

2

6

CENTRAL ADMINISTRATIVE TRIBUNAL , PRINCIPAL BENCH

Original Application No. 571 of 1996

New Delhi, this the 19th day of March, 1999

Hon'ble Mr. R.K.Ahooja, Member (A)
Hon'ble Mr. S.L.Jain, Member (J)

Parveen Kumar, Asstt. Sub-Inspector

of Police (1672/D) (PIS No. 24900005),

resident of C-6/84 Yumana Vihar, Delhi-110053 ..APPLICANT

(By Advocate : Shri Shyam Babu)

Versus

1. Deputy Commissioner of Police

(Prov. & Lines), Old Police Lines,

Rajpur Road, Delhi.

2. Addl. Commissioner of Police,

Rashtrapati Bhawan (Security),

New Delhi.

..RESPONDENTS

(By Advocate : Shri Amresh Mathur)

O R D E R

By Mr. S.L.Jain, Member (J)

This is an application under Section 19 of the Administrative Tribunal Act 1985 for the relief to call for the records of the case, quash/set aside the enquiry report annexure H, the impunged order of punishment dated 31 August, 1995 annexure A, the impunged appellate order dated 18.12.1995 annexure - B with all consequential reliefs/benefits regarding seniority, monetary or promotion along with costs.

2. There is no dispute between the parties in respect of the fact that the applicant was placed under suspension vide D.O. No. 60 dated 23.02.1995 by the Deputy Commissioner of Police, vide order dated 06.03.1995, the respondents No. 1 appointed Shri R. Dayal as Inquiry Officer to conduct the Inquiry on day-to-day basis, the Inquiry Officer served upon the applicant memo of inquiry, summary of allegations, list of witnesses and

Sd/-

7

documents, examined the prosecution witnesses, framed the charge against the applicant, the applicant examined the defence witnesses, submitted the defence note on 26.05.1995 and thereafter the Inquiry Officer submitted his report in which allegation No. 1 regarding the theft of petrol from the Government vehicle was not substantiated during the Inquiry but allegation No. 2 regarding consumption of liquor was substantiated. The applicant was served with the show cause notice dated 16.03.1995, submitted the reply dated 26.06.1995, the Disciplinary Authority passed the punishment order dated 31.08.1995 by reducing the applicant by three stages from Rs. 1440/- to Rs. 1350/- in the time scale for a period of two years with effect from date of issue of the impugned order, the applicant will not earn increments of pay during the period of reduction and on the expiry of this period the reduction will have the effect of postponing his future increment of pay. The said punishment is awarded in respect of allegations 1 and 2. The applicant submitted the appeal, In appeal allegation No, 1 was not found to be proved while allegation No, 2 was found to be proved and the Appellate Authority rejected the appeal by Appellate order dated 18.12.1995 and confirmed the punishment awarded by the Disciplinary Authority.

3. The plea of the applicant is that his suspension with effect from 23.02.1995 was arbitrary and contrary to rule 27 of Delhi Police (Punishment and Appeal) Rules 1980. No charges were framed against applicant and no summary of allegation was served on the applicant before suspension. The Disciplinary Authority while disagreeing in respect of charge No, 1 which was found to be not proved by the Inquiry Officer, not given the opportunity to the applicant to make his submission against such a finding. Charge No. 2 which is said to have been proved is not established on the evidence of record. The Inquiry Officer, the Disciplinary as well as the Appellate Authority have acted on evidence which is not legal one, has neither rejected the defence evidence nor relied on the defence evidence. The Inquiry Officer has used his own imagination to prove the charge No. 2 against the applicant. The punishment awarded is not according to law. Hence this OA for the above said relief.

8

4. The respondents have denied the said allegations and submitted for dismissal of OA along with costs. During the course of the arguments only the point's submitted are in respect of charge No. 2, illegal suspension and excessive punishment.

