

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2176/98 with MA 2292/98

(9)

New Delhi this the 13th day of Sept. 2000.

HON'BLE MRS. DR. A. VEDAVALLI, MEMBER (J)

HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)

Shri Amar Chand & Ors.

(By Advocate Shri Shyam Babu)

-Versus-

Union of India & Others

... Respondents

(By Advocates Shri Ajesh Luthra)

1. To be referred to the Reporter or not? YES

2. To be circulated to other Benches of

the Tribunal?

NO

AV
(DR. A. VEDAVALLI)
MEMBER (J)

J-A

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2176/98
with
MA No. 2292/98

jk
New Delhi this the 13th day of September, 2000

Hon'ble Dr. A. Vedavalli, Member (J)
Hon'ble Smt. Shanta Shastri, Member (A)

1. Amar Chand
S/o Shri Mool Chand
R/o I-2/178 Ambedkar Nagar
New Delhi-110 062.
2. Narender Kumar (869-L),
S/o Shri Nishan Singh,
R/o 28L, Police Colony, Model Town,
New Delhi-110 009.
3. Ashok Chakraborty (406 L),
R/o B-120 Pandav Nagar,
Delhi-110 092.

Applicants

(By Advocate: Shri Shyam Babu)

Versus

1. Jt. Commissioner of Police,
Rashtrapati Bhavan Security,
New Delhi.
2. Dy. Commissioner of Police,
(Prov. & Lines), Rajpur Road,
Delhi.
3. Commissioner of Police,
Delhi,
Police Headquarter,
I.P. Estate, New Delhi.
4. Govt. of NCT Delhi through its
Chief Secretary,
5, Sham Nath Marg,
Delhi.

Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R

Hon'ble Dr. A. Vedavalli, Member (J)

Heard the learned counsel for both the parties.
Pleadings and material papers and documents placed on
record have been perused including the additional reply
affidavit filed by the Respondents on 24.8.2000,

J-A

2. MA No. 2292/98 for joining together of the applicants is allowed.

(10)

3. This OA is filed by Amar Chand, ASI, Ashok Chakarvorty, Head Constable and Narender Kumar, Head Constable working in the Delhi Police. They are aggrieved by the order of punishment imposed upon them by the disciplinary authority viz., stoppage of next increment with cumulative effect for a period of five years. They have impugned the concerned Enquiry report dated 23.3.1998 (Annexure M), the penalty order passed by the disciplinary authority dated 25.5.1998 (Annexure A) and the Appellate authority's order dated 4.9.1998 (Annexure B) in this OA.

4. The facts of this case, briefly, are as under:

A Government vehicle Gypsy No. DL-1C-D-3798 which was involved in an accident was brought by crane to the CMT Workshop for repair. The applicants who were posted and working in the said workshop allegedly were found pilfering about seven litres of petrol unauthorizedly and were caught red handed by the Inspector Kishan Lal, in the presence of ASI, Kharak Singh and Constable Shyam Lal on 1.4.1997 at about 4.30 PM. Initially, the respondents issued a show cause notice dated 4.4.1997 (Annexure C) stating that the aforesaid act on the part of the applicant amounts to gross misconduct and non worthiness unbecoming of a police officer and called upon them to show cause as to why they should not be censured for the above lapses. The said show cause notice was, however, withdrawn by the respondents by their order dated 8.10.1997 (Annexure E) on administrative grounds.



(11)

5. The respondents thereafter ordered the departmental enquiry against the applicant by their order dated 10.10.1997 (Annexuree G). The summary of allegations dated 20.11.1997 (Annexure H) were served on the applicants. They did not admit the allegation against them. They engaged a defence assistant. 3 PWs were examined during the enquiry and on the basis of the statement made by them, a charge was prepared and was served upon the defaulter applicants. The said charge dated 8.1.1998 (Annexure K) is as under:

"Charge"

I, Geeta Rani Verma, ACP/HQ-MT-P&I-E.O. charged you, ASI Amar Chand No. 847-D, HC/MT Narender Kumar No.869-L and HC/MT Ashok Chakrawarti No. 406-L that while posted in CMT Workshop Prov. & Lines were caught red-handed on 1.4.97 by Insp. Kishan Lal at about 4.30 P.M. while pilfering petrol from the Govt. Gypsy No. DL-1C-D-3798 New Delhi Distt., which was under repair in the workshop. HC Narender Kumar had removed the Petrol Tin and Pipe from the office fo Insp. Kishan Lal M.T.C. when he had gone to inform the senior officer about the mall practice.

The above act on the parts of these officials amounts to grave misconduct, dereliction in the discharge of official duty, integrity, un-becoming act of a Police office and abuse of official position which renders them liable to be dealt with departmentally under section 21 of Delhi Police Act 1978.

