

(6)

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-594/95

New Delhi this the 12th Day of October, 1995.

Hon'ble Shri B.K. Singh, Member(A)

Const. Mohinder Singh,
S/o Sh. Prabhu Dayal,
R/o 25-H, Police Colony,
Model Town,
Delhi-9.

Applicant

(through Sh. Shankar Raju, advocate)

versus

1. The Lt. Governor of NCT Delhi/UDI
through Commissioner of Police,
Police Headquarters, M.S.O. Building,
I.P. Estate, New Delhi.

2. Deputy Commissioner of Police
(Central District)
Darya Ganj, New Delhi-2.

Respondents

(through Sh. Arun Bhardwaj, advocate)

ORDER

delivered by Hon'ble Shri B.K. Singh, Member(A)

This O.A.No. 594/95 has been filed against order No. 6851/SIP-C dated 11.5.1992 whereby adverse A.C.R. for the period 16.1.1991 to 7.1.1992 has been conveyed to the applicant by the Reviewing Officer after disagreeing with the Reporting Officer, vide Annexure A-1, order No. 22229-31/SIP-C dated 28.12.1992 whereby the representation of the applicant against the adverse remarks and against ^{Grading 'C'} ~~it~~ has been rejected vide Annexure A-2 and order No. 1256/ASIP-5th BN. DAP dated 14.3.1995 whereby the representation/revision petition against the adverse remarks has been reconsidered but rejected vide Annexure A-3.

(B)


The admitted facts of the case are that the applicant was enrolled as a Constable in Delhi Police on 29.09.1982. While posted at Police Station, Dosh Bandhu Gupta Road, a D.E. was ordered jointly against the applicant and one Const. Mukesh Kumar. The Enquiry Officer submitted his report to the effect that the charges levelled against the applicant and others were not proved. The Disciplinary Authority exonerated the applicant and other constables and treated the suspension period as 'spent on duty' which is enclosed as Annexure A-4 of the paperbook.

The Reviewing Authority based on the same charges recorded an adverse remark. The remark reads as follows:-

"I do not agree. He misbehaved with a shop-keeper and quarrelled under influence of liquor and was placed under suspension."

This A.C.R. is impugned vide Annexure A-1.

The applicant preferred a representation against the A.C.R. contending that he had already been exonerated from the charge and the period of suspension also has been treated as on duty. Another fellow Constable also challenged his A.C.R. in O.A.No.2720/93 and the Tribunal vide orders dated 8.7.1994 allowed the O.A. and directed the respondents to expunge the said remarks from the A.C.R. of the applicant by observing that the remarks of the Reviewing Authority were totally unjustified. A copy of this judgement has been enclosed as Annexure A-6 of the paperbook.



The reliefs prayed for are :-

- (a) To set-aside/expunge the 'adverse-remarks' recorded by the Reviewing Authority including the Grading 'C' in the A.C.R. of the applicant for the period 16.1.1991 to 7.1.1992 vide Annexure A-1;
- (b) to set-aside the impugned orders at Annexures A-2 & A-3; and
- (c) to extend the benefit of order in O.A.No.2720/93 to the applicant.

On notice the respondents filed the reply contesting the application and grant of reliefs prayed for.

Heard the learned counsel Sh. Shankar Raju for the applicant and Sh. Arun Bhardwaj for the respondents.

It is admitted that the D.E. was launched on the same charges that the applicant alongwith others under the influence of liquor misbehaved and quarrelled with a shop-keeper and was placed under suspension. This remark is a factual remark. There are two aspects involved (i) that the applicant was under the influence of liquor; (ii) that he misbehaved and quarrelled with a shop-keeper and (iii) he was placed under suspension. The D.E. was launched against him on the charges that he was under the influence of liquor and he misbehaved and quarrelled with a shop-keeper. The charges could not be proved against him and, therefore, the foundation of the A.C.R. itself disappears once the charge of misbehaviour and quarrel as a result of the applicant was under the influence of liquor are found false. There is no justification for retention

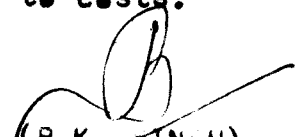
B

9

of this remark in the A.C.R. The suspension period has been treated as on duty. Therefore, it is not a punishment now. The factual remark automatically will go if a D.E. has been launched and the entire factum of the charge is disproved and the period of suspension is also treated as on duty.

However, if the respondents feel that this is a factual remark, then they are also required to add that a D.E. was launched on the basis of this charge and the charges were not proved against the applicant and he was exonerated and the period of suspension was treated as on duty. When a factual remark is recorded, the result of the disciplinary enquiry also has to be recorded in the A.C.R. and, therefore, in the interest of justice, the respondents are directed either to expunge remarks since these have no meaning now or alternatively modify or add that a D.E. was launched against the applicant on the basis of these charges and he was exonerated of the charges and the period of suspension was treated as on duty. The grading also must accordingly be changed on the basis of the D.E. Justice, however, demands that the remark should not stand in the A.C.R. However, the circulars on the subject are clear that if a factual remark is recorded about any enquiry then the result of the enquiry also will have to be entered in the A.C.R. and the A.C.R. will have to be modified accordingly.

With the above observations, the O.A. is disposed of but without any order as to costs.


(B.K. SINGH)
MEMBER (A)

/vv/