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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2535/1999

New Delhi this the 18th day of July, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

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

W/ASI Jagtar Kaur No.738/D
W/O S.L.Chawla,
R/O 28-B, Police Colony,
Model Town, Delhi-110009.

... Applicant

(By Shri Shankar Raju, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Home Arrairs,
North Block, New Delhi.
2. Addl. Commissioner of Police,
Police control Room & Communications,
Police Headquarters, I.P.Estate,
New Delhi.
3. Dy. Commissioner of Police,
Police control Room,
Police Headquarters, I.P.Estate,
New Delhi. ... Respondents

(By Mrs. Meera Chhibber, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

A penalty of reduction in rank from the post of Sub Inspector to that of Assistant Sub Inspector issued by the disciplinary authority on 16.12.1998 as affirmed by the appellate authority on 21.9.1999 is impugned in the present O.A.

2. Disciplinary proceedings were initiated against applicant vide order dated 3.9.1996. Applicant was served with a summary of allegations on 6.9.1996. She was served with a fresh summary of allegations on 11.6.1998. Applicant submitted her written statements in regard to the aforesaid summary of allegations and charge. The enquiry was entrusted

[Signature]

to one ACP Devi Chand who by his report of 15.4.1997 exonerated her. The disciplinary authority by its orders issued on 2.2.1998 directed a supplementary enquiry to be held under Rule 16(xi) of the Delhi Police (Punishment & Appeal) Rules, 1980. Since the aforesaid order of 2.2.1998 contained some lacunae, the disciplinary authority by a further order issued on 16.5.1998 directed another supplementary enquiry against applicant from the stage of summary of allegations. The enquiry was entrusted to ACP Ranbir Singh for conducting the proceedings, who, in turn by his report dated 28.9.1998 found the charges against applicant as proved. Based on the aforesaid findings, the disciplinary authority by its order dated 16.12.1998 accepted the findings of the aforesaid enquiry officer and proceeded to impose a major penalty of reduction in rank from Sub Inspector to Assistant Sub Inspector. Aforesaid order was carried by applicant in appeal. The appellate authority by its order of 21.9.1999 has affirmed both the findings of guilt as also the penalty imposed on applicant and dismissed the appeal. Aforesaid orders are impugned in the present O.A.

3. Shri Shankar Raju, the learned counsel appearing in support of the O.A., has first contended that the penalty which has been imposed on applicant is wholly untenable. The penalty imposed on applicant reads as follows :



.....I, Uday Sahay, DCP/PCR therefore, hereby order that major penalty punishment of reduction of rank from S.I. to ASI shall be imposed upon the defaulter."

4. Shri Raju has placed reliance on Rule 5 (iii) of the aforesaid Rules which in so far as the same is relevant, provides :

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"5. Authorised punishments- The Delhi Police Act, 1978 prescribes the following penalties -

xxx xxx

(iii) Reduction in rank for a specified period,"

xxx xxx"

According to Shri Raju, the impugned order of penalty which does not specify the period of reduction in rank is illegal and deserves to be set aside.

5. Mrs. Meera Chhibber, the learned counsel appearing for respondents, has, however, supported the aforesaid order of penalty by making a reference to Section 21 of the Delhi Police Act which prescribes powers of punishment. Sub-section (1) clause (c) of Section 21 provides for "reduction in rank". The power to impose a penalty which is contained in the parent Act, according to the learned counsel for respondents, cannot be ~~ever-ruled~~ ^{circumscribed} by the provisions of the aforesaid Rule ~~contained in the Delhi Police (Punishment & Appeal) Rules~~. Further reliance is placed by Mrs. Chhibber on F.R.29(2) which provides as under :

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"(2) If a Government servant is reduced as a measure of penalty to a lower service, grade or post or to a lower time-scale, the authority ordering the reduction may or may not specify, the period for which the reduction shall be effective; but where the period is specified, that authority shall also state whether, on restoration, the period of reduction shall operate to postpone future increments and, if so, to what extent."

Aforesaid provision of F.R.29 has been made applicable under the Delhi Police Act by a notification of 17.12.1980. The impugned punishment which does not specify the period of reduction in rank, in the circumstances, according to the learned counsel for respondents, is in order.

6. Section 21 of the Delhi Police Act provides for powers of imposing punishment. Under sub-section (1)(c) of Section 21 penalty of reduction in rank is provided for. The same does not require an order to specify the period for which reduction in rank is ordered. However, the aforesaid provision contained in the Act has to be read along with the relevant Rules being the Punishment and Appeal Rules. The same provide for imposing the aforesaid penalty of reduction in rank for a specified period. By Rule 5(iii) the penalty which is contemplated is reduction in rank for a specified period. The phrase "for a specified period" has been added by notification No.F5/20/84 Home (P) Estt. dated 4.9.1986. The aforesaid provision, in our judgment, is in no way in conflict with the provisions contained in the Act, namely, to impose a penalty of reduction in rank. The Act provides for a penalty of reduction in rank whereas the aforesaid Rule~~s~~ prescribes the method^{or mode} by which the aforesaid penalty can be imposed. The aforesaid requirement of imposing the penalty for a specified period has been induced by an amendment which, we presume, had been introduced by a conscious decision being taken in that behalf.

