

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.618/1999

29

New Delhi, this 10th day of July, 2001

Honble Shri Justice Ashok Agarwal, Chairman
Honble Shri M.P.Singh, Member(A)

Constable Ashok Kumar, No.481-A
F-19, Mandawali, Uche Pur
PO Trilokpuri, New Delhi .. Applicant

(By Shri R.V. Sinha, Advocate)

versus

1. Commissioner of Police
Delhi Police, Police Hqrs.
IP Estates, New Delhi
2. Shri P.D. Duggal
ACP & Enquiry Officer
Shift C, NITC, New Delhi
3. Deputy Commissioner of Police
Delhi Police, IGI Airport, New Delhi
4. Adl. Commissioner of Police (Ops)
Delhi Police, Police Hqrs.,
IP Estates, New Delhi .. Respondents

(By Mrs. Jasmine Ahmed, Advocate)

ORDER(oral)

By Shri Justice Ashok Agarwal

In respect of an incident that had taken place on 7.7.1997, disciplinary proceedings were initiated against the applicant who is a Constable in Delhi Police, who at the material time was posted as personal orderly to one Shri Sita Ram Mamgain, ACP/IGI Airport. The applicant was charged under the following summary of allegation:

"It is alleged against Const. Ashok Kumar No.481-A that on 7.7.97 while driving bus No.DL-IP-8227 under DTC, he jumped Red Light of W-Point on way from ITO side and continued driving the bus rashly and dangerously causing danger to the life of the public in the presence of C.P. Delhi. The bus was stopped at Sikandara Road Bus Stop. On receiving W.T. message in Tilak Marg Circle from SI Karan Singh No.2376-D WT Operator of C.P. Delhi, ASI Parmanand Z.O. reached the spot and challaned Ashok Kumar s/o Shri Harbhajan Singh r/o F-19, Mandawali, Fazalpur, Delhi-92, the bus driver, and arrested him U/S 184 M.V.Act and later on released him on personal Bond. It was found that Ashok

Kumar, bus driver, is a Constable of Delhi Police and posted as personal orderly to Shri Sita Ram Mamgain, ACP/IGI Airport.

2. It is further alleged against Const. Ashok Kumar No.481-A that being a Govt. servant he engaged himself in other trade and undertaking employment in violation of Rule 15 of CCS(Conduct) Rules, 1964".

2. The inquiry authority during course of the proceedings before it has examined four ~~Defence~~ ^{Prosecution} Witnesses and 5 ~~Prosecution~~ ^{Defence} Witnesses. Based on the aforesaid oral testimony as also on the documentary evidence adduced before it, the enquiry authority by its report of 2.11.97 has found the aforesaid charges proved against the applicant. The disciplinary authority by its order of 22.12.97 has concurred with the findings of the enquiry authority and has proceeded to impose the extreme penalty of dismissal from service against him. The aforesaid order of the disciplinary authority was carried by the applicant in ~~his~~ appeal and the appellate authority by an order passed on 19.3.98 has agreed with the findings and order passed by the disciplinary authority and has dismissed the appeal. The aforesaid orders of the disciplinary and appellate authorities were carried by the applicant in a revision and the revisional authority vide its order dated 4.1.99 has affirmed the aforesaid orders of the disciplinary authority and appellate authority and has proceeded to dismiss the ~~original~~ ^{revision} application. The aforesaid orders are impugned by the applicant in the present OA.

3. Shri R.V. Sinha, learned advocate appearing in support of the applicant has raised several contentions in his attempt to impugn the aforesaid orders of penalty imposed upon the applicant.

4. Shri Sinha firstly contended that it is a case of no evidence. We have perused the report of the enquiry officer who has summarised the evidence of of PWs as well as DWS. We have also considered the documentary evidence which has been brought on record and we find that the aforesaid contention is without any force. On the contrary, we find that the findings are based on good and positive evidence which have found favour with all the authorities, namely enquiry authority, disciplinary authority, appellate authority as well as revisional authority. The aforesaid contention, in the circumstances, is rejected.

