

(3) IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI. 13

DA 166/98

New Delhi this the 23th day of September, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Hon'ble Shri K. Muthukumar, Member (A)

Sh. Gurmeet Singh

86, ODA Flats,

Jhilmil, Delhi-95

... Applicant

(By Advocate Shri D.N. Goburdhun)

Vs.

1. National Capital Territory of Delhi,
through Chief Secretary,
Sham Nath Marg,
New Delhi.

2. Commissioner of Police,
I.P. Estate,
Police Headquarters,
New Delhi.

3. Deputy Commissioner of Police
(Vigilance),
Police Headquarters,
New Delhi.

4. D.C.P. 3rd B.N.
D.A.P. Vikaspuri Lines,
Vikaspuri, New Delhi.

... Respondents

(By Advocate Shri Vijay Pandita)

ORDER (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant is aggrieved by the order passed by Respondent 2 dated 1.7.97 on the appeal filed by him, in pursuance of the Tribunal's order dated 3.4.97 in Gurmeet Singh Vs. NCT of Delhi through Chief Secretary and Others (DA 1601/95).

2. Shri D.N. Goburdhun, learned counsel for the applicant submits that in pursuance to the aforesaid order of the Tribunal, the applicant had filed an appeal on 2.5.97 and was also heard in person by the Commissioner of Police on 25.6.97 before passing the impugned order. Learned counsel submits that the same officer, Shri T.R. Kakkar, had passed the impugned order dated 1.7.97 as Commissioner of Police, sitting in ~~an~~ appeal against the earlier

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impugned order dated 27.7.95 also passed by him while he was posted as Additional Commissioner of Police. The impugned order has been challenged on a number of grounds but learned counsel has emphasized that on this very ground alone, that the particular officer cannot sit on appeal against his own order passed in disciplinary proceedings, the impugned order dated 1-7-97 may be quashed and set aside.

3. The respondents have filed their reply and we have heard Shri Vijay Pandita, learned counsel for the respondents. He submits that the appellate authority's order dated 1.7.97 has been correctly passed by the Commissioner of Police who is the designated appellate authority over the order passed by the Additional Commissioner of Police under Rule 23(6) of the Delhi Police (Punishment and Appeal) Rules, 1980, read with Section 23 of the Delhi Police Act, 1978. He, therefore, submits that there is no legal infirmity in the impugned order as the same has been passed in accordance with the law and Rules.

4. Rule 23(6) of the Delhi Police (Punishment and Appeal) Rules provides "that in case the order of punishment or reduction in rank has been passed by the Additional Commissioner of Police then the appellate authority is the Commissioner of Police. While the rule position as mentioned above, ^{may be correct,} however, we find substance in the submissions made by Shri D.N. Goburdhun, learned counsel. The same officer who had passed the order as disciplinary authority should not have passed the order in the appeal, filed against his own order dated 27.7.95 in his higher rank as Commissioner of Police.

5. Perhaps, because of the lapse of time between the impugned disciplinary authority's order and the appellate authority's order the same official on promotion from Additional Commissioner of Police to Commissioner of Police has passed the impugned order. It is noted that the later order has been passed by the same officer, namely, Shri T.R. Kakkar as Commissioner of Police, who

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has reduced the punishment earlier awarded to the applicant from reduction in rank from Inspector to Sub-Inspector permanently to that of reduction in rank from Inspector to Sub-Inspector for a period of 10 years. In the circumstances of the case the concerned officer could have referred the matter to a higher authority to dispose of the appeal in this particular case which has not been done. The fact that the disciplinary authority has himself acted as an appellate authority would appear to be clearly in violation of the principles of justice and would not appear to be just to any reasonable person, let alone to the applicant. Therefore, on this ground the appellate authority's order dated 1.7.97 is liable to be quashed and set aside. We do not also not, however, express any view on the merits of the case. In this connection we note that at present Shri T.R.Kakkar is no longer the Commissioner of Police.

6. Another point raised by the learned counsel for the applicant is that in the earlier case(OA 1601/95) filed by the applicant, the Tribunal taking into account the facts and circumstances of the case, had held as follows:-

" For this purpose, the delay in filing the appeal shall stand condoned. In the event any grievance still survives thereafter it will be open to the applicant to agitate the matter afresh through appropriate proceeding in accordance with law. Till disposal of said appeal, the interim order dated 27.7.95(sic.) which has been extended from time to time, will continue."

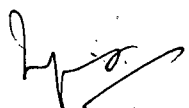
He submits that as the appellate authority's order cannot be sustained in law, a similar order as passed by the Tribunal earlier should be granted by way of interim order to stay the impugned order dated 27.7.95 till disposal of the appeal. To this Shri Vijay Pandita, learned counsel has submitted that since the applicant has already retired from service no such order is called for. He has also submitted that the interim order would operate till the disposal of the OA and, therefore, no stay of the order dated 27.7.95 is needed in the present circumstances of the case.

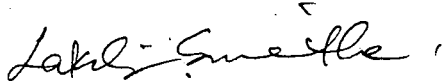
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7. Taking into account the earlier order passed by the Tribunal dated 3.4.97 in OA 1601/95 and the submissions of learned counsel, we are of the considered view that till disposal of the appeal by the Appellate authority in accordance with law and rules, the operation of the order dated 27.7.95 has to be stayed and we do so.

8. In the result, for the reasons given above, the appellate authority order dated 1.7.97 is quashed and set aside. Respondents are directed to dispose of the appeal dated 2.5.97 afresh within two months from the date of receipt of a copy of this order after affording a personal hearing to the applicant with intimation to the applicant. The penalty order dated 27.7.95 shall be stayed till disposal of the appeal.

No order as to costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

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