

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 186/95

Date of decision 25.10.1995.

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Kali Charan,
resident of A-46, Gali No.2,
Guru Nanak Nagar, Karawal Nagar Road,
Delhi-110053

... Applicant

(By Advocate Shri Shankar Raju)

Vs.

1. Lt. Governor of Delhi/N.T.C. of
Delhi (Through Commissioner of Police),
Police Headquarters, M.S.O. Building,
New Delhi.
2. Addl. Commissioner of Police,
New Delhi-Range,
Police Headquarters, M.S.O. Headquarters Bldg,
I.P. Estate, New Delhi.

... Respondents

(By Advocate Shri Vijay Pandita)

ORDER (ORAL)

(Hon'ble Shri S.R. Adige, Member (A))

In this application, Shri Kali Charan, Head Constable, Delhi Police has impugned the order dated 4.3.1994 (Annexure A-1) forfeiting five years approved service permanently, entailing proportionate reduction in his pay and withholding increments with commulative effect, as well as the Appellate order dated 21.7.1994 (Ann.A.2) reducing the punishment to forfeiture of 2 years approved service permanently entailing proportionate reduction in the applicants pay w.e.f. 4.3.1994 and withholding increments with commulative effect.

2. Shortly stated, the applicant was proceeded against departmentally on the charge that on the night of 21/22-5-93 while he alongwith two other constables were detailed for duty at Bhopura check post from 8P.M. to 8.AM, during surprise check, it was found that while

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one of the constable was sleeping in the check post and the other constable had gone to the toilet, the applicant was standing near the check post, and stopped three trucks and took money from the truck drivers.

3. In the departmentally enquiry conducted against the applicant, the Enquiry officer in his report dated 12.1.1994 (Annexure A-3) held that the charge against the applicant ^{was} proved beyond doubt. Accepting the E.O.'s finding, the disciplinary authority imposed the impugned punishment, which, as stated above, was modified in the appellate order, against which the applicant has now filed this J.A.

4. At the outset, applicants counsel Shri Raju, stated that the preliminary enquiry was conducted by Inspector Shri Ramesh Malik, who was also examined as PW-2, but his preliminary enquiry report was not supplied to the applicant, as a result of which the applicant was seriously-prejudiced in the D.E., which was sufficient to vitiate the departmental proceedings, in the light of paragraph 2(ii) of respondents circular dated 1.5.1980 (Annexure J) a copy of which has been placed on record.

5. Shri Pandita, respondents counsel admits that -Inspector Malik was called to ^{the} stand as PW 2, but a copy of his Preliminary Enquiry report was not supplied to the applicant. However, Shri Pandita contended that rule 15(iii) and rule 16(1) of Delhi Police (Punishment and Appeal) Rules, 1980 does not require a copy of the preliminary enquiry report to be supplied to the applicant, and argued that the contents of the respondents circular dated 1.5.80 could not over ride the rules. He

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also contended that although Inspector Malik was called to the stand as PW-2 he was not cross examined and hence the contents of the respondents circular dated 1.5.80 did not help the applicant.

6. We have considered this matter carefully.

7. When the respondents own circular dated 1.5.80 states that non supply of the P.E. report of the officer who conducted the P.E. although he was cited and examined as ^a PW, vitiates the D.E. abinitio, the arguments advanced by Shri Pandita ~~Shri~~ ^{Laksh} force, more particularly because no materials have been shown to us recalling ^{or} modifying that circular.

8. In the result, ^{the} DA succeeds and is allowed to the extent that the impugned orders dated 4.3.1994 (Annexure A-1) and dated 21-7.1994 (Annexure A-2) are quashed and set aside, and the case is remanded back to the respondents for conducting fresh departmental proceedings in accordance with law from the stage of supplying a copy of the preliminary enquiry report to the applicant.

9. No costs.
Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Amige
(S.R. Amige)
Member (A)

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