

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH.

OA No.1158 of 1996

New Delhi, this 31st day of March, 2000

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

Naresh Pal (794/P)
S/o Shri Shree Lal
R/o Vill & PO Chhawla
Alipur, Delhi-110071

...Applicant

(By Shri Shyam Babu, Advocates - not present)

versus

1. Commissioner of Police
Police Headquarters
I.P. Estate, New Delhi-110002
2. Additional Commissioner of Police
(Operation)
Police Headquarters
I.P. Estate, New Delhi-110002
3. Deputy Commissioner of Police
I.G.I. Airport
New Delhi.

...Respondents

(By Smt. Jyotsna Kaushik, Advocate - not present)

Order (Oral)
Hon'ble Smt. Shanta Shastry

The applicant is not represented either in person or through counsel. The respondents however are represented by departmental representative SI Raj Singh Parmar. Learned counsel for the respondents however is absent.

2. The applicant has impugned the order of punishment dated 26.4.1995 of the disciplinary authority (DA, for short), the appellate order dated 26.7.1995 and the revisional order dated 18.1.1996. He has sought to quash and set aside the enquiry report dated 16.5.1995 and the aforesaid impugned orders with all consequential benefits.

3. The applicant who is a Constable in Delhi Police, was posted at the Indira Gandhi International Airport, New Delhi during 1994. He was placed under suspension with effect from 31.5.1994 in contemplation of a departmental enquiry (DE, for short) against him. A regular DE was initiated against him under the provisions of Delhi Punishment & Appeal) Rules, 1980 (RULES, for short) on the allegation that on the night on 27/28.5.1994 Constable Vidya Sagar No.429/P was detailed at Visitors Entry Gate (Departure Hall) to watch on the staff who were involved in nefarious activities from 7 PM onwards by Shri Ranbir Singh, Additional Commissioner of Police who was then the in-charge Shift 'B'/NITC. Constable Suraj Bhan, No.812/P was also performing his duty in the same night from 7 PM to 8 AM at the aforesaid gate. On a specific information, the applicant while posted in Shift 'A'/NITC was caught red handed by Constable Vidya Sagar, while taking out one bottle of one litre Scotch Seagram's 100 Pipers Deluxe Duty Free in polythene bag of duty free shop. The said bottle of Scotch was produced before Inspector Omkar Singh, Checking Officer of Building Gates 'B'/NITC at about 7.50 PM by Constable Vidya Sagar. The bottle was seized vide seizure memo prepared on 27.5.1994 and deposited in the Malkhana of P.S./NITC. On questioning, the applicant stated that he had purchased the bottle against ten dollars from duty free shop, I.G.I. Airport, Terminal-II. The bottle of foreign liquor was purchased and was being taken out by the applicant for the purpose of smuggling etc. He indulged and acted in a shameful manner and therefore he

was placed under suspension vide order dated 31.5.1994

He was subsequently re-instated by order dated 18.10.1994.

4. The EO after completing the enquiry submitted his report to the DA holding that the charge framed against the applicant was substantiated. A copy of the EO's report was served on the applicant to submit his representation against the findings of the EO's report and also to show cause as to why his suspension period should not be treated as period not spent on duty by order dated 24.2.95. The applicant submitted his representation on 10.3.1995. The DA gave him a hearing on 21.3.1995 and thereafter passed impugned order imposing the punishment of forfeiture of two years' approved service permanently entailing proportionate reduction in pay. His pay was reduced by two stages from Rs.1130 to Rs.1090 per month in time scale of pay for a period of two years with the clarification that he would not earn increment of pay during the period of reduction and on the expiry of that period the reduction would have the effect of postponing his future increments of pay. His suspension period from 31.5.94 to 17.10.94 was also decided as not spent on duty. The applicant's appeal was also rejected by the order dated 18.7.1995. The applicant submitted a revision petition thereafter which was also considered and rejected by the revisional authority, i.e. Commissioner of Police, Delhi, by order dated 18.1.1996.

