

Central Administrative Tribunal
Principal Bench

(31)

New Delhi, dated this the 6th day of Sept 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. Kuldip Singh, Member (J)

1. O.A. No. 767 of 1996

Shri K.S. Sen,
S/o Shri B.S. Sen,
R/o G-II 2nd Floor,
P.P. Jangpura
New Delhi-110014.

... Applicant

Versus

1. Union of India through
the Commissioner of Police,
Police Headquarters, I.P. Estate,
New Delhi.
2. Addl. Commissioner of Police (Admn.),
I.P. Estate,
New Delhi. ... Respondents

2. O.A. No. 926 of 1995

Shri K.S. Sen

... Applicant

Versus

1. Union of India through
the Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.
2. Additional Commissioner of Police,
(Operation), Delhi, PHQ,
I.P. Estate, New Delhi.
3. Dy. Commissioner of Police,
D.E. Cell (Vigilance) Delhi,
P.S. Defence Colony,
New Delhi.
4. Addl. Commissioner of Police (Admn.)
Delhi, PHQ, I.P. Estate,
New Delhi.
5. Dy. Commissioner of Police,
Communications,
5, Rajpur Road,
O.P.L. Delhi-110006. ... Respondents

By Advocates: Applicant in person
Shri Munish Kumar Proxy
counsel for Shri Vijay Pandita

2

(32)

ORDER

BY HON BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

As these two O.A.s involve common question of law and fact they are being disposed of by this common order.

O.A. No. 926 of 1995

2. In this O.A. applicant impugns respondents' orders dated 7.7.94, 16.8.94 and 9.3.95 (Ann. A-1 Colly.). He prays for consideration of promotion as Inspector retrospectively w.e.f. the date his juniors were promoted and for costs.

3. Applicant and Woman Head Constable Rani Soloanki were suspended and proceeded against departmentally on the ground that on 19.11.92 while working as Inspector Control Room, West District, he directed Women Head Constable Rani Soloanki to report for duty at the Control Room from the EPABX Rajouri Garden but she refused to obey and resorted to using unparliamentary and abusive language. She also physically assaulted applicant in the process. Applicant also did not exercise restrain and manhandled the Woman Head Constable besides using abusive and foul language at her.

4. The E.O. in his finding concluded that the charge levelled only against applicant were substantiated. Disagreeing with his findings the

2

Disciplinary Authority supplied a copy of the E.O's finding together with his note of disagreement to applicant as well as Women Head Constable Rani Solanki vide Memo dated 4.4.92 for representation if any, and they submitted their representation on 22.4.94.

5. After going through the materials on record, and giving applicant as well as W/HC Rani Solanki hearing in O.R. on 24.6.94, the Disciplinary Authority by impugned order dated 7.7.94 held the charge proved against both of them and after noticing that applicant was repentant imposed the punishment of withholding one increment for one year in the present scale of pay without cumulative effect on him. He further directed that the period of suspension from 24.11.92 till the date of issue of the order be treated as period not spent on duty. Applicant's appeal was rejected by impugned appellate order dated 9.3.95.

6. We have heard the applicant who argued his case in person. Proxy counsel Shri Munish Kumar appeared for respondents and was also heard.

7. Applicant has contended that he was the victim of conspiracy and was not at all at fault. He avers that there are contradictions in the statements of witnesses and it is a case of non evidence. He

(3A)

contends that the failure to record fresh statements of witnesses in his presence despite his protest and the cross-examination only on the basis of the preliminary statements is a violation of rules. He contends that it is a case of multiple punishments and as the punishment order does not state the stage at which the increment has to be stopped, it is bad in law.

8. In so far as applicant's claim of not being at fault is concerned, we are unable to accept the same. The Disciplinary Authority has correctly concluded that the misconduct of Woman HC Rani Solanki does not exculpate applicant of his own misconduct in failing to exercise proper restraint which was expected of him as a senior officer. The evidence on record is consistent as to the unfortunate happenings on that day, and it is clear that the statements of witnesses were recorded in the D.E. and applicant was given full opportunity to cross-examine the PWS and produce his own defence witnesses. It is also not a case of double punishment and the order withholding one increment for one year without cumulative effect obviously is applicable from the date of its issue.

9. Nothing has been shown by applicant to establish that there was any infirmity in the conduct of the proceedings, or that there was a denial to him

2

(35)

of the principles of natural justice, or indeed that the impugned orders were passed by an authority not competent to do so. Furthermore as the punishment of withholding of one increment, even without cumulative effect constitutes a major punishment within the meaning of Rule 5 Delhi Police (P&A) Rules applicant is not entitled to the benefit of O.M. dated 3.12.85, reported at Page 260 of Swamy's Compilation of FRS & SRS Part I General Rules (12th Edition 1993) where a suspension period resulting only in a minor penalty has to be treated as period spent on duty.

10. Hence O.A. No. 926/95 warrants no interference.

O.A. No. 767 of 1996

11. In this O.A. also applicant seeks retrospective promotion as Inspector (Technical) from the date he became eligible for the same with consequential benefits.

12. Admittedly applicant who was appointed as ASI (Radio Technician) w.e.f. 11.6.71 and after confirmation on 19.6.75 was promoted as SI/Supervisor Tech. Communication w.e.f. 23.10.86, and was confirmed as such w.e.f. 1.1.89. He was promoted as Inspector/Tech (Communication) on temporary and ad hoc basis w.e.f. 16.1.90 under Rule 19(1) Delhi Police (P&C) Rules. A regular DPC for admission to Promotion List 'F' to fill up 10 posts of Inspector (Tech.)/Communication was held on 17.9.93 and

2

(36)

applicant was duly considered, but as he was under suspension and was facing departmental proceedings on the relevant date his case was kept in a sealed cover. His ad hoc promotion was, however, continued till the decision in the D.E. pending against him. After the major penalty of withholding one increment for one year was imposed on him vide order dated 7.7.94, the sealed cover was opened and respondents state that he was found to have been graded unfit for promotion by the D.P.C. Accordingly he was reverted to his substantive rank of S.I./Supervisor by order dated 16.8.94.

13. We have already noticed that no good reasons have been advanced to warrant judicial interference in O.A. No. 926/95. Applicant has not brought out any legal infirmity in the decision of the D.P.C. which found him unfit for regular promotion as Inspector to warrant judicial interference in O.A. No. 767/96.

14. During the course of hearing applicant asserted that by respondents order dated 22.3.95 (Page 83 of O.A. No. 767/96) his pay had not been correctly fixed, but he was not able to lay a firm foundation to sustain this assertion during his submission. If he is aggrieved by the aforesaid order dated 22.3.95 it is open to him to challenge the same separately in accordance with law if so

2

(31)

advised, after clearly specifying the basis of such challenge.

15. Granting applicant the liberty as aforesaid, O.A. No. 926/95 as well as O.A. No. 767/95 are dismissed. No costs.

16. Let copies of this order be placed in both O.A. case records.

(Kuldeep Singh,
Member (J)

(S.R. Adige)
Vice Chairman (A)

/GK/

12/11/95
Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
Faridkot House,
Copernicus Marg.
New Delhi-11006