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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A. No. 228/1998.

New Delhi, this the 14th day of September, 1998.

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN.

HON'BLE MR. R.K. AHOOJA, MEMBER (A)

Balwan Singh,
Ex-Constable (Dvr) No.313/DAP
S/o Shri Hukam Chand,
R/o VPO Bawana, Delhi.

....Applicant.

(BY ADVOCATE SHRI SAMA SINGH)

versus

1. Commissioner of Police,
Delhi Police Headquarters,
MSO Building IP Estate,
New Delhi.
2. The Sr.Addl. Commissioner of Police (AP&T),
Delhi Police Headquarters,
MSO Building, IP Estate,
New Delhi.
3. The Dy. Commissioner of Police,
1st Bn., DAP,
Delhi. Respondents

(BY ADVOCATE SHRI ANOOP BAGAI)

ORDER

JUSTICE K.M. AGARWAL:

On 28.1.1998, notice was directed to be issued against the respondents in so far as the penalty of dismissal was concerned. Applicant was found to have consumed liquor during duty hours and on that basis, the extreme penalty of dismissal from service was imposed on him by the disciplinary authority and upheld by the appellate authority. We were of the view that looking to the nature of misconduct alleged and found proved against the applicant, the penalty was perhaps excessive. We also recollect that in some such other cases, the authorities had taken a lenient view. Accordingly notice before admission on the quantum of penalty only was directed to be issued.

2. The learned counsel for respondents submitted that the department was not aware of any such authority where

in a case of similar nature, lenient view was taken and the extreme penalty of dismissal was not imposed.

3. We are conscious of the decision of Supreme Court in **UNION OF INDIA v. PARMA NANDA**, 1989 (1) SCALE 606 wherein it was held:

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters of punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

At the same time, we noticed a decision of the Principal Bench of the Tribunal in Ex-Const. Jagir Singh v. Additional Commissioner of Police & another, O.A. No.473/92, decided on 21.4.1997, where the provisions of rule 8 of the Delhi Police (Punishment and Appeal) Rules, 1980 were considered and it was found that on the principles for inflicting penalties laid down under the rule, punishment of dismissal or removal from service could be imposed only for the act of grave misconduct rendering the delinquent officer unfit for police service. The applicant in the present O.A. was a Constable (Driver) in Delhi Police, who has been awarded the extreme penalty of dismissal from service on the ground that he was found to have consumed liquor during duty hours. The impugned orders do not indicate that while passing them, the Disciplinary Authority and/or the Appellate Authority had in their minds the provisions of rule 8 of the Delhi Police (Punishment and Appeal) Rules, 1980. The penalty order, therefore, deserves

to be quashed with directions to the Disciplinary Authority to reconsider the quantum of punishment to be awarded to the applicant for the alleged misconduct found proved against him.

4. In the result, this O.A. partly succeeds and it is hereby partly allowed. The finding on misconduct is confirmed, but the punishment awarded is set aside with directions to the Disciplinary Authority to reconsider the quantum of penalty to be imposed in the light of the provisions of rule 8 of the Delhi Police (Punishment and Appeal) Rules, 1980 and to pass appropriate orders within a period of two months from the date of receipt of a copy of this order, after hearing the applicant. No costs.

5. It may be made clear that the claim for arrears of pay or suspension allowance for the period subsequent to the date of the impugned dismissal order by the Disciplinary Authority shall be subject to the discretion of the Disciplinary Authority. It may award, or may not award any arrears of pay or suspension allowance for the entire or a part of the period subsequent to 2.4.1996, the date of impugned order by the Disciplinary Authority and/or till the date of his reinstatement, if any, pursuant to any lesser penalty imposed on him in compliance of the present order of the Tribunal. This is because the finding about misconduct has not been disturbed by us, but the case is remanded only for reconsideration of the nature and quantum of punishment after hearing the applicant.

KM
(K.M.AGARWAL)
CHAIRMAN

RKA
(R.K.AHOOJA)
MEMBER (A)