

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2127/98

New Delhi, this the 20th day of November, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

ASI Hawa Singh No.2554/Security, S/O Sh.
Hoshiar Singh, aged 50 years, Presently
posted in Security, R/O A-55 B, Mandi
Mohalla, Samay Pur, Delhi.

...Applicant..

(By Advocate: Sh. Rajeev Kumar, proxy for
Sh. Shanker Raju).

VERSUS

- 1.. Union of India, through its
Secretary, Ministry of Home
Affairs, North Block, New Delhi.
- 2.. Addl. Commissioner of Police,
Northern Range, Police Head
Quarters, IP Estate, MSO Building,
New Delhi.
- 3.. Addl. Dy. Commissioner of Police,
Central District, Darya Ganj,
Delhi.

...Respondents..

(By Advocate: Sh. Vijay Pandita)

O R D E R (ORAL)

By Hon'ble Shri Justice Ashok Agarwal, Chairman:-

In disciplinary proceedings conducted against the applicant, who was at the material time an ASI in Delhi Police, the following penalty has been imposed upon him "forfeiture of five years approved service permanently for a period of five years entailing proportionate reduction in his pay. During the reduction, he will not earn increment and after expiry of period this will have effect on postponing his future increment". Aforesaid order of penalty has been imposed by the disciplinary authority by his order issued on 3.2.98. Being aggrieved by the aforesaid order, applicant has preferred an appeal. The appellate authority by his order dated 3.2.98 has

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maintained the aforesaid order of penalty and dismissed the appeal. Aforesaid orders are impugned by the applicant in the present OA.

2. Aforesaid disciplinary proceedings were conducted against the applicant with the following charges:

"CHARGES:

It is alleged against you ASI Hawa Singh No.3203/D and Ct. Pramod Kumar No.1893/C that on 10.5.97 one woman visited police booth at 6 Tooti Chowk, and handed over a missing girl aged about 3/4 years to Const. Pramod Kumar no.1893/C. She was later-on indentified as "PRIYA". The shopkeeper, Deep and a rickshaw puller to take the missing girl to PP Sangtrashan. The shopkeeper and rickshaw puller took the girl to police post/Sangtrashan where they met ASI Hawa Singh No.3203/D and Const. Mahmood Khan who directed them to take the girl to police station Pahar Ganj. On way to the police station, rickshaw puller asked Deep to go back as he would also take the girl to the police station. Shri Deep left the rickshaw puller and the girl some where near crossing of DEG Head and Rajguru Road. In the meantime Shri Dinesh Kumar R/O 3/172, Khicripur Delhi, father of the missing girl came to police post/Sangtrashan where he was told to go to police station/Pahar Ganj to take charge of his daughter. Shri Dinesh Kumar reached police station Pahar Ganj and found that his daughter PRIYA had not been brought to the police station by any one. Since no clue of the missing girl could be found, a case vide FIR No.344/97 dated 11.5.97 U/S 363 IPC was registered at police station/Pahar Ganj.

The above stated acts of omission by you ASI Hawa Singh No.3203/D and Ct. Pramod Kumar No.1893/C render you liable U/S 21 of the Delhi Police Act 1978."

3. Sh. Rajeev Kumar, learned proxy advocate appearing on behalf of the applicant has first contended that the aforesaid order of penalty amounts to multiple

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punishments. The same cannot be sustained in terms of the Section 21 of the Delhi Police Act. According to him, the aforesaid Section inter alia permits ^{imposition of following} penalties, namely, reduction in rank, forfeiture of approved service, reduction in pay and withholding of increment. ~~Since~~ The impugned order forfeits 5 years' service, and entails proportionate reduction in his pay and deprives the applicant of earning increments during the specified period. The same cannot be justified by the aforesaid provision contained in Section 21. Disciplinary authority could have imposed only one of the penalties and not more than one penalty. In our view, aforesaid contention need not detain us any longer, if one has regard to the decision of the Full Bench of this Tribunal in ASI Chander Pal Vs. Delhi Administration & Anr. (OA-2225/93) decided on 18.5.99. The FB in the aforesaid case has found as follows:-

" The penalty of forfeiture of 'X' years approved service permanently entailing reduction in pay by 'X' stages for a period of X years with the condition that the delinquent police official would not earn increment/increments during the period of reduction and on the expiry of that period the reduction would have the effect of postponing the future increments, is in accordance with law."

4. In the circumstances, we find that the impugned order of penalty is just and proper. Aforesaid contention of Sh. Rajeev Kumar, learned proxy counsel is accordingly rejected.

5. Sh. Rajeev Kumar, learned proxy counsel has next submitted that the impugned order of penalty cannot be

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sustained as there has been a violation of the provisions of Rule 15 (2) of the Delhi Police (Punishment & Appeal) Rules, 1980. The said rules provides as under:-

"15 (2). In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

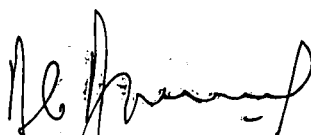
6. The learned proxy counsel has pointed out that the disciplinary proceedings were preceded by a preliminary enquiry and the same discloses a cognizable offence and hence prior approval of the Addl. Commissioner of Police was a must before initiation of the departmental enquiry. According to the learned proxy counsel, the applicant has been found prima facie guilty of an offence punishable under Section 166 of the I.P.C. and hence provisions of Rule 15 (2) ^{are} ~~have been~~ attracted. Since prior approval of the Addl. Commissioner of Police has not been taken, the entire disciplinary proceedings stand vitiated.

7. We have perused the provisions of Section 166 of the IPC and find that the said offence is a non-cognizable offence. Since the same is not cognizable, aforesaid provisions of Rule 15 (2) cannot be said to be attracted. Aforesaid contention of the proxy counsel is also rejected.

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8. Sh. Rajeev Kumar, learned proxy counsel has next taken us through the report of the EO and has pointed out that the enquiry officer has examined two court witnesses who did not figure in the list of witnesses submitted by the delinquents. Applicant, in the circumstances, has been taken by surprise and his defence has been prejudiced. We have considered the aforesaid contention in the light of the witnesses examined and we find that the said contention is also devoid of merit. In the cross-examination conducted by and on behalf of the applicant, a contention was raised that the applicant and the co-delinquent was never present at the time of the incident and it was one Mohd. Khan, court witness No.1, who was present and who handed over the custody of the minor girl and who asked the rickshaw-pullar to produce her at the Pahar Ganj PS. It was in these circumstances that court witness No.1 and court witness No.2 were examined for the purpose of falsifying the aforesaid defence of the applicant. In our view, no capital can be made out of this as no prejudice is stated to have ensued on the aforesaid witnesses having been examined in the enquiry. The aforesaid contention is also rejected.

9. No other point has been ^{used} made in support of the OA. Present OA, we find is devoid of merit and the same is accordingly dismissed without any order as to costs.


(Ashok Agarwal)
Chairman


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

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