

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 589/99
T.A. No.

19

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DATE OF DECISION 25-10-2000

Sh. Manikeshwar Sharma

... Petitioner

None present

... Advocate for the
Petition(s)

Versus

UOI Through Secy. M/O
Home Affairs and Ors

... Respondents

Sh. Vijay Pandita

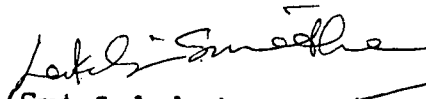
... Advocate for the
Respondents

CORAM :

The Hon'ble Smt. Lakshmi Swaminathan, M(J)

The Hon'ble Shri V.K. Majotra, Member(A)

1. To be referred to the Reporter or not.? Yes
2. Whether it needs to be circulated to
other Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal: Principal Bench

O.A. No. 589/99

New Delhi this the 25th day of October, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri V.K. Majotra, Member (A)

Shri Manikeshwar Sharma
S/o Shri Birkha Ram
R/o C 37, Rana Park,
Sameypur Badli,
Delhi-110042.

-Applicant

(None Present)

Versus

1. Union of India
Through Secretary,
Ministry of Home Affairs,
Central Secretariat,
New Delhi.

2. Commissioner of Police,
Police Headquarters,
I.T.O.,
New Delhi-110002.

-Respondents

(By Advocate: Shri Vijay Pandita)

ORDER (Oral)

Smt. Lakshmi Swaminathan, Member (J)

The applicant has filed his application impugning the validity of the order passed by the Commissioner of Police dated 7.8.98 dismissing his representation against the penalty order passed against him of forfeiting permanently 3 years approved service and reduction of pay by three stages vide order dated 14.12.89 passed by the Disciplinary Authority and dismissal of his appeal by the Appellate Authority vide his order dated 17.5.90.

2. The brief relevant facts of the case are that the aforesaid impugned order has been passed in furtherance to the directions of the Tribunal dated

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27.4.98 in C.P. 138/98 in O.A. 2948/97. The applicant had been proceeded against departmentally for beating up a member of public and absuing him namely, a chowkidar in village AIR Khanpur. The applicant had been detailed for duty on 19/20.1.89 at AIR Khanpur, Delhi with two Home Guard personnel. It was alleged that when he did not find any chowkidar or "Thikri Pahra" men, he went inside the village to check the chowkidar. It was alleged that he had an exchange of verbal abuse with the chowkidar and also had a scuffle with him, when he hit the chowkidar with lathi causing injury to his hand. The applicant was placed under suspension w.e.f. 23.1.89 and a regular departmental enquiry was ordered against him. The Enquiry Officer has found him guilty of the charge levelled against the applicant. The Disciplinary Authority had after examining the evidence and document on record and also hearing the applicant, imposed the punishment under challenge vide his order dated 14.12.89. The appeal submitted by the applicant was also rejected by the Appellate Authority vide his order dated 17.5.90. After the appeal was rejected, the applicant submitted a representation to the Commissioner of Police, Delhi through his Advocate which was not accepted by the respondents as it did not contain his signature on the representation. Thereafter the applicant filed the aforesaid OA 2948/97. Consequent upon the Tribunal's order dated 21.4.95 in the OA and the further order in CP-138/98, the applicant submitted his representation which has been disposed of by the

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Commissioner of Police vide his order dated 7.8.98 which has been challenged in this OA.

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3. As none has appeared for the applicant even on the second call and this case has been listed at Sr. No. 7 in today's cause list under regular matters, we have carefully perused the pleadings and documents on record. It is also relevant to note that although a number of opportunities have been given to the applicant to file rejoinder to the counter affidavit filed by the respondents, the applicant has chosen not to file the same. We have also heard Shri Vijay Pandita, learned counsel for respondents.

4. One of the main grounds taken by the applicant to challenge the order passed by the respondents dated 7.8.98 is that because a criminal case was pending against the applicant in the criminal Court, a departmental enquiry on the same facts could not have been conducted by them so as to cause prejudice to the applicant. He has further contended that the acquittal of the case against the applicant by the criminal Court is binding upon the findings of the domestic enquiry. In the facts and circumstances of the case, we are unable to agree with either of these contentions raised by the applicant. The respondents have correctly relied upon the judgments of the Hon'ble Supreme Court in State of Rajasthan Vs. B.K. Meena {(1996) (8) ATC 684} and on the three Bench judgment of the Apex

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court in Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya and Others {(1997) (2) SCC 699}.

5. In Miya's case (supra) the Supreme Court, after referring to the judgment of the Court in Meena's case (supra) and Kusheshwar Dubey Vs. M/s Bharat Coking Coal Limited and Others {1988 (4) SCC 319} have quoted the following passage from Meena's case:-

"It would be evident from the above decision..... the defence of the employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law".

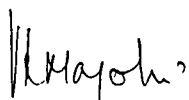
6. In the present case, as the applicant has been admittedly acquitted in the criminal Court, we are unable to agree with the applicant's contention that the proceedings in the domestic enquiry has caused any prejudice to him in the criminal case. Further, from a perusal of the materials on record, we agree with the respondents that the penalty orders imposed on the applicant in the departmental enquiry has been done after following the due procedure of law and granting him an opportunity to put forward his defence in compliance with the principles of natural justice. Therefore, the contention of the applicant that because a criminal case was pending against him, the domestic enquiry should have been automatically stayed cannot be accepted, having

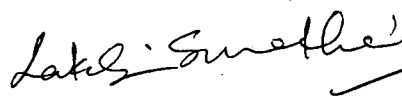
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regard to the aforesaid decisions of the Supreme Court. Further, in the impugned order, the Commissioner of Police while disposing of the applicant's representation has dealt with his pleas which in the facts of the case cannot be faulted. In the order dated 7.8.98, it has been stated that the departmental enquiry against the petitioner had been dealt with for beating up a member of the public and abusing him, which misconduct was proved in the course of the domestic enquiry and hence punishment was awarded to the applicant. It has been further recorded that the acquittal of the applicant in the criminal case by giving him benefit of doubt cannot also affect the otherwise correctly conducted domestic enquiry by the respondents. This conclusion of the respondents is also valid having regard to the facts and circumstances of the case.

7. In the result for the reasons given above, we find no merit in this application. The OA is accordingly dismissed. No order as to costs.


(V.K. MAJOTRA)
MEMBER (A)


(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

cc.