

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 766 /19 98

DATE OF DECISION : 20.11.2000

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

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

Ex. Constable Braham Prakash

... Applicant(s)

-Versus-

U.O.I. & ORS.

... Respondent(s)

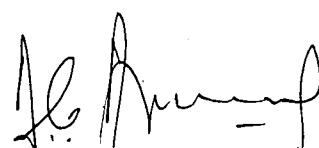
Advocates :

Mr./Ms. Shanker Raju, for Applicant(s)

Mr./Ms. Amit Rathi, proxy for
Mr. Rajan Sharma, Advocate for Respondent(s)

1. Whether to be referred to Reporter? Yes

2. Whether to be circulated to other Benches? No


(ASHOK AGARWAL)
CHAIRMAN

(1) **CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 766/1998

New Delhi this the 20th day of November, 2000. (2)

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

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

Ex. Constable Braham Parkash
S/o Late Shri Nain Singh
R/o C-43, Jitar Nagar Gagan Vihar
Delhi-51.

.....Applicant

(By Advocate Shri Shanker Raju)

-versus-

1. Union of India
Through Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Addl. Commissioner of Police,
Operations, Police Head Quarters
I.P.Estate, M.S.O. Building
New Delhi.
3. Add.Dy. Commissioner of Police
Police Control Room
Police Head Quarters, I.P.Estate
New Delhi. ... Respondents

(Shri Amit Rathi, proxy for Shri
Rajan Sharma, counsel)

O R D E R (ORAL)

Justice Ashok Agarwal:-

In disciplinary proceedings conducted against
the applicant ~~who was~~ a Constable in Delhi Police, a
penalty of dismissal from service has been imposed
upon him by the Additional Dy. Commissioner of Police
being his disciplinary authority by an order passed on
4.6.1996. Aforesaid order of the disciplinary
authority has been maintained by the Additional
Commissioner of Police who is the appellate authority
~~in the instant case~~ by an order passed on 15.9.1997.

N.A.

Aforesaid orders are impugned by the applicant in the present OA.

(2)

2. Applicant was enrolled as a Constable in Delhi Police on 14.11.1972 under the then Punjab Police Rules. According to the applicant, he was appointed by the Deputy Inspector General of Police which under the Schedule to the Delhi Police Act is equivalent to Additional Commissioner of Police.

3. By an order passed on 29.6.1995, applicant was ordered to be dealt with departmentally for misconduct of remaining unauthorisedly absent. As already stated, the impugned order of dismissal from service has been passed by the Additional Deputy Commissioner of Police. It has, inter alia, been contended by Shri Shanker Raju, the learned counsel appearing in support of the OA that the aforesaid order could not have been lawfully passed by the Additional Deputy Commissioner of Police as the appointing authority of the applicant was the Deputy Inspector General of Police who has been equated with the Additional Commissioner of Police. Since the appointing authority of the applicant is ^{equated with the rank of} the Additional Commissioner of Police, it is only the said officer, namely the Additional Commissioner of Police who could have validly passed an order of penalty against the applicant. The impugned order which has been passed by an officer of a subordinate rank, namely the Additional Deputy Commissioner of Police cannot be validly sustained.

M.Y.

4. Aforesaid contention is sought to be countered by and on behalf of the respondents by contending that the applicant was enrolled in Delhi Police not by the Deputy Inspector General of Police as contended but by the Commandant who under the Schedule has been equated with that of Deputy Commissioner of Police.

5. Factual contention which has been raised on behalf of the respondents cannot be accepted for the following reasons. The Commandant has been conferred with the exercise of powers and duties of District Superintendent of Police only after the issue of the notification dated 5/6th May, 1976. He was thus not authorised to appoint a Constable prior to the issue of the said notification. Applicant, it is undisputed has been appointed much prior to the issue of the notification i.e. 14.11.1972. He could not, therefore, ^{have} been appointed by the Commandant. His appointment must have been made by the Deputy Inspector General of Police. The question, therefore, which requires to be decided in the present case is whether the penalty which has been imposed by the Additional Deputy Commissioner of Police can be sustained on the ground that the same has been issued by an officer who was not the appointing authority of the applicant but is an officer subordinate in rank to the officer who appointed him.

6. Shri Amit Rathi, proxy counsel appearing for Shri Ranjan Sharma, ~~the learned counsel~~ for the respondents has placed reliance on a decision of the

Supreme Court in the case of **Ram Kishan vs. Union of India and others**, (1995) 6 SCC 157 wherein it has, inter alia, been observed as under:-

(5)

"6. It would be seen that the Deputy Commissioner of Police is in charge of the district and one or more Additional Deputy Commissioner of Police has/have been authorised to assist the Deputy Commissioner. Section 19 of the General Clauses Act, 1897 lays down thus:-

"19. Official chiefs and subordinates- (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relating to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior."