5. The learned counsel for the applicant relied on 1991(3) Supreme Court cases 930 ^{Bachubhai} ~~virtue~~ by Hasan Ali versus State of Maharashtra and argued that if no urine or blood test was sent for chemical analysis it cannot be established that the applicant was in drunken state. It is true that the said Authority is under Section 304(A) and 337 of the Indian Penal Code but the fact remains that for establishing drunkenness, urine test and blood test are to be done and until and unless the same is done the charge cannot be established. In the present case, admittedly this has not been done.

6. Dr. C.L. Gautam was examined as PW 4 and Dr. Mukthiar Singh was examined as PW 7. The defence of the applicant is that he has consumed excess of the medicine, Dr. Mukthiar Singh has stated that the applicant was smelling of alcohol, Dr. C.L. Gautam admits that the applicant was under his treatment and medicine which was prescribed by him if taken in excess, alcohol smell is possible. The applicant was found to be having alcohol smell and there is no direct evidence that he has consumed alcohol but in view of rule 22(BB) it is provided ^{that a Govt. servant shall refrain from consuming} any intoxicating drug. The defence of the applicant was he has consumed drug in excess which resulted alcohol smell is a misconduct as per rule 22 D. Thus the finding recorded by the Inquiry Officer, Disciplinary Authority and the Appellate Authority regarding guilt of the delinquent officer is warranted by law.

7. The applicant's counsel relied on rule 27 of Delhi Police (Punishment and Appeal) Rules 1980 and argues that the applicant could have been suspended only when it appears likely that the charge framed will, if proved, render him liable to be dismissed or removal from service, after enquiry the punishment awarded is not of dismissal or removal from service as his suspension was not in accordance with Rules 27 hence his period of suspension

9

shall be treated on duty.

8. We have to read Rule 27 along with Rule 30 of the Delhi Police (Punishment and Appeal) Rules 1980 which provided that if a police officer is reinstated on inquiry ^{or on} appeal, the grant of ~~pay~~ ^{basic} and allowances including ~~substant~~ ^{basic} grant shall be made in accordance with such rules and orders on the subject, thus, we are unable to agree with the learned counsel for the applicant and the case of the applicant is to be dealt with in accordance with Rule 30 of the Delhi Police (Punishment and Appeal) Rules 1980 in respect of his suspension period.

9. The learned counsel for the applicant submits that the punishment awarded by the Disciplinary Authority which is upheld by the Appellate Authority is the same while the Disciplinary Authority has awarded punishment in respect of allegation No. 1 & 2 while the appellate authority does not find that allegation No. 1 is proved and only confirms allegation No. 2 hence his punishment awarded by the Appellate Authority is not justified one. It is entirely within the jurisdiction of the departmental authorities that what punishment is to be awarded. In the present case, Disciplinary Authority which finds the applicant guilty in respect of charges No. 1 and 2 does not specify the punishment separately, the Appellate Authority also maintains the said punishment, in the circumstances we are of the opinion that when two allegations in respect of which applicant was held guilty by the Disciplinary Authority are entirely distinct one, the Appellate Authority confirms the said punishment only in respect of allegation No. 2 it was proper for the Appellate Authority to give notice before awarding punishment for enhancement of the punishment which he failed to do so hence the order to the extent of punishment awarded illegal.

10. In the circumstances, we allow the O.A. partly, quash the appellate punishment order dated 18.12.95 annexure -- B and the case is remitted to the Appellate Authority to award fresh punishment in respect of the allegation No. 2 which is proved against the applicant. In case he feels that the said punishment which is now

Sd/-

awarded is to be awarded, he must before awarding the punishment issue notice to the applicant regarding enhancement of the punishment and after hearing decide the matter according to law. In case he comes to a conclusion that lesser punishment is to be awarded, he can do so without issuing the notice and hearing the applicant. The matter be finalised within a period of three months from the date of receipt of the order.

(1). Looking to the fact and circumstances of the case, we order that parties shall bear their own costs.

S.L. JAIN
MEMBER (J)

R.K. SHOOJA
MEMBER (A)

Amit