5. The applicant has put forth several grounds challenging the impugned orders.

10

6. According to the applicant, there is no evidence to prove the charge. The only person who could have proved the charge is PW-3 i.e. Constable Vidya Sagar. But his evidence does not support the charge. The enquiry officer (EO, for short) has relied on hearsay evidence of the PW-5 and PW-6. There are discrepancies in the evidence. Secondly, the applicant's request for documents which were material and relevant for proper defence was rejected by the EO. Besides, procedurally also the EO was appointed by the Deputy Commissioner of Police/DE Cell who is not the DA. The DA of the applicant was DCP/IGI Airport, New Delhi. This is contrary to Rule 16(1) of the RULES. The applicant has contended further that his suspension was not justified in that Rule 27 of the RULES provides that a police officer will be placed under suspension only if the charge, if proved, renders him liable to be dismissed or removed from service. In this case the applicant has not been either dismissed or removed. Moreover, the concerned Addl. Commissioner of Police has not applied his mind and has neither formed any opinion in pursuance of Rule 15(2) of the RULES as to whether the DE should have been initiated or criminal proceedings should be launched. The DE has been initiated directly. In addition to the arguments urged in the OA, the learned counsel for the applicant has also submitted written arguments. In the written arguments, while reiterating the arguments already put forth, the learned counsel has urged that the punishment meted out to the applicant is not according to Rule 8(d)(ii) of the RULES. The vires of these rules has been challenged in the High Court on

the decision given by the Full Bench of this Tribunal upholding the imposition of such punishments. The Hon'ble High Court has issued notice in the writ petition under Article 226 of the Constitution of India and the matter has been reportedly listed in April, 2000.

7. We have perused the pleadings and available material on record including the ^{written} arguments submitted on behalf of the applicant. We note that the EO has conducted the enquiry as per rules. He had examined PWS and DWS, given opportunity to the applicant for cross-examination and provided relevant material/ documents and on the basis of the available evidence has reached the finding that the charge against the applicant has been substantiated. He has based his finding on evidence. After a perusal of the enquiry report as well as the impugned orders, we are unable to agree with the applicant's contention that it is a case of no evidence. It is not for us to reappraise the evidence. We are satisfied that the enquiry has been conducted properly. It is true that the EO was appointed by the DCP/DE Cell. We however find that according to the Delhi Police (Appointment & Recruitment) Rules, 1980 in the case of constables, the authority to whom power to make appointment is delegated includes the DCP or any other officer of the equivalent rank (Rule 4). This being so the argument of the applicant that DCP/DE Cell is not the DA for the applicant cannot be accepted. It has been held in the case of Babu Ranjan Das Vs. UOI 1988(8) ATC 761 (Jabalpur) that charge-sheet not signed by the DA but by another officer authorised by him is

proper. We are supported in this by the Full Bench judgement of this Tribunal in OA 1835/87 in the case of Ashok Kumar Vs. UOI & Ors.

8. It cannot be said that the suspension of the applicant was unjustified because when the enquiry was contemplated it was expected that the punishment would be of removal or dismissal. It is seen from the impugned order of the DA that he took a lenient view and gave lesser punishment to the applicant. The DA took a conscientious decision to initiate DE against the applicant instead of initiating criminal proceedings. This cannot be found fault with.

9. Finally in regard to the punishment, which according to the applicant is not according to Rule 8(d)(ii) of the RULES, no doubt the vires of the rules has been challenged in the Hon'ble High Court on the judgement of the Full Bench of this Tribunal in the case of ASI Chander Pal Vs. Admn. upholding the imposition of such punishment and though the High Court has issued notice on the writ petition and the matter has been listed in April, 2000, it has not been contended that any stay order has been passed by the High Court in this matter. Therefore we are bound by the Full Bench judgement on this issue.

10. We are satisfied that the DA has carefully gone through the enquiry report and has passed a reasoned and speaking order while awarding punishment to the applicant. The appellate authority has also passed a speaking order, so also the revisional authority after

(13)

taking into consideration the evidence on record. We are therefore unable to grant any relief to the applicant in this case.

ii. In the facts and circumstances of the case, the OA is dismissed. We do not order any costs.

Shanta S-
(Smt. Shanta Shastry)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

/gtv/