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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-543/98

New Delhi this the 30th day of August, 1999.

Hon'ble Smt. Lakshmi Swaminathan, Member(J)~
Hon'ble Sh. S.P. Biswas, Member(A)

Shri Puran Mal,
S/o late Sh. Chidda Singh,
R/o Q.No.241, Sector-III,
R.K. Puram, New Delhi. Applicant

(through Sh. S.K. Gupta, advocate)

versus

1. Lt. Governor,
Govt. of NCT of Delhi,
New Delhi, through Deputy
Secretary(Home),
5, Sham Nath Marg,
Delhi-54.

2. Commissioner of Police,
Police Headquarters,
MSO Bldg., New Delhi. Respondents

(through K.K. Singh for Sh. Raj Singh, advocate)

ORDER(ORAL)

Hon'ble Sh. S.P. Biswas, Member(A)

The short question that arises for adjudication is that whether the impugned order at page 8 of the paperbook (stated to have been issued on 23.2.98) could be issued without affording to the applicant an opportunity of being heard.

2. The background facts relate to an order of the respondents at Annexure R-1, issued on 04.05.93 wherein the applicant was promoted as Assistant Commissioner of Police by the respondents purely on ad hoc and emergent basis for a period of 6 months from

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the date of that order. Promotion thus effected in May 1993 continued till the impugned order of 1998 was issued by the respondents. The basis for issue of this impugned order is that the applicant was found drunk on duty and that inspite of advice and issue of displeasure ~~and~~ advisory memos and adverse remarks in his ACR the applicant had failed to mend his ways. He was, therefore, not considered fit to perform his duties as Assistant Commissioner of Police.

3. To defend the impugned order, the learned counsel for the respondents would contend that there was nothing wrong in the order of reversion particularly when the initial promotion was on ad hoc basis and the applicant's performance in that capacity was not upto the mark. An order based on unsatisfactory performance in the facts and circumstances of the case does not call for any protection under Article 311(2) of the Constitution, the learned counsel for the respondents submitted.

4. Learned counsel for the applicant would then argue that the present order is an order casting a stigma on the applicant. The order mentions that the applicant was found drunk on duty and he did not mend his ways despite several warnings being given to him.

5. It has been well settled for a long time in this country that an order to the detriment of an

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official cannot be made without affording him/her an opportunity to show cause against the proposed order. Affected persons must know the reasons upon which the action is proposed. Authority is legion for this proposition, and it is available in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei & Ors. (AIR 1967 SC 1269). Admittedly, the impugned order dated 23.02.98 has been issued without an opportunity being given to the applicant. We also find that what has acted as the foundation for the order is the findings of the respondents, behind his back, that he was found drunk on duty and that he did not improve his performance despite displeasure memos, adverse remarks etc. Based on such a finding, the impugned order is punitive in nature since the respondents have entered into a finding of applicant's misconduct and that has been arrived at without regular departmental enquiry or an opportunity of getting explanation from the aggrieved official. The impugned order, though appears to be a simple order of discontinuance of ad hoc appointment was actually 'founded' on allegations and has to be held bad in law. The material which has been based to arrive at the decision by the respondents attach "stigma" to the applicant herein and hence it is liable to be set aside. In holding this view, we find direct support from the decision of the Apex Court in the case of Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors. (JT 1991(1) SC 396).

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6. In the light of the circumstances
aforementioned and the position of law, the O.A.
succeeds on merit and we do so accordingly with the
following directions:-

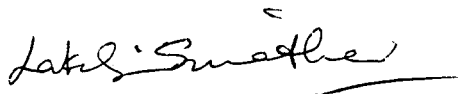
(i) The impugned order, as at page-8 of the
paperbook, shall stand set aside.

(ii) The applicant shall be entitled for the
consequential benefits, that is,
reappointment on ad hoc basis as Assistant
Commissioner of Police.

(iii) Our orders aforesaid will not, however,
stand in the way of the respondents to
proceed with the action in accordance with
law.

7. The O.A. is disposed of as aforesaid. No
order as to costs.


(S.P. Biswas)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

/s/