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7. As far as F.R.29 on which reliance is placed by the learned counsel for respondents is concerned, the aforesaid notification of 17.12.1980 which has made the FRs applicable to the Delhi Police Act has itself provided that in case of any conflict between the provisions of the Rules framed under the Delhi Police Act and the Central Government Rules adopted under this notification, the provisions of the Rules framed under the Delhi Police Act shall prevail. In the circumstances, we have no hesitation in holding that it is only in case where there is no conflict between the FRs and the Rules framed under the Delhi Police Act that the former will be applicable; the moment there appears any conflict, the latter will prevail. As far as the FRs are concerned, the same permit imposition of a penalty of reduction in rank without specifying the period whereas as far as the Rules under the Delhi Police Act are concerned, the same require a specific period to be mentioned in the order. In the circumstances, we find that the contention advanced by Shri Raju is justified.

8. Shri Raju has next urged that the enquiry officer who had first been appointed in the instant case was pleased to exonerate the applicant. The disciplinary authority by its order of 16.5.1998 has not directed a supplementary enquiry but has virtually ordered an enquiry de novo. The disciplinary authority in its order has observed as follows :

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.....As per the said rules, the EO was required to cross examine the prosecution witnesses with a view to elucidate the facts referred to in the statements or documents brought on record. It appeared that the EO deliberately failed to cross examine all the PWs except HC Vipti Ram, No.719/DAP (PW-2).

Moreover, the questions were put to this PW in a manner which helped the defaulter SI to prepare her defence..."

"Therefore, I, Uday Sahay, DCP/PCR in view of Rule 16(x) of Delhi Police (Punishment & Appeal) Rules, 1980 hereby order to conduct the supplementary enquiry against W/SI Jagtar Kaur, No.D/2502 from the stage of Summary of Allegation. The DE is entrusted to Sh.Ranvir Singh, ACP-S.W.Z./PCR for conducting its proceedings on day to day basis and submitting his findings at the earliest. The Enquiry Officer will also submit a weekly progress report to the undersigned."

According to Shri Raju, what the disciplinary authority has done is to virtually erase the entire proceedings conducted by the earlier enquiry officer ACP Devi Chand and thereby ordered a de novo enquiry at the hands of a fresh enquiry officer. This, according to the learned counsel for applicant is impermissible under Rule 16(x) which merely authorises ~~the~~ holding of a supplementary enquiry and not a de novo enquiry. The disciplinary authority, if it were to differ with the findings of the enquiry officer, was at liberty either to record his note of disagreement or direct a supplementary enquiry. The disciplinary authority, under the circumstances, was not at all justified in directing a de novo enquiry and that too after unjustifiably holding that the earlier enquiry officer had failed to cross examine the prosecution witnesses, ~~which, in our view,~~ ^{which is} hardly a role that can be said to be entrusted to an enquiry officer.

9. In our view, if one has regard to the order passed by the disciplinary authority, it becomes clear that the order of the disciplinary authority cannot be said to be a dispassionate one. If the disciplinary

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authority had disagreed with the findings of the enquiry officer, nothing prevented him from recording his note of disagreement. If he found that the enquiry conducted by the enquiry officer was incomplete, again nothing prevented him from directing a supplementary enquiry. He was, however, wholly unjustified in directing a de novo enquiry thereby erasing the entire enquiry proceedings which had been conducted by the first enquiry officer. The enquiry officer who was thereafter appointed has examined the very same witnesses who had been examined in the earlier enquiry and surprisingly, the ~~various~~ same witnesses ~~had~~ deposed contrary to their deposition in the first enquiry. The evidence of the witnesses in the first enquiry could not be utilized by and on behalf of applicant ~~for the purpose~~ ~~by way~~ of shaking the veracity of the witnesses in the second enquiry as their ~~very~~ ~~earliest~~ evidence had been ~~erased~~ ~~completely obliterated~~ by the order passed by the disciplinary authority ordering a de novo enquiry. Applicant, in the circumstances, we find, has been ~~in his defence~~ seriously prejudiced in the disciplinary proceedings.

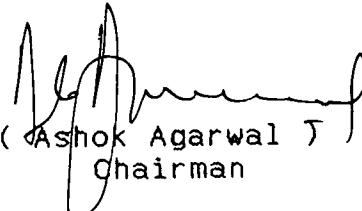
10. Having regard to the aforesated facts, we hold that ends of justice would be met by remanding the present disciplinary proceedings to the stage of findings issued by the first enquiry officer ACP Devi Chand on 15.4.1997. The disciplinary authority will be at liberty, if he is so advised, to take further ~~in furtherance of the disciplinary proceedings~~ steps in accordance with law. In case the disciplinary authority chooses to take steps against applicant, the same be ~~done~~ ^{taken} within a period of four months from the date of service of this order. In ~~no~~ ^{no} case ~~within the aforeslated period~~ ^{within the aforeslated period} ~~applicant~~ ^{applicant} steps favourable to applicant are taken, she will

M.J

~~because~~
be entitled to be restored to her original position of
Sub Inspector with all consequential benefits.

11. Present O.A. is accordingly allowed in the
aforestated terms but without any order as to costs.

V. K. Majotra
(V. K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

/as/