

(11)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2437/1996

New Delhi this the 3rd day of May, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Gaj Raj Singh S/O Nand Lal,
R/O WZ-114-A, Village Todapur,
New Delhi. ... Applicant

(By Shri Sarvesh Bisaria, Advocate)

-Versus-

1. Lt. Governor Delhi through
Chief Secretary,
Govt. of N.C.T. of Delhi,
Delhi.
2. The Director,
Directorate of Social Welfare,
Delhi Administration,
Curzon Road, New Delhi. ... Respondent

(By Shri Rajinder Pandita, Advocate)

O R D E R (ORAL)

Shri V. K. Majotra, AM :

Separate departmental enquiries were conducted against the applicant for an accident dated 17.11.1984 and another dated 31.1.1988 while allegedly negligently/unauthorisedly driving vehicle No.DEP-5214 on the first occasion, and vehicle No.DHA-8101 on the second occasion. The two enquiry officers held the charges as proved beyond any doubt. Vide an order dated 4.8.1989 of the disciplinary authority, the applicant was reduced to the lower post of peon; ^{it was} simultaneously ^{and that} ordering ~~ing~~ an amount of Rs.10612.50 and Rs.21254/- ^{to} be recovered from his pay being the amount of expenditure incurred by the Government on the repairs of the two vehicles.

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2. The applicant moved this Tribunal in O.A. No.459/1990. Vide order dated 9.6.1994 the Tribunal held that the order of the disciplinary authority dated 4.8.1989 was not in accordance with law inasmuch as the applicant having never been appointed to the post of peon, a group 'D' post, could not have been reverted by way of imposition of punishment of reduction to a lower post to which he had never been appointed. The Tribunal also quashed the order of recovery of the pecuniary loss caused to the Government from the salary of the applicant. However, while quashing and setting aside the aforesaid order, the Tribunal remitted the case to the disciplinary authority to pass order in accordance with law after giving an opportunity of hearing to the applicant. The applicant was heard by the disciplinary authority in pursuance of the directions of the Tribunal on 22.4.1996. The applicant made his written statement also before the disciplinary authority stating that the enquiries conducted against him were in contravention of the principles of natural justice and not in accordance with the established principles of law. He also alleged that the alleged incidents had occurred several years back and hence the disciplinary proceedings and the imposition of punishment etc. was highly belated.

3. Vide its orders dated 26.7.1996 the disciplinary authority imposed a major penalty of removal from service on the applicant and also ordered that the period of suspension of the applicant from

5.2.1988 to 15.2.1990 be not treated as spent on duty, and that he would not be paid anything in addition to the subsistence allowance already paid to him. The appellate authority has rejected the applicant's appeal vide order dated 15.10.1996. The applicant has assailed order dated 26.7.1996 of the disciplinary authority whereby he has been removed from service and the order^{dt. 15.10.1996 lb} of the appellate authority rejecting the appeal.

4. The applicant had joined the respondents as a driver w.e.f. 17.11.1971. He was confirmed as driver on 18.7.1981. The applicant has pleaded that the punishment of removal from service awarded to him for two minor accidents during a long service career of 17 years is totally disproportionate and not justifiable in the eyes of law. He has also alleged that the respondents have taken a period of about 12 years in concluding the proceedings and imposing the punishment on the applicant. He has also taken exception to the non-assignment of any reasons by the appellate authority while rejecting his appeal. Alleging the impugned orders as arbitrary and without any application of mind, the applicant has sought quashing of the same with all consequential benefits.

5. In their counter, the respondents have stated that the applicant had been a careless and negligent driver and had caused the accident~~s~~ on the first occasion while driving the vehicle negligently

and on the second occasion when he drove the vehicle unauthorisedly and under the influence of liquor. It has also been pointed out by the respondents that the applicant had been found guilty by the Court of the Metropolitan Magistrate and was fined Rs.150/- on 1.2.1988 indicating that the applicant is an unreliable driver who could not be given any vehicle to drive.

6. We have heard the learned counsel of the parties and examined the material on record. The applicant had been appointed as a driver way back on 17.11.1971. He was confirmed on the post of driver after a service of ten long years. Confirmation of a Government official is only after satisfaction of the competent authority in regard to the satisfactory performance of his duties. His confirmation on the post of driver w.e.f. 18.7.1981 is only indicative of the fact that the applicant during that period between 1971 and 1981 had not been driving vehicles negligently, rashly or inefficiently and, therefore, had satisfactorily performed his duties and was confirmed by the authorities. However, two minor accidents, one in 1984 and the other in 1988 which had not resulted in any loss of life and had caused only some damage to the concerned vehicles had set the entire career of the applicant at ~~naught~~ ^{naught} and the respondents moved their machinery to take disciplinary action against him. However, the completion of the departmental action again took a long time of about

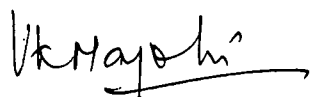
ten years resulting in the passing of the impugned orders of removal of the applicant from service.

7. From the facts of the case, we are satisfied that the punishment inflicted upon the applicant is certainly disproportionate to his guilt. The ends of justice would have been met if a lesser punishment had been chosen for the applicant. Now whereas the punishment of removal has been inflicted upon the applicant after a service of more than 25 years, he is left ~~absolutely~~^{lb} high and dry and will not be able to avail himself of various benefits which would have otherwise been available to him if any of the lesser punishments had been awarded in the case. Normally, the courts are not supposed to ~~interfere~~^{lb} with the orders of the Executive, but in rare cases where the impugned orders hurt the judicial conscience^{seriously lb} it is imperative for the courts to draw ~~the pen of~~^{lb} compassion and direct the Executive to re-consider the case in regard to the quantum of punishment. ^{The present case is one such case. lb in this case lb} In our considered view, ^{lb} the ends of justice would ~~be met only~~^{lb} if punishment having less severity than the removal from service is imposed upon the applicant.

8. Having regard to the aforesaid reasons, the order dated 26.7.1996 passed by the disciplinary authority and the appellate order dated 15.10.1996 are quashed and set aside, ^{and} so far as the order of penalty is concerned, ^{lb} the respondents are directed to re-consider the matter in regard to the quantum of

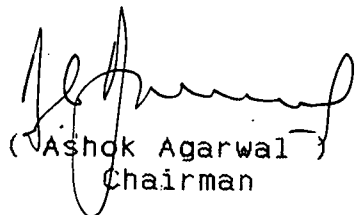
punishment. The respondents will be free to pass an ^{appropriate} order of penalty, ^{observations} ~~keeping in view the nature of the offence~~ effective from 26.7.1996, i.e., when the applicant was originally removed from service.

9. The O.A. is accordingly disposed of. There shall be no order as to costs.



(V. K. Majotra)
Member (A)

/as/



(Ashok Agarwal)
Chairman