That under Section 148 (2) of the Delhi Police Act, every Rule made under the Act shall be laid before the Parliament, immediately after the Rules ~~was~~ are made by the Rule Making Authority and only thereafter the Rule shall come into effect. As the Rule has not so far been placed before the Parliament, and hence approved by the Parliament, it has no force. Hence, the action of the Respondent taken under the Rule is null and void.

ii) As Rule 25 B empowers, by way of review the Commissioner of Police etc. to revise or enhance the punishment against an employee, it goes beyond the competence of the Rule Making Authority, hence it is ultra vires of the provisions of the Act.

6. The learned counsel appearing for the respondents, however, refutes the contentions of the learned counsel for the applicants and contends that Rule 25 B is valid and that there was no violation of Section 148 of the Act and that the Rule Making Authority is empowered to frame the Rule.

7. We have carefully considered the rival contentions. In order to appreciate the contention it is necessary to read Rule 25 B of the Rules.

> "25 B. Review--The Commissioner of Police, an Addl. Commissioner of Police; Dy. Commissioners of Police and Addl. Dy. Commissioners of Police, Principal, Police Training School or College; or any other officer of equivalent rank may at any time call for the records of awards made by any of his subordinate either on his own motion or otherwise and confirm, enhance, modify or annul the same or make further investigation or direct such to be made before passing orders:
>
> Provided that no such action under this sub-rule shall be initiated more than 6 months after the date of the order sought to be reviewed except with the prior approval of the Lt. Governor, Delhi.
>
> (ii) If an award of dismissal or removal from service is annulled, the officer annulling it shall state whether it is to be recorded as suspension followed by re-instatement or not. The order shall also state whether service previous to dismissal or removal shall count for pension or not.
>
> (iii) In all cases in which an officer proposes to enhance punishment he shall, before passing final orders give the defaulter concerned an opportunity of showing cases, in writing, including personal hearing, if asked for, why his punishment should be enhanced."

Rule 25 B has been introduced by way of amendment of the Rules in 1994. The first contention of the learned counsel of the applicant is that the Rule has no validity since the amendment made in 1994 by which the Rule has been brought into existence was not laid before the Parliament as mandated by Section 148 of the Act. It is no doubt true that under Sub Section (2) of Section 148 of the Act, every Rule shall have to be laid before the Parliament, as soon it is made, for a period of 30 days. If both the Houses of the Parliament either modified or

annulled the rule it shall thereafter have effect only in such modified form or of no effect at all, as the case may be. The sub Section also makes it clear that any modification or annulment shall be without prejudice to the validity of the action taken under the Rule before it was modified or annulled. It is, therefore, manifest from a close examination of the sub-section that the Parliament has not intended while enacting the section that any Rule made by the Government should have been approved before it was enforced. What was intended was that the Rule shall nevertheless be laid before the Parliament after it was made for a period of 30 days and once it is either modified or annulled, the Rule will have effect in such modified form or will have no effect, thereafter. It therefore appears that the contention that unless the Rule is laid before the Parliament or approved, it has no validity, appears to be wholly incorrect. From the scope and design of the Rule, Parliament only intended that Rule should be brought before the House after it was made. Further, this Section does not make the Rule invalid, if it is not laid before the House and approved by it. No other provision is brought to our attention where the said consequence is provided. In the absence of any such provision, it should only mean that the Parliament did not intend that the laying of the Rule before the Parliament and getting it approved by it was mandatory for the validity of the Rule. It is, however, the case of the applicant and it is not disputed by the respondent that though the amendment was made in 1994 enacting Rule 25 B, has not been laid before the Parliament so far. It is stated that the Government is now taking steps to do so.

8. It is no doubt true that sub-section (2) implies by the use of the word "shall" laying the Rule before the Parliament as a mandatory requirement, But the law is well settled that the use of the word "shall" is not conclusive and decisive of the matter, the Court has to ascertain the true intention of the Legislature, which is the determining factor, and that must be done by looking carefully to the whole scope, nature and design of the statute vide State of Uttar Pradesh Vs. Manbodhan Lal Srivastava, AIR 1957 SC 192 and State of Uttar Pradesh Vs. Babu Ram, AIR 1961 SC 751, where the Subba Rao, J observed as follows:-

> "The relevant rules of interpretation may be briefly stated thus: When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

9. In M/s. Atlas Cycle Industries Ltd. Vs. State of Haryana, AIR 1979 SC 1149. The Supreme Court after an elaborate discssion of the case law on the point as to the various forms of laying" of a provision before the Legislature or Parliament, Jaswant, J. speaking for the Court, while considering the implication of Section 3(6) of the Essential Commodities Act and the effect of non-laying of the notification issued by the Central

Governmebnt fixing the rates of various catgegories of iron and steel under the iron and steel order and why the notification was not placed before the Houses of Parliament held:

