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Central Administrative Tribunal, Principal Bench

Original Application No.2620 of 1996

New Delhi, this the 1st day of May, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman
Hon'ble Mr. V.K. Majotra, Member (Admnv)

Head Constable Mahavir Singh No.353/W, PIS
No.28823085, S/o Late Shri Daryao Singh, R/o
House No.11/V&PO Diehaon Kalan, PS
Najafgarh, New Delhi-110043.

- Applicant

(By Advocate Shri B.S. Oberoi)

Versus

1. Union of India, through Commissioner of
Police, Police Head Quarters, MSO
Building, I.P.Estate, New Delhi-110002.

2. Senior Additional Commissioner of Police
(Planning and Implementation), Police
Head Quarters, MSO Building, I.P.Estate,
New Delhi-110002.

3. Deputy Commissioner of Police, I.G.I.
Airport, New Delhi.

- Respondents

~~(None for the respondents) vs. C.A. No. 2620 of 1996~~

O R D E R (Oral)

By Justice Ashok Agarwal, Chairman.-

In disciplinary proceedings conducted against the applicant and two others, a penalty of forfeiture of three years approved service permanently is imposed on the applicant. Accordingly the pay of the applicant is reduced by three stages from Rs.1210/- to Rs.1125/- per month in the time scale of pay for a period of three years. It is further directed that he will not earn increment of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. The aforesaid order of penalty is imposed by the disciplinary authority's order passed on 30th May, 1995 at Annexure-A-2. The applicant carried the aforesaid order in appeal and by an order passed by the appellate

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authority on 27th May, 1996, his appeal was dismissed vide Annexure-A-1. The aforesaid orders dated 30th May, 1995 and 27th May, 1996 are impugned in the present Original Application.

2. As already stated, the disciplinary proceedings were initiated against the applicant and two others, ^{The charge against them contained} on the following allegations :-

"on the night intervening 22/23.4.94 HC P.A.Rasheed, No.237/P, HC Mahavir Singh, No.177/P and Const. Venu Gopal K., No.886/P were detailed for surveillance of Vigilance duty at Terminal-II I.G.I. Airport from 7 PM to 8 AM. On that night HC P.A.Rasheed No.237/P and HC Mahavir Singh, No.177/P left their duty point without obtaining permission from their Seniors and reached at Ayyappa Temple, R.K.Puram, New Delhi. After reaching there, HC P.A.Rasheed met Const. Venu Gopal K., No.886/P, who was already present there. Both (HC P.A.Rasheed and Const.Venu Gopal K.) picked up one Sh. P.K.K. Unnithan of M/s Continental Tour and Travels, Govind Puri, Kalkaji, New Delhi near Tea Shop outside the temple and forcibly brought him to IGI Airport, Terminal-II in a Maruti Car with the help of HC Mahavir Singh, No.177/P and one Santosh probably a Const. posted in Central Distt. They confined Mr. P.K.K.Unnithan wrongfully and illegally whole night in the room being used as retiring room for the staff of Vigilance Branch and harassed him with ulterior motive."

By an order passed on 24th May, 1994 at Annexure-A-3 the applicant as also two others were placed under suspension. By a later order passed on 24th June, 1994 at Annexure-A-4 order of suspension in so far as the same related to the applicant was withdrawn and he was reinstated. The suspension period between 24th May, 1994 and 23rd June, 1994 was directed to be treated as spent on duty for all intents and purposes. By a show cause notice issued on 24th June, 1994 the applicant was called

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upon to show cause why a penalty of 'censure' should not be imposed upon him. By further orders passed on 1st July, 1994 and 20th October, 1994 the applicant was allotted his initial duties in the Vigilance Cell. By a later order passed on 16th August, 1994 (Annexure-A-8) the censure notice of 24th June, 1994 was withdrawn and a regular departmental enquiry was directed to be held against the applicant as also two others. Thereafter, enquiry officer submitted his enquiry report as per Annexure-A-12 giving his findings, a copy of which was served on the applicant. Thereafter, the disciplinary authority proceeded to impose the impugned order of penalty and the appellate authority has proceeded to dismiss the appeal.

3. Shri Oberoi, learned counsel appearing in support of the present application has first contended that the order for conducting censure proceedings was issued by the Deputy Commissioner of Police. Hence the order withdrawing the same could not have been passed by the very same officer i.e. the Deputy Commissioner of Police. Reliance in this behalf has been placed on Rules 25, 25A and 25B of the Delhi Police (Punishment & Appeal) Rules, 1980.

4. In our judgment aforesaid provisions of appeal, revision and review ^{will not} ~~cannot~~ be attracted in ~~so~~ ^{as far as these} ~~far~~ ^{orders} as these relate to the ~~order~~ ^{ing of} to hold censure proceedings and thereafter ~~to~~ ^{ing} withdraw the same. Both these orders have been passed by the Deputy Commissioner of Police, who is the disciplinary authority, as far as the applicant is concerned. Whatever can be done by an



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officer can always be undone by him/under Section 21 of
the General Clauses Act. The said contention in the
circumstances is rejected.

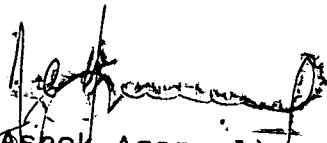
5. The second and the only other contention raised by Shri Oberoi is on merits. He has tried to contend that on the material placed in the departmental enquiry the aforesaid impugned order of penalty could not justifiably be imposed on the applicant. It is undisputed that the applicant at the material time was detailed for surveillance of vigilance duty at the IGI Airport. He left his duty point without obtaining permission from his seniors and reached Ayyappa temple, R.K.Puram, New Delhi. He was in the company of Head Constable P.A.Rasheed and Constable Venu Gopal, who picked up one Shri P.K.K.Unnithan of M/s Continental Tour and Travels, Govind Puri, Kalkajai, New Delhi and forcibly brought him to IGI Airport and confined him wrongfully and illegally during the whole night in the retiring room of the staff of Vigilance Branch and harassed him with ulterior motive. Even though the applicant may not have played an active role in the matter of picking up of Shri P.K.K.Unnithan and confining him illegally throughout the night, he was in the company of the police officers throughout the period when said Unnithan had been wrongfully confined. The applicant had been posted for surveillance of vigilance duty and he had left his duty point without obtaining the requisite permission. In the circumstances, it is not possible to accept the contention of the applicant that he cannot be held guilty of misconduct resulting in

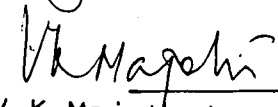
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the imposition of the penalty in question. As far as the finding of guilt is concerned, the same is based on the aforesaid undisputed facts. The same cannot be successfully assailed in the present application specially as we are not a court of appeal. Principles of natural justice have been duly complied with. The applicant has been given considerable opportunities at all the material ^{stages} times. The impugned orders are, therefore, found to be just and proper. No exception can be ~~made~~ ^{to} there~~of~~. The present OA in the circumstances is dismissed. No order as to costs.


(Ashok Agarwal)
Chairman


(V.K. Majotra)
Member (Admnv)

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