

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.253/1998

New Delhi, this 29<sup>th</sup> day of September, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J)  
Hon'ble Shri M.P. Singh, Member(A)

Avinash Nautiyal  
307, J&K Pocket  
Dilshad Garden, New Delhi .. Applicant  
(By Shri A.K. Behera, Advocate)

versus

1. Commissioner of Police  
IP Estate, New Delhi
2. Sr. Addl. Commissioner of Police(AP&T)  
Police Hqrs., New Delhi
3. Dy. Commissioner of Police  
10th Bataillion, DAP  
New Delhi .. Respondents

(By Shri Rajan Sharma, Advocate through proxy  
counsel Shri Ashwini Bhardwaj)

ORDER

By Shri M.P. Singh

It is seen from the papers placed before us that this is the second round of litigation by the applicant. He had earlier filed OA No.1751/90 against order dated 13.2.90 of the disciplinary authority (DA, for short) by which the applicant was imposed a punishment of removal from service. The Tribunal vide its order dated 27.10.94 while quashing the order of the DA dated 13.2.90 had held as under:

"The disciplinary authority has completely failed to even refer to this defence of the applicant. There has been no consideration at all of this plea. Though the appellate authority makes reference to it, he holds that this plea is not acceptable. No reasons have been given why the evidence of Dr. Vimal is unacceptable. Therefore, prejudice has been caused to the applicant.

".....We are of the view that in the circumstances of the case, the failure to observe the prescribed procedure laid down in para (a) of sub-rule (xii) of Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 vitiates the order of the disciplinary authority which is liable to be quashed. We do so. Consequently the order of the appellate authority also stands quashed. The case is now remitted to the disciplinary authority to continue the proceeding, in accordance with law as mentioned above, if he so chooses, from the stage reached after the Enquiry Officer's report was received by him"

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2. In the present OA, the applicant is aggrieved by the order dated 19.9.95 passed by the DA imposing upon him the punishment of forfeiture of four years' approved service permanently for seniority and promotion purposes and reduction of applicant's pay by four stages from Rs.1030 to Rs.950 per month for a period of four years with cumulative effect and order dated 18.12.96, passed by the appellate authority (AA, for short) by which the punishment awarded was confirmed.

3. Brief facts of the case are that while the applicant, a Constable in Delhi Police, temporarily posted in Security Unit, was detailed for PSO duty for the VIP on 7.6.89, he was found in awkward and drunken and unconscious condition. He was sent for medical examination at RML Hospital and the doctor attending on him opined that the applicant had consumed alcohol. In regard to other matters like pulse beating, speech, gait etc. he was found to be normal. He was charge-sheeted and an enquiry was ordered to investigate the charge against the applicant. The Enquiry Officer (EO, for short) enquired into the charge against the applicant and relying upon the evidence of Dr. Vimal Kumar concluded that the charge was not proved. The DA while disagreeing with the finding of the EO, imposed the penalty of removal from service on the applicant and the same was confirmed by the AA.

4. The applicant filed OA No.1751/90 against the order of removal which was quashed by the Tribunal vide its order dated 27.10.1994 (supra). In pursuance of the Tribunal's order dated 27.10.94, the DA issued a notice to the applicant (Annexure A-V) calling upon him to show cause as to why his

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services be not terminated. Applicant submitted his detailed reply on 16.2.95 to the show cause notice. Thereafter the DA imposed the punishment as stated in para 2 above and applicant's appeal against the same was rejected by the appellate authority. Aggrieved by these orders, the applicant has filed the present application seeking directions to quash these impugned orders with all consequential benefits.

5. Respondents have contested the case and submitted that in pursuance of order of the Tribunal dated 27.10.94, a fresh show cause notice was issued to the applicant stating reasons for disagreement with the finding of the EO. Applicant submitted his reply in response to the notice on 20.2.95. He was heard in the orderly room on 6.9.95 and after carefully considering applicant's written reply as well as oral submissions, DA found them unsatisfactory. The DA after taking into account the submissions made by the applicant, passed the impugned order dated 19.9.95.

6. Heard the arguments advanced by the learned counsel for rival contesting parties and perused the records.

7. We find that the applicant has taken inter-alia the following grounds in his defence. "As regards the medicine is concerned and consequent unconsciousness, appropriate authority to prove the same is a medical person i.e. a doctor who is well versed with the medicines and its after affects. The defence witness Dr. Vimal Kumar of CGHS had already opined that the applicant was under the treatment and due to the medicine prescribed, the smell of alcohol can remain in breath and the medicine can sometimes have an effect of making a person unconscious. As such, the opinion





of the doctor who has not been controverted in the cross examination is absolute and as such the DA who is not a medically trained person cannot disagree with the opinion of a doctor to come to a different conclusion".

8. It is seen from the impugned orders of DA and AA that they have not discussed the points raised by the applicant in his defence, particularly the one mentioned in para 7 above. DA has only mentioned factual position and the reasons for disagreement with the finding of the EO.

9. Despite the clear directions of this Tribunal in its order dated 27.10.94, the DA as well as the AA completely failed to even refer to the defence of the applicant made by him in his representation. It clearly shows that the impugned orders are arbitrary, illegal and therefore they are liable to be quashed.

10. In the result, the OA is allowed. The impugned orders dated 19.9.95 and 18.12.96 of the DA as also the AA respectively are set aside. Respondents are directed to restore the pay of the applicant with all consequential benefits, within a period of three months from the date of receipt of a copy of this order. We do not order any costs.

  
(M.P. Singh)  
Member(A)

  
(Smt. Lakshmi Swaminathan)  
Member(J)

/gtv/