5. Shri Sinha has next contended that the present disciplinary proceedings have been initiated at the instance of Commissioner of Police who was present when the incident had occurred. Hence, according to him, the Commissioner of Police was a relevant witness in the enquiry. Since he has not been examined, the whole enquiry is liable to be thrown over-board. In our judgement, there is no force in the aforesaid contention. Merely because the Commissioner of Police has not been examined does not warrant a finding that the entire evidence on record stands vitiated. The evidence which is recorded unmistakably points out that the applicant was driving the DTC bus in a rash and dangerous manner and had jumped red light. The applicant who was found driving the said bus, later on was found to be a Constable in Delhi Police posted as personal orderly to the ACP/IGI Airport. Hence on both issues, namely driving the bus rashly and dangerously causing danger to the life of the public by jumping red signal as also employing himself as a bus driver of the DTC bus have

N.D.

6/3

been proved from the evidence adduced before the enquiry authority. The aforesaid second contention of Shri Sinha, in the circumstances, is also rejected.

6. Shri Sinha has next contended that the present disciplinary proceedings have been initiated by the Commissioner of Police. Hence based on instructions issued by the Government of India under Rule 15 of CSS(CAA) Rules, 1965 disciplinary authority should have been none other than the Commissioner of Police himself. Since the disciplinary authority in the instant case is an officer below the rank of Commissioner of Police, the enquiry proceedings would stand vitiated. The said instructions on which which reliance is placed by Shri Sinha provides as under:

"3. Instances have also come to notice where, though the decisions in disciplinary/appellate cases were taken by the competent disciplinary/appellate authorities in the files, the final orders were not issued by that authority but only by a lower authority. As mentioned above, the disciplinary/appellate/reviewing authorities exercise quasi-judicial powers and as such, they cannot delegate their powers to their subordinates. It is, therefore, essential that the decision taken by such authorities are communicated by the competent authority under their own signatures, and the order as issued should comply with the legal requirements as indicated in the preceding paragraphs. It is only in those cases where the President is the prescribed disciplinary/appellate/reviewing authority and where the Minister concerned has considered the case and given his orders that an order may be authenticated by an officer, who has been authorized to authenticate orders in the name of the President".

(3) "Higher disciplinary authority" instituting the proceedings competent to impose a minor penalty - When proceedings are instituted by a "higher disciplinary authority", final order should also be passed by such "higher disciplinary authority" and the case should not be remitted to a lower disciplinary authority, on the ground that on merits of the case it is sufficient to impose a minor penalty and such minor penalty could be imposed by a lower disciplinary authority. In such cases, the appeal against the punishment order of the "higher



(29)

"disciplinary authority" shall be to the authority prescribed under the rules as the appellate authority in respect of such order".

7. In our judgment, the aforesaid instructions can have no application in the instant case as the present disciplinary proceedings have not been initiated by the Commissioner of Police. The same may have been directed to be held by the Commissioner of Police but the same has been initiated by an order No. 4212-3/HAP/IGIA(P-1/B) on *Deputy Commissioners of Police* 22.7.97. It has been issued by an officer below the rank of Commissioner of Police. Since the present enquiry has been initiated not by the Commissioner of Police but by the aforesaid order by an officer below his rank, may be at the direction of the Commissioner of Police, the aforesaid instructions will have no application. This contention of Shri Sinha in the circumstances is also rejected.

8. Shri Sinha has next contended that all that has been found against the applicant is the solitary incident of 7.7.97. There is no past adverse record that has been pointed out so as to justify imposition of extreme penalty of dismissal from service. In his support, he has placed reliance on Rules 8 and 10 of the Delhi Police (Punishment & Appeal) Rules, 1980, which provide as under:

"8. The punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service".

"10. The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not

25

established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank."

9. According to Shri Sinha Rules 8 and 10 have to be read together and it is only if the past record of the delinquent is found to be such then that would justify the finding that the misconduct is grave rendering him unfit for police service that an order of dismissal from service can be passed. In our judgement, there is no merit in the aforesaid contention. The aforesaid Rule 8 have made provision for imposition of penalty of dismissal or removal from service on finding of grave misconduct rendering his continuance in Police Service undesirable.

