

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 242/98

New Delhi, this the 16th day of October, 2000

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Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

Ex-Constable Roop Chand, S/O Sh. Ram
Lal, R/O Vill. & P.O. Dhoom, Nanik Pur,
P.S. Dadri, Distt. Ghaziabad (UP).

...Applicant.

(By Advocate: Sh. Yogesh Sharma)

VERSUS

1. N.C.T. of Delhi through the Secretary, Old Secretariate, Delhi.
2. The Commissioner of Police, D. Police Head Quarters, I.P.Estate, New Delhi.
3. The Sr. Addl. Commissioner of Police, AP & T, Police Head Quarter, I.P.Estate, New Delhi.
4. The Dy. Commissioner of Police, VII Bn. DAP, Teen Murti Lane, Delhi.

...Respondents.

(By Advocate: Ms. Jasmine Ahmed)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (J):-

The applicant in this case has assailed orders dated 4.2.1996, Annexure-A1 and order passed on appeal dated 14.10.1996, Annexure-A2.

2. Facts in brief are that the applicant who was working as Constable in Delhi Police was sanctioned casual leave for one day, i.e., 8.3.94 and was to resume duties on 9.3.94. But on 9.3.94 his wife fell seriously ill as she was suffering from Tuberculosis and was under the treatment of District Tuberculosis Centre, Ghaziabad and there was no adult family member

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to look after her so he could not join duties and also sent an information to the DCP and he joined duties on 16.9.94/15.9.94. A charge-sheet was served upon him on 21.11.1994. Thereafter the disciplinary authority after considering all the facts and circumstances of the case passed the punishment order dated 26.5.1995. The applicant did not prefer any appeal against the said order but the appellate authority, i.e., The Senior Additional Commissioner of Police issued a show cause notice dated 26.10.1995 under Rule 25-B(iii) of the Delhi Police (Punishment & Appeal) Rules, 1980 for enhancing the punishment. So the learned Additional Commissioner of Police exercised his powers under Rule 25-B of the Delhi Police (Punishment & Appeal) Rules, 1980 and issued show cause notice as to why the punishment imposed on the applicant be enhanced.

3. In pursuance of that order passed by the Sr. Additional Commissioner of Police, the enquiry was held against the applicant and impugned orders Annexure-A1 and Annexure-A2 were passed whereby he was removed from service.

4. The learned counsel appearing for the applicant has submitted that since the order on the basis of which the enquiry had been initiated has been passed by the Senior Additional Commissioner of Police in exercise of his power under Rule 25-B of the Delhi Police (Punishment & Appeal) Rules, 1980 and that order itself is null and void since Rule 25-B has already been held to be ultra vires of the Delhi

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Police Act, 1978 in view of the judgment delivered by the Full Bench in the case of HC Rajpal Singh v. U.O.I. & Others (OA 77/97 with other connected cases) decided on 14.9.2000 wherein the Hon'ble Full Bench had held that Rule 25-B is ultra vires of the Delhi Police Act, 1978. Under the circumstances, the learned counsel for the applicant further submitted that all actions taken in exercise of the powers under Rule 25-B are void ab initio, since the quashing of the Rule 25-B being ultra vires, has an effect as if Rule 25-B does not exist on the Statute Book. In view of this, possibly no action could have been initiated by the Senior Additional Commissioner of Police in exercise of powers under Rule 25-B of the Delhi Police (Punishment & Appeal) Rules, 1980.

5. The learned counsel for the respondents could not advance any arguments against the Full Bench judgment.

6. Keeping in view all the contentions raised by the counsel for the applicant, we are of the considered view that the action of the Senior Additional Commissioner of Police in exercise of his powers under Rule 25-B of the Delhi Police (Punishment & Appeal) Rules, 1980 is altogether null and void since Rule 25-B has already been held to be ultra vires of the Delhi Police Act, 1978 as per the Full Bench judgment referred to above.

7. Consequently, all the proceedings taken thereafter e.g. initiating the D.E. and passing of the impugned order of punishment are also void ab initio and cannot be sustained.

8. In view of the above, we have no reservations to allow the OA. Accordingly, we allow the OA quashing the impugned orders dated 4.2.96 and 14.10.96 and directing that the applicant be taken back in service forthwith with all the consequential benefits, as per rules and instructions on the subject.

S.A.T.Rizvi

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

Kuldeep Singh
(Kuldeep Singh)
Member (J)

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