

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 624/1998

New Delhi, this the 9th Day of November, 2000

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. S.A.T. RIZVI, MEMBER(A)

Ex. Constable Chand Ram No.11414/DAP S/o Shri Daryao Singh; Aged 44 years, R/o Vill. & P.O.-Rai, Police Station Rai, District Sonapat, Haryana.

.....Applicant

(By Advocate : Shri Shankar Raju)

VERSUS

- 1 Union of India Through Its Secretary,
Ministry of Home Affairs, North Block,
New Delhi.
2. Lt. Governor, Government of N.C.T.Delhi,
5, Raj Niwas Marg, Delhi - 54.
3. Commissioner of Police, Police Head Quarters,
I.P. Estate, New Delhi.
4. Sr. Addl. Commissioner of Police, AP&T,
Police Head Quarters, I.P. Estate, N.Delhi.
5. Dy. Commissioner of Police, Xth Bn. D.A.P.,
New Police Lines, Delhi.

.....Respondents

(By advocate: Ms. Sumedha Sharma)

O R D E R (ORAL)

BY JUSTICE ASHOK AGARWAL

A penalty of removal from service imposed upon the applicant in disciplinary proceedings conducted against him for his misconduct of unauthorised absence, is impugned in the present OA. Aforesaid order has been passed by the Deputy Commissioner of Police being the disciplinary authority on 7th December, 95 (Annexure A-1). Aforesaid order of 7th December, 1995 has been maintained by the Senior Additional Commissioner of Police being the Appellate Authority on 11th April, 1996 (Annexure A-2); the same has been further maintained by the Commissioner

of Police, Delhi, being the Revisional Authority by an order passed on 27.3.97 (Annexure-A-3) All the aforesaid orders are impugned in the present OA.

2. Aforesaid orders, in our view, are liable to be set aside on a short ground that the Deputy Commissioner of Police who has purported to have acted as the disciplinary authority was not authorised to impose the aforesaid order of penalty in terms of Article 311(1) of the Constitution of India.

3. The applicant was appointed as a Constable w.e.f 15th November, 1972, by an order passed by the Deputy Inspector General of Police. The post of Dy. Inspector General of Police in terms of Schedule-III of the Delhi Police Act 1978 is equated with the post of Additional Commissioner of Police and the post of Superintendent of Police is equated with that of a Deputy Commissioner of Police. As far as applicant is concerned, it is an admitted fact that the order of his appointment has been passed by the DIG of Police. In the circumstances, it is only the Additional Commissioner of Police who could have acted as the disciplinary authority and could have passed the impugned order of penalty.

4. Ms. Sumeda Sharma, learned counsel appearing on behalf of the respondents has, however, placed reliance on Rule 4 of Delhi Police (~~Punishment & Appeal~~) Rules, 1980 and has submitted that the appointing authority for the post of Constable is the Deputy Commissioner of Police. Hence, the order passed by the Deputy Commissioner of Police is not an order passed by an

18/1

12

officer junior in rank to the authority competent to pass the same. She has also referred to Rule 6 of Delhi Police (Punishment & Appeal) Rules, 1980 and has reiterated that the competent authority to impose the aforesaid punishment on a constable is the Deputy Commissioner of Police.

5. ~~In our view, if one has regard to~~ Certain decisions ~~which~~ have been taken and maintained by the Tribunal on the specific subject. In the case of Ex.Constable Mohinder Singh Vs. Additional Commissioner of Police and another, in OA No.3157/92 decided on 25th March, 1998, it has been held as under:-

"The Tribunal has also examined this question in the case of Bhim Singh vs. Union of India OA No.1707/87 wherein the applicants were appointed by the Deputy Inspector General of Police and it was held that what is material for the purpose of Article 311(1) of the constitution is the question as to who actually appointed the person concerned and not the competent authority who could have appointed the person concerned. The applicant herein having been appointed by an officer of the rank of Additional Commissioner could not have been dismissed by an officer of the rank of Additional Deputy Commissioner. This position was reiterated in OA No.3956/92 Ex. Constable Ganesh Bahadur Vs. Deputy Commissioner of Police and Anr.

this decided on 6.10.97."

6. In ^Lour view of the matter, we hold that the impugned order of penalty of removal from service has been passed by an officer not authorised to do so. The impugned orders are accordingly quashed and set aside. The applicant will now be entitled to be reinstated in service, however, without consequential benefits.

Ref

13

-4-

7. In result, the present OA is allowed. No order as to costs.

(ASHOK AGARWAL)
CHAIRMAN

(S.A.T. RIZVI)
MEMBER(A)

/kedar/