Sd/-

(Geeta Rani Verma)

Asstt. Commissioner of Police
HQ-MT-Prov. & Lines, Delhi"

6. The defaulter applicants submitted a list of 3 DWs. They were examined and their statements were recorded. The defaulters submitted their defence statement. The Enquiry Officer's report was given on 23.3.1998 (Annexure M) which is the third impugned order in this OA. The finding of the Enquiry Officer is as under:

A/

"Keeping in view of the above, the allegations levelled against all the three defaulter stands proved without any doubt."

(12)

7. The applicants submitted their representations to the disciplinary authority (Respondent No. 2) against the finding of the enquiry officer (Annexure N). After giving a personal hearing to the applicants and on consideration of the enquiry officer's report, defence statement etc., the disciplinary authority held that "the charge is proved beyond any shadow of doubt" and imposed upon the defaulters the punishment as noted supra by the first impugned order dated 25.5.1998 (Annexure A). The appeals filed by the defaulter applicants against the said order were rejected by the Appellate authority (Respondent No. 1) by the second impugned order dated 4.9.1998 (Annexure B).

8. The applicants have sought the following reliefs in this OA:

- a) call for the record of the case and quash/set aside the enquiry report dated 23.3.98 (Annex-M) impugned order of punishment dt. 25.5.98 (Annex-A) and impugned appellate order dated 4.9.98 (Annex-B)
- b) grant all consequential benefits/reliefs to the applicants whether seniority, monetary or promotion
- c) pass such other and further order as this Hon'ble Tribunal deemed fit and proper in the facts of the case.

9. The respondents have contested the OA and have filed their counter to which a rejoinder has been filed by the applicant. The respondents have also filed an additional reply affidavit on 24.8.2000

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pursuant to this Tribunal's order dated 18.8.2000. No reply to the saild affidavit was filed by the applicants in spite of the opportunity given to them.

(B)

10. The first and the crucial main ground pressed by the learned counsel for the applicant, Shri Shyam Babu, is that the fresh departmental enquiry is illegal since it is violative of the respondent's own circular dated 28.4.1993 (Annexure F). He submitted that the show cause notice dated 4.4.1997 (Annexure C) issued against the applicants initially was withdrawn by the Respondents by their order dated 8.10.1997 (Annexure E) on alleged administrative grounds. He contended that since no reason for such withdrawal were given and no right was reserved for re-starting the enquiry, the action of the respondents in initiating a fresh enquiry by their order dated 10.10.1997 (Annexure G) is barred under the said circular. He has also relied strongly on an order of this Tribunal (PB) dated 31.1.1992 in OA 602/99 (Inspector Harbhajan Singh vs. Commissioner of Police and ors.) in this connection.

11. In reply to the aforesaid contention, the respondents in their counter have stated the aforesaid show cause notice was withdrawn on administrative grounds as the mis-conduct committed by them warranted major punishment. Learned counsel for the Respondents, Shri Ajesh Luthra also submitted that such withdrawal is perfectly valid and legal and above contention of the applicants is untenable. In this connection he relied upon a recent order of this Tribunal (PB) dated 4.5.2000 in OA 904/99 (Mange Ram Vs. Govt. of N.C.T., Delhi and Ors.)

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12. We have given our careful consideration to this matter.

(14)

13. It is seen that in the case of Harbhajan Singh (Supra) also a show cause notice for imposing a minor penalty of censure on the applicant therein was withdrawn by the disciplinary authority without stating any reason and a regular departmental enquiry was ordered against him under Rule 14 of the CCS (CCA) Rules, 1965 on the same charge. The first ground on which the said action was challenged in that OA is substantially similar to the aforesaid first main ground raised by the applicants in the present OA which was pressed by their learned counsel during the hearing. It was held by this Tribunal in the aforesaid Harbhajan Singh's case in the light of an earlier decision of this Tribunal in the case of Kartar Singh Vs. Union of India (1987) Vol. IV AISLJ CAT PB 230 at pages 233 to 234, with reference to the Government of India instruction No. 9 below Rule 15 of the CCS (CCA) Rules, 1965, that the ratio of the said decision holds good even for enquiry conducted under the Delhi Police (Punishment and Appeal), Rules, 1980. The impugned orders in the aforesaid case of Harbhajan Singh were quashed and set aside on the ground that no reasons have been given for withdrawing the first show cause notice and ordering a fresh departmental enquiry which is not legally sustainable. Subsequently, the circular dated 28.4.1993 (Annexure F) was issued by the respondents wherein the decision of this Tribunal regarding the aforesaid ground was referred to though



no details as to the date and cause title of the said case were given. However, it was stated in the said circular inter alia thus:

(15)

"It is, therefore emphasised upon all the disciplinary authorities to take care that clear and appropriate reasons are mentioned in the orders withdrawing/or dropping action in a disciplinary matter of show cause notice. Such orders must also clearly mention that the disciplinary proceedings or show cause notice is being dropped without any prejudice to further disciplinary action which could be subsequently taken in the matter."

