

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.725/1996

New Delhi this the 1st day of January, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. C.S. CHADHA, MEMBER (ADMNV)

Smt. Anita Sharma,
W/o Sh. Sushil Kumar Sharma,
R/o C/o Sh. Gaja Nand Vats,
Qr. No.254, Police Colony,
Ashok Vihar, Phase-I,
Delhi.

-Applicant

(By Advocate Shri Ashwani Bhardwaj)

-Versus-

1. State of Delhi
through its Chief Secretary,
Delhi Administration, Delhi.
2. The Commissioner of Police,
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi-110002.
3. The Addl. Commissioner of Police,
(Operations),
Police Headquarters,
MSO Building,
I.P. Estate,
New Delhi.
4. The Dy. Commissioner of Police,
Communications, Old Police Lines,
Rajpur Road,
Delhi-110054.

-Respondents

(By Advocate Shri Ram Kanwar)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

By an order dated 28.1.2000 OA was disposed of in terms of the decision of the Apex Court in State of Punjab & Ors. v. Bakshish Singh, JT 1998 (7) SC 142. High Court of Delhi in CWP-139/2001 by an order dated 17.4.2002 set aside the order passed by this court and remitted the matter for consideration of other issues raised in the OA.

2. Applicant in this OA has impugned respondents' order dated 7.6.94 imposing upon her a major

punishment of removal from service, appellate order dated 1.2.95 as well as order passed on revision on 31.7.95, upholding the punishment imposed. Applicant seeks quashment of these orders and direction to reinstate her in service with all consequential benefits.

3. Applicant was enrolled as a Woman Head Constable (Assistant Wireless Operator) on 28.8.89. Applicant was transferred to EAPBX, Rajouri Garden on 18.3.93. As applicant has not turned up on duty after filing casual leave she was granted off for that day. On her application sent on 19.3.93 for grant of 1+1 days casual leave through her husband which was refused. She without any authority withdrawn herself from official duty and was marked absent vide DD entry No.52 dated 19.3.93. Her application sent on 22.3.93 for grant of 12 days (i.e. w.e.f. 22.3.1993 combined with all Saturdays, Sundays and gazetted holidays upto 12.4.1993 was not considered as the same was accompanied by her resignation. Applicant was directed to appear before the ACP (HQ) on several occasions by sending an intimation to her home address. Request for resignation was examined and as the same was not in accordance with rules showing disregard from the language used therein the same was not acceded to after according several opportunities to applicant to appear in the OR. Applicant failed to respond to same. A DE was ordered and a summary of allegation was served upon applicant, alleging gross misconduct, indiscipline, non-compliance of lawful orders and continued absence unauthorisedly. Inquiry Officer through his finding held applicant guilty of the charge. Disciplinary Authority communicated the findings

of the IO to applicant and despite receiving the same, applicant re-iterated her request for resignation and not filed any reply to same.

4. Disciplinary Authority by an order dated 76.6.94 imposed upon her a punishment of removal from service, which was put to challenge by way of an appeal as well as revision but the same has been upheld, giving rise to present OA.

5. Sh. Ashwani Bhardwaj, learned counsel appearing for applicant contended that inquiry is vitiated as the same has not been held in accordance with the procedural rules laid down in Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980.

6. Though several contentions have been raised by applicant to assail the impugned order, but at the outset, it is contended that the absence of applicant was on justified grounds under mitigating circumstances when his only child was seriously sick. Applicant sent applications for availing leave due to her but the same was arbitrarily rejected and as the allegations of wilful and unauthorized absence have not been alleged in the summary of allegation the punishment imposed upon her is arbitrary, severe and disproportionate to the charge. As applicant had excellent past record the impugned punishment violates Rules 8 (a) and 10 of the Delhi Police (Punishment & Appeal) Rules, 1980.

(17)


7. In this backdrop it is stated that neither the appellate authority nor revisional authority have considered the proportionality of punishment and no finding has been recorded which is the prerogative of the departmental authorities in the light of the decision of the Apex Court in B.C. Chaturvedi v. Union of India, 1995 (8) SC 65.

8. On the other hand, respondents' counsel Shri Ram Kanwar vehemently opposed the contentions of applicant and stated that applicant has herself waived of her right, as in response to the finding she has not filed any reply and in the departmental inquiry as well no defence was produced. According to him even before the disciplinary authority it was the intention of applicant to resign and she was not at all interested in police service. As a disciplined force punctuality and conduct of police officer is very relevant as applicant has unauthorisedly absented herself and used language which smacks of insubordination, the punishment imposed is commensurate with the misconduct. There is no procedural illegality committed during the course of enquiry.

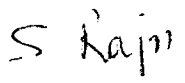
9. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view and on perusal of the orders passed by the appellate as well as revisional authorities, we are satisfied that no finding has been recorded as to the proportionality of punishment or whether the punishment is commensurate with the misconduct. As, in the light of the decision of the Apex Court in B.C. Chaturvedi's case (supra) the proportionality of punishment

and the consideration thereof is the prerogative of the departmental authorities, having failed to discharge their onerous duty to go into the proportionality of punishment and to record a finding, these orders cannot be sustained in the eyes of law.

10. For the foregoing reasons, OA is partly allowed. Appellate as well as orders passed in revision are quashed and set aside. As the Commissioner of Police is no more competent to entertain the revision petition the matter stood remanded back to the appellate authority for passing a detailed and speaking order, including a finding on the proportionality of punishment, after taking into consideration the contentions putforth by applicant in her appeal. Aforesaid exercise shall be carried out within a period of three months from the date of receipt of a copy of this order. No costs.


(C.S. Chadha)
Member (A)

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(Shanker Raju)
Member (J)