

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1538/1998

(9)

New Delhi this the 5th day of December, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Ex. Constable Balkishan ~~40~~.
S/o Shri Ram Swaroop
R/o Village-Rajpur, P.O. Atterna
Police Stn. Rai, District Sonapat
Haryana.

... Applicant

(Shri Sachin Chauhan, proxy for Sh. Shanker
Raju, Advocate)

-versus-

1. Union of India
Through its Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Commissioner of Police
Police Head Quarters, I.P. Estate
M.S.O. Building, New Delhi.
3. Sr. Addl. Commissioner of Police
A.P. & T, Police Head Quarters
I.P. Estate, M.S.O. Building
New Delhi.
4. Dy. Commissioner of Police
1st Bn, D.A.P
New Police Lines, Kingsway Camp
Delhi.

... Respondents

(By Shri George Paracken, Advocate)

O R D E R (ORAL)

Justice Ashok Agarwal:-

By an order passed by the disciplinary authority on 5. 9. 1995 at Annexure A-3 in disciplinary proceedings conducted against the applicant, a penalty of forfeiture of 5 years approved service temporarily for a period of one year has been imposed upon him. By a later order passed by the reviewing authority on 4.12.1996 at Annexure A-1, aforesaid penalty has been enhanced to one of dismissal from service. Appeal of

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the applicant against the aforesaid order of dismissal from service has been ~~maintained~~^{dismissed} by the appellate authority by his order passed on 29.5.1998 at Annexure A-2. Aforesaid orders are impugned in the present OA.

2. Counsel for the applicant has submitted that the aforesaid order passed by the reviewing authority enhancing the penalty has been passed in purported exercise of powers under Rule 25 (B) (III) of Delhi Police (Punishment and Appeal Amendment) Rules, 1994. The said rule, counsel points out, has been held to be ultra vires by a Full Bench judgement of this Tribunal in **OA No. 77/1997** in the case of **Head Constable Rajpal Singh vs. Union of India & ors.** rendered on 14.9.2000 to which one of us (Justice Ashok Agarwal) was a party.

3. In view of the aforesaid decision, counsel submits that the aforesaid order of dismissal from service cannot be sustained.

4. In our judgement, contention raised is just and proper and the same deserves to be accepted. Once aforesaid rule is found to be ultra vires, the very power under which the order of penalty has been enhanced will fall to the ground. In the circumstances, the impugned order of dismissal from service is quashed and set aside and the penalty of forfeiture of five years approved service of the applicant temporarily for a period of one year as imposed by the disciplinary authority is ~~maintained~~^{restored}.

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5. Present OA in the circumstances is allowed in the aforestated terms. Applicant will now become entitled to reinstatement and incidental benefits as per rules. No costs.



(S.A.T. Rizvi)
Member (A)

sns


(Ashok Agarwal)
Chairman