10. Rule 10 merely enables taking into account past adverse record also for justifying passing of order of dismissal from service. If Shri Sinha's submission that no order of dismissal from service can be passed unless there is adverse past record against the delinquent is accepted the same would result in disastrous consequences. Even if a most heinous crime is committed the same will not justify penalty of dismissal from service unless it is backed by past adverse records. Shri Sinha in order to buttress his argument has placed reliance on the judgement of the SB of Delhi High Court in the case of Sukhbir Singh Vs. Dy. Commissioner 1984 Rajdhani Law Reporter 282, which has considered Rule 16.2(1) of Punjab Police Rules, 1934, which provides as under:

W.D.

"Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension".

In the above judgement the learned Single Bench Judge referring to Rules 8 and 10 of the Delhi Police (Punishment & Appeal) Rules, 1980 has gone on to hold that the misconduct must be very 'grave' and 'continued' indicating incorrigibility and complete unfitness for police service. The aforesaid judgement dealt with the misconduct of the delinquent, who was charged with stealing of a brass utensil (patila), which was the subject matter of the disciplinary proceedings. It was observed that extreme penalty of dismissal from service should not have been resorted to as aforesaid misconduct was not backed by past adverse record. The aforesaid case in our view does not and can not apply to the facts of the present case.

11. Shri Sinha has next contended that in respect of second charge, namely, the applicant having engaged himself in other trade as Driver and undertaken employment, there is no evidence. According to him, unless there was evidence to show that he had accepted employment with the DTC as Driver and had received salary for the same, the aforesaid charge cannot be held proved. In our judgement, there is no merit in this contention also. The fact that the applicant is a Constable in Delhi Police and he was found driving DTC bus is sufficient to hold that he had engaged himself in an alternate employment. The aforesaid contention, in the circumstances, is also rejected.

12. Shri Sinha has next contended that the applicant has not been given personal hearing by the revisional authority while deciding the case, as provided in Rule 25A, which reads as under:

[Signature]

A Government servant whose appeal has been rejected will not be entitled to file a second appeal. Such government servant may however, file a revision within a month of receipt of appellate orders by him to the authority superior to the appellate authority on grounds of material irregularity or illegality in the proceedings provided that no application for revision of an order of the Lt. Government shall lie. The revisional authority thereupon -

- (i) confirm or modify the impugned order; or
- (ii) accept the revision petition and set aside the order of the appellate authority; or
- (iii) reduce the punishment; or
- (iv) impose any penalty where no penalty has been imposed; or
- (v) disagree with the disciplinary/appellate authority, and enhance the punishment; or
- (vi) remit the case to the authority which made the order or any other authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- (vii) pass such other orders as it may deem fit.

Provided that no orders imposing or enhancing any penalty shall be made by any revising authority unless the Govt. servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or against the enhancement of the penalty by the order sought to be revised and if no enquiry under Rule 16 has already been held in the case then no penalty, as prescribed in clauses (i) to (vii) under Rule 5 shall be imposed except after an enquiry in the manner laid down in Rule 16:

Provided further that no power of revision shall be exercised unless:-

- (ii) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules

He has also placed reliance on Rule 25 B which provides as under:

The Commissioner of Police/ACP/DCP/ADCP 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. 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 cause, in writing, including personal hearing, if asked for, why his punishment should not be enhanced.

WJD

28

According to Shri Sinha, applicant's request for a hearing by the revisional authority should not have been denied to him. In our judgement, there is no merit in the aforesaid contention of Shri Sinha. Opportunity of hearing has to be provided under the aforesaid Rule 25A only where the revisional authority disagrees with the disciplinary/appellate authority and enhances the punishment. Revisional authority is not required to give personal hearing once the appellate authority agrees with the order passed by the disciplinary authority. The aforesaid contention in the circumstances is also rejected.

13. Shri Sinha has ~~further~~ ^{finally} contended that orders passed by the disciplinary and appellate authorities are not speaking ones. We have perused these orders and both the authorities have given sufficient reason justifying the punishment. This contention is also rejected.

14. No other contention is made out by Shri Sinha.

15. For the aforesaid reasons, the present OA, we find, is devoid of merit and is accordingly dismissed. No order as to costs.

mfsb
(M.P. Singh)
Member(A)

Ashok Agarwal
(Ashok Agarwal)
Chairman