14. While so, in the present case the show cause notice dated 4.4.1997 (Annexure C) calling upon the applicants to show cause as to why they should not be censured for their act viz., pilfering of the petrol from a Government vehicle which was under repair in the workshop which amounts to gross misconduct and non worthiness and unbecoming of a police officer in the discharge of his official duty, was withdrawn by the respondents by their order dated 8.10.1997 (Annexure E) on "Administrative Grounds". No clear and appropriate reasons for such withdrawal have been given by them in the said order and there is no mention that the show cause notice is being dropped "without any prejudice" to further disciplinary action which could subsequently be taken in the matter, despite the relevant provision of the said Circular dated 28.4.1993 (Annexure F) noted (supra). Thereafter, a regular departmental enquiry against the applicants for the aforesaid mis-conduct was conducted by the respondents and the impugned order of punishment dated 25.5.1998 imposing a major penalty

(A)

(Annexure A) and the appellate order dated 4.9.1998 (Annexure B) rejecting the appeals against the said punishment order were passed by the respondents.

(16)

15. It is seen that a reply dated 21.4.1997 (Annexure D) to the said show cause notice requesting vacation of the said notice was given by the applicant No. 3 and in his appeal dated 23. 6. 1998 (Annexure O) to the appellate authority also, he had specifically stated, inter alia, that in spite of the aforesaid reply, the said show cause notice against him was kept pending for about six months and within two days after withdrawing the same on administrative grounds departmental enquiry was ordered against him without making any mention about withdrawing of the earlier show cause notice and hence the departmental enquiry is unjust and defective. Though the Appellate Authority has considered the aforesaid submissions of the applicant in his order dated 4.9.1998 (Annexure B) which is also impugned in this OA, he has stated that the show cause notice was withdrawn on administrative ground and fresh orders to conduct the departmental enquiry were issued considering the gravity of the mis-conduct by the applicants which warranted a major penalty. However, we find that this particular reason was never mentioned either in the order dated 8.10.1997 (Annexure E) withdrawing the show cause notice or in the order dated 10.10.1997 (Annexure G) ordering fresh departmental enquiry against the applicants. There is not even a whisper about the provisions of the department's own circular dated 28.4.1993 (Annexure F) regarding the procedural requirements which are to be complied with by the disciplinary authority while

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dropping or withdrawing a show cause notice in the light of this Tribunal's decision mentioned therein whereby relevant provisions of CCS (CCA) Rules were made applicable to the enquiry under the Delhi Police (Punishment and Appeal) Rules, 1980. It is noticed that the relevant Government of India decision, contained in Note 9 below Rule 15 of the CCS (CCA) Rules, 1965 provides as under:

(17)

"(9) Reasons for cancellation of original charge-sheet to be mentioned if for issuing a fresh charge-sheet. It is clarified that once the proceedings initiated under Rule 14 or Rule 16 of the CCS (CCA) Rules, 1965, are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, important that when the intention is to issue a subsequent fresh charge-sheet, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges the same was based on."

16. The order of this Tribunal dated 4.5.2000, in Mange Ram case (Supra) also will not help the respondents as the said decision was given on quite a different set of facts and circumstances.

17. On the facts and circumstances of this case, and in the light of the foregoing discussions, we are of the considered view that the fresh departmental enquiry conducted against the applicants after withdrawing the show cause notice without giving specific reasons and without reserving the right or



liberty to order fresh enquiry is patently violative of the provisions of the aforesaid note No. 9 below Rule 15 of the CCS (CCA) Rules 1965 which are made applicable to the departmental enquiries under the Delhi Police (Punishment and Appeal) Rules, 1980 by the decision of this Tribunal dated 31.1.1992 in Harbhajan Singh's case (Supra) and the respondent's own circular dated 28.4.1993 (Annexure F) noted earlier. Such an action is not sustainable under the law.

(18)

18. In the view which is taken by us above regarding the crucial main ground urged by the applicants, it is not necessary to go into the merits of the other grounds and contentions raised by them in this OA.

19. In the result, the impugned report of the enquiry officer dated 23.3.1998 (Annexure M), the order of the disciplinary authority dated 25.5.1998 (Annexure A) and the appellate authority's order dated 4.9.1998 (Annexure B) are quashed and set aside. The respondents are directed to take necessary steps to restore the concerned increment to the applicants with effect from the date on which it had fallen due under the Rules and also grant them all consequential benefits in accordance with law within a period of three months from the date of receipt of a copy of this order.

20. The OA is allowed as above.

Order accordingly. No costs.

Shanta Shastray
(Shanta Shastray)
Member (A)

A. Vedavalli
(Dr. A. Vedavalli)
(Member (J))