"7. So, it would be clear that where a superior officer has been authorised to perform some duties under an Act or a regulation, a subordinate or deputy officer lawfully performing those duties in the place of his superior is equally empowered to perform the duties of the office of the superior. Rule 4 of the Rules states that not only the Deputy Commissioner but Additional Deputy Commissioner also has been delegated the power of appointing Sub-Inspectors, Assistant Sub-Inspectors, Head Constables and Constables. An Additional Deputy Commissioner is thus competent to pass an order of dismissal qua a police constable, as is the petitioner.

"8. Our attention is then invited to Rule 6 of the Delhi Police (Punishment and Appeal) Rules, 1980 (for short, 'the Appeal Rules'), which reads:-

"6. Classification of punishments and authorities competent to award them.- (1) Punishments mentioned at Serial Nos. (i) to (vii) above shall be deemed 'major punishment' and may be awarded by an officer of the rank of the appointing authority or above after a regular departmental enquiry."

"9. It is, therefore, contended that the Rule indicates that an officer of the inferior rank cannot exercise the power to

impose major punishment. It is already seen that under Rule 4 of the Rules, the Additional Deputy Commissioner of Police is also one of the appointing authorities; and by the force of Section 19 of the General Clauses Act, he can exercise the powers of the Deputy Commissioner of Police. So, in a given case, even the Additional Deputy Commissioner can pass order of dismissal, if what has been provided in Section 19 of the General Clauses Act is also borne in mind. The exercise of power with the aid of the Rules and the Appeal Rules by the Additional Deputy Commissioner in the present case cannot be said to be without authority of law or void. He is competent to pass the order."

6

7. In order to appreciate the contention as also the aforesaid decision of the Supreme Court, it may be useful to make a reference to Rule 4 of the Delhi Police (Appointment & Recruitment) Rules, 1980 which provides as under:-

"4. General- (i) Appointing authorities- The following authorities shall be competent to make appointments to various subordinate ranks of Delhi Police:-

| Class of Police Officers | Authority to whom the power of appointment is delegated | The extent of delegation |
|--------------------------|---|--------------------------|
|--------------------------|---|--------------------------|

(i) Inspector Addl. C.P. Full powers subject to the rules framed hereunder.

(ii) Sub-Inspr. (i) DCP/ Do
(ii) Addl. DCP
(iii) Principal/PTS
(iv) Any other officer
of equivalent rank

(iii) ASI Do Do
(iv) H.C. Do Do
(v) Constables Do Do

Aforesaid provision, it is clear has prescribed the Deputy Commissioner of Police. Additional Deputy

Commissioner of Police, Principal/PTS and any other officer of equivalent rank as the appointing authority for Sub-Inspector, Assistant Sub Inspector, Head Constable and Constable. It is crucial to note that the Additional Deputy Commissioner of Police is one of the appointing authorities as far as the aforesaid officers are concerned. Additional Commissioner of Police has been made the appointing authority for Inspector and as far as Sub-Inspector, Assistant Sub-Inspector, Head Constable and Constable are concerned, it is the Deputy Commissioner of Police, Addl. Dy. Commissioner of Police etc are made /etc. who may be the appointing authority.

8. As far as the aforesaid decision of the Supreme Court is concerned, the same would have applied provided the Additional Commissioner of Police was also the appointing authority for the post of Constable. On the reasoning given by the Supreme Court, the Additional Deputy Commissioner of Police could in that case have performed the duties and functions of the Additional Commissioner of Police. Since the Additional Commissioner of Police is not the appointing authority for Constables, ~~it~~ being the Additional Deputy Commissioner of Police, ~~he~~ could not have validly performed the duties and functions of the Additional Commissioner of Police. Aforesaid decision of the Supreme Court, in the circumstances, we find can have no application to the facts arising in the present case. As already stated, applicant has been appointed on 14.11.1972 by the Deputy Inspector ^{who has been equalled with Addl. Commissioner of Police} General of Police. He is, therefore, the appointing authority. He alone in the circumstances could have

passed an order of penalty of dismissal from service upon the applicant. The Additional Deputy Commissioner of Police not being his appointing authority, ~~he~~ could not have validly passed the impugned order of penalty. In the circumstances, we are constrained to hold that the impugned order of penalty of dismissal from service has been passed by an officer not authorised to do so. Impugned orders dated 4.6.1996 and 15.9.1997 passed by the disciplinary authority and the appellate authority respectively are accordingly quashed and set aside. Applicant will now be entitled to be reinstated back in service, however, without consequential benefits.

(8)

9. In the result, the present OA is allowed ~~is~~ allowed in the aforesated terms. No order as to costs.


(S.A.T. Rizvi)

Member (A)


(Ashok Agarwal)
Chairman

sns