

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.629/98

New Delhi, this the 21st day of November, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

Ex. Constable Mangal Singh No.1242/DAP,
S/O Sh. Yaad Ram, aged about 26 years,
R/O B-67, Police Colony Saraswati Vihar,
Shakur Pur, Delhi-34.

...Applicant.

(By Advocate: Sh. Shanker Raju)

VERSUS

1. Union of India, through its Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. Sr.Addl.Commissioner of Police, AP & T, Police Head Quarters, IP Estate, New Delhi.
3. Dy.Commissioner of Police, 4th Bn, New Polic Lines, Delhi.
4. Commissioner of Police, Police Head Quarters, IP Estate, MSO Building, New Delhi.

...Respondents.

(By Advocate: Sh. Ram Kanwan, proxy counsel
for Ms. Neelam Singh)

O R D E R (ORAL)

By Hon'ble Shri Justice Ashok Agarwal, Chairman:-

By an order passed by the Full Bench on 14.9.2000 in the case of HC Rajpal Singh Vs. Union of India & Ors. (OA-77/97 with other connected cases) it has been held that Rule 25 (B) Delhi Police (Punishment & Appeal) Amendment Rules, 1994 is ultravires the provisions of the Delhi Police Act. Rule 25 (B) insofar as is relevant for the enquiry at hand provides as under:-

"25.B.Review:- The Commissioner of Police, an Addl.Commissioner of Police; Dy. Commissioners of Police and Addl. Dy. Commissioners of Police; Principal, Police Training School or College; or any other officer of equivalent rank may at any time call for the records of

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awards made by any of his subordinate either on his own motion or otherwise and confirm, enhance, modify or annul the same or make further investigation or direct such to be made before Passing orders."

2. Aforesaid rule has now been held to be ultravires and hence the impugned order passed on 6.8.97 by the Sr. Addl. Commissioner of Police enhancing punishment against the applicant will be liable to be quashed and set aside.

3. Few facts leading to the filing of the present OA are as follows:-

4. Disciplinary proceedings were initiated against the applicant and his co-delinquent under the following summary of allegations:-

"It is alleged against Rcts Mangal Singh No.2478/C and Inderjit Singh No.2479/C (under suspension) that while undergoing basic training at Recruit Training Centre IV Bn. DAP they stated that they have come from Police Headquarters and allegedly collected Rs.1250/- from 25 newly incumbents @ Rs.50/- each as security money on the pretext for providing cots and boxes to them."

5. Enquiry Officer by his report of 31.10.94 has found against the applicant and the co-delinquent as under:-

"Conclusion:-

From the facts stated above, the undersigned is not inclined to prove the charge fully as money was not collected by the defaulters but their presence at the place of incident is proved and the role of defaulter Inderjit Singh No.2479/C (now) 1837/East is more dominating than Rct. Mangal Singh No.2478/C (now) 1836/East who remained Mum at the place of incident."

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6. Aforesaid findings, it is clear, has exonerated the applicant as also the co-delinquent in regard to the charge of collecting amounts from the Rct. Constables. They have been held guilty of the charge of remaining present with Co-delinquent having been given a more dominating role than the applicant. Aforesaid finding of guilt, on the face of it, does not cast any aspersion on the delinquent as mere presence at particular place cannot form the basis of misconduct. Disciplinary authority based on the aforesaid findings of the EO has proceeded to observe as under:-

"I have gone through the statements of Prosecution Witnesses, findings of the EO and other record available on OE file, very carefully. I have also heard Rcts. Mangal Singh No.1836/E and Inderjit Singh No.1837/E in person on 14.9.95 where they stated that they collected the said amount on the direction of their munshi from the Recruit/Consts. of Platoon No.8 through their munshi. They have also given in writing to the undersigned. They assured that they will not indulge in such activities in future. Though there are some contradiction on the record about the statements of Prosecution Witnesses, it is fully proved during departmental proceedings by the E.O. that they were present at the time of incident. However, they did not collect the said money for their personal use."

Based on the aforesaid findings, the disciplinary authority has proceeded to pass the order of penalty:

".....one year approved service of R/Cts. Mangal Singh No.1836/E and Inderjit Singh No.1837/E is forfeited for a period of one year, permanently, entailing proportionate reduction in their pay from the date of issue of this order. They will not earn increment of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing their future increments of pay. Their suspension

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period as stated above is treated as period not spent on duty."

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Aforesaid order was passed by the Dy. Commissioner of Police being the disciplinary authority on 4.1.96.

7. The Sr. Additional Commissioner of Police has thereafter issued a show cause notice on 2.5.96 asking the delinquents to show cause as to why the order of penalty should not be enhanced. Aforesaid action is sought to be taken under Rule 25 (B) Delhi Police (Punishment & Appeal) Amendment Rules, 1994.

8. By the impugned order passed by the aforesaid authority on 6.8.97, applicant, including his co-delinquent, has been imposed a penalty of removal from service. Applicant sought to impugn the aforesaid order of 6.8.97 by instituting a departmental appeal on 22.8.97. Since no order thereon was passed for a period of over six months, the present application is instituted on 9.3.98.

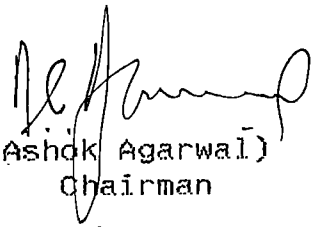
9. We have heard the learned counsel appearing for the contending parties in the light of the aforesaid facts as also in the light of the judgement of the Full Bench to which one of us (~~Hon'ble~~ Shri Justice Ashok Agarwal, Chairman) was a party. We have no hesitation in holding that the impugned order passed on 6.8.97 enhancing the penalty to one of removal from service purported to ^{have} been passed in ^{of power} exercised under Rule 25 (B) deserves to be quashed and set aside on the ground that the same has been issued without the authority of law. We direct accordingly. The order passed by the disciplinary authority on 4.1.96 imposing a


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penalty of forfeiture of one years' approved service, ~~as~~
~~stated above~~, is maintained. Present application is
allowed in the aforesaid terms. Applicant will now be
entitled to be reinstated along with back-wages with
effect from the date of institution of the application,
i.e., 9.3.98.

10. The OA is disposed of as above. No costs.


(Ashok Agarwal)
Chairman


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

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