> "In the instant case, it would be noticed that sub-section (6) of Section 3 of the Act merely provides that every order made under S.3 by the Central Govt or by any officer or authority of the Central Govt. shall be laid before both Houses of Parlament, as soon as may be, after it is made. It does not provide that it shall be subject to the negative or the affirmative resolution by either House of Parliament. It also does not provide that it shall be open to the Parliament to approve or disapprove the order made under Section 3 of the Act. It does not even say that it shall be subject to any modification which either House of Parliament may in its wisdom think it necessary to provide. It does not even specify the period for which the order is to be laid before both Houses of Parliament nor does it provide any penalty for non-observance of or non-compliance with the direction as to the laying of the order before both Houses of Parliament. It would also be noticed that the requirement as to the laying of the order before both House of Parliament is not a condition precedent but subsequent to the making of the orders without the approval of both Houses of Parliament. In these circumstances, we are clearly of the view that the requirement as to laying contained in sub-section (6) of Section 3 of the Act falls within the first category of 'simple laying' and is directory and not mandatory."

10. The court thus held that non laying of the notification before the Houses of the Parliament will result in nullification of the Notification. The ratio in the above authorative pronouncement is squarely applicable to the facts of the present cases. We, therefore, hold that even though the Rule has not been 'laid' before the Parliament, as contemplated under Section 148 of the Act, it cannot be said that it would result in the nullification of the Rule. However, it is mandatory to comply with the requirement of sub section (2) of Section

148 of the Act by placing the Amended Rule 25 B before the Parliament. We, therefore, direct to place the rule before the Parliament within the shortest possible time.

11. We now deal with the next contention; The Govt. is empowered as a rule making authority under Section 147 of the Act to make rules for carrying out the purposes of the Act. Sub Section (2) expressly provides that such rules may provide for the enumerated matters thereunder, and in 2 (c) it is contemplated that the rules may provide for awarding of any of the punishments referred to in Sub Section (1) or sub Section (2) of 21 to any Police Officers of sub ordinate rank. Sub Rule 2 (d) enables the Govt. to frame the rules as to the procedure for awarding punishment under Section 22. It is, therefore, necessary to consider Sections 21 and 22 of the Act. Section 21 enables the Commissioner of Police, Additional Commissioner of Police etc. to award punishment to any Police Officer of subordiante rank, the punishments mentioned in Section 21 (1). Dismissal and removal from service are also mentioned as one of such punishments. Section 22 contemplates that awarding of any punishment as mentioned in Section 22 shall contain reasons in accordance with rules. Section 23 provides for an appeal against an order of punishment passed by a Police Officer under Section 21.

12. The Delhi Police (Punishment & Appeal) Rules were made in exercise of the powers conferred by Section 147 (1) and (2) of the Act. These rules contain the procedure for the enquiries to be made for awarding punishments. Rules 16 to 20 deal with procedure as to the

departmental enquiries and passing the final order. Rule 23 provides for appeal. Rule 25 provides for the kind of orders that can be passed by the appellate authority. It is seen that under Rule 25 the appellate authority can either confirm or set aside the order of punishment or reduce the punishment and direct further enquiry by the enquiry officer. There was thus no provision for revising the order of the appellate authority or for revision or review of the order passed by the appellate authority. Hence Section 25 A and Section 25 B were brought into existence by the amendment Act of 1994.

13. After consideration of the above provisions in the Act, we are of the opinion that the contention advanced that the rule is ultra vires of the powers of the rule making authority appears to be clearly erroneous. A combined reading of ~~under~~ Sections 141 and 148 of the Act make it clear that the rule making authority in "carying out the purposes of" the Act is empowered to make rules for awarding of any of the punishments referred to in Section 21. Accordingly the rules were framed as to how the departmental enquiry should be conducted and as to how the final order be passed and how the appeal is filed. The impugned Rule 25 B empowers the Commissioner of Police and other enumerated officers to review a case suo moto and enhance the punishment given by the disciplinary authority or by the appellate authority. The reviewing authority will enhance the punishment only on the basis of the evidence available on record. It is clear from rule 25 B that the orders that are sought to be reviewed are the awards of punishment made by any of the subordinate officers to the reviewing authority. This power is vested

on the Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police etc. by Sections 21 and 22 of the Act. However, as a safeguard to the delinquent, it was We are of the view that the Rule 25 B is in accordance with Sections 21 and 22 of the Act and it is not ultra vires.

14. Hence, both the contentions are rejected. No other arguments were advanced. Both the OAs are, therefore, dismissed with costs of Rs.1500/- (Rupees one thousand five hundred) in each case.

(Smt. Shanta Shastry)
Member (A)

(V.Rajagopala Reddy)
Vice-Chairman(J)

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