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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 709/1998

New Delhi this the 13th day of November, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Ex. Const. Shri Bhagwan No.683/L
S/O Lakh Ram,
R/O 18/2, Gali No.1,
East Moti Nagar, Sarai Rohilla,
Delhi.

... Applicant

(By Shri Rajeev Kumar proxy for Shri Shanker Raju,
Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block,
New Delhi.

2. Addl. Commissioner of Police,
Northern Range, Police Headquarters,
I.P.Estate,
New Delhi.

3. Addl. Dy. Commissioner of Police,
North District, Civil Lines,
Delhi-110009. ... Respondents

(By Shri Ajay Gupta, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

In our view, the impugned order of penalty of removal from service is liable to be struck down on the short ground that the officer who has issued the aforesaid order does not hold the rank of an officer who has been the appointing authority of the applicant.

2. Applicant in the instant case was appointed as a Constable on 17.5.1978 by the then Commandant under the Punjab Police Rules. Subsequently, on

coming into force of the Delhi Police Act on 27.8.1978, the said Commandant under the schedule to the aforesaid Act has been shown equivalent to Deputy Commissioner of Police. The order of penalty, however, has been imposed by the Additional Deputy Commissioner of Police. Aforesaid order passed by an officer below the rank of the officer who has been the appointing authority of the applicant is, therefore, unsustainable under Article 311 of the Constitution. The Additional Deputy Commissioner of Police, in the circumstances, could not have acted as the disciplinary authority and could not have passed the impugned order of penalty.

3. The case of the applicant is similar to the case in *Attar Singh v. Commissioner of Police & Anr.*, OA No. 1567/91, decided on 10.4.1992, and in the case of *Ex. Constable Mohinder Singh v. Additional Commissioner of Police & Anr.*, OA No. 3157/92, decided on 25.3.1998. The latter decision has been followed by us in the case of *Ex. Constable Chand Ram v. Union of India & Ors.*, OA No. 624/98, decided on 9.11.2000.

4. In view of the aforesaid decisions, we are constrained to hold that the aforesaid order of penalty passed by the Additional Deputy Commissioner of Police not being the appointing authority is liable to be quashed and set aside. Similarly, the order passed by the appellate authority on 29.1.1998 maintaining the aforesaid order of penalty and dismissing the appeal is also liable to be quashed and

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set aside. We order accordingly. Applicant will, in the circumstances, be entitled to be reinstated in service, however, without consequential benefits.

5. Present OA is allowed in the aforesated terms. There shall be no order as to costs.

S. A. T. Rizvi

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

Ashok Agarwal

(Ashok Agarwal)
Chairman

(s)

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