CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A.NO.1602/97

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New Delhi, this the 15th day of November, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

ASI Jasram No.2766/D, S/O Sh. Bucha Ram, aged about 50 years, presently posted at PCR, R/O Qtr.No.M-4/3, Police Colony, Andrews Ganj, New Delhi.

...Applicant.

(By Advocate: Sh. Shankar Raju)

VERSUS

1. Union of India through its Secretary, Ministry of Home Affairs, North Block, New Delhi.

2. Addl. Commissioner of Police, Operations, Police Head Quarters, I.P.Estate, MSO Building, New Delhi.

3. Dy.Commissioner of Police, FRRO, Hans Bhawan, New Delhi.

4. Dy.Commissioner of Police, HQ (I), Police Head Quarters, IP Estate, New Delhi.

...Respondents.

(By Advocate: Sh. Rajinder Pandita)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, Member (A):-

The applicant ASI has been charged in this case with malafide intention and gross misconduct in clearing a passenger while posted at I.G.I.Airport on the basis of fake passport on 28.3.94. On the basis of this charge, the applicant has been tried departmentally and has been punished by the disciplinary authority vide order dated 15.4.96. The punishment inflicted is reduction in pay by two stages from Rs.1760/- PM to Rs.1640/- PM in the time scale of pay for a period of two years permanently. It has also been directed that the applicant will not earn his increments of pay during this period and after the expiry of the aforesaid period, the reduction will have the effect of postponing his future increments. The

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appellate authority has upheld the orders passed by the disciplinary authority in his order dated 21.2.97. Both these orders have been impugned by the applicant alongwith the findings of the Enquiry Officer dated 5.2.96 as also the order dated 9.5.97 issued by the respondent No.4 removing the name of the applicant from the promotion list E-I thereby discontinuing his adhoc promotion.

2. The learned counsel for the applicant has raised a couple of contentions. One of these deals with Rule 16 (i) of the Delhi Police (Punishment & Appeal) Rules, 1980 which provides that "...Lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution shall be attached to the summary of misconduct...." (emphasis supplied). The learned counsel referred to the mandatory nature of the provision. However, the issue relating to the mandatory nature of the said provision was referred to the Full Bench which has decided the matter in its order dated 13.9.2000 and laid down that the aforesaid rule cannot be mandatory and is to treated as directory in nature. We are bound by the rule so laid down by the Full Bench and to this extent, the legal issue raised by the learned counsel for the applicant will not hold good.

3. Our attention has next been drawn to the summary of allegations and the list of witnesses and documents placed on record. It would seem from these that in the list of witnesses it has nowhere been mentioned as to what kind of evidence would be led by each of the

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witnesses as prescribed under Rule 16 (i). A perusal of the summary of allegation also does not reveal the nature of evidence that was likely to be led by each of the witnesses aforesaid. On this ground, a plea has been taken that prejudice has been caused to the applicant in offering his defence in this case. We do not agree with this on the ground that this specific plea, namely, that the nature of evidence to be led by each witness has not been mentioned in the list of witnesses aforesaid, has not been taken by the applicant at any stage during the course of the departmental proceedings and has not been brought out [redacted] in the present OA either. It has been raised as a law point during the course of the arguments and that question has already been answered as stated in para 2 above. We have nevertheless glanced through, with the help of the learned counsel, the report of the enquiry officer so as to see whether any prejudice has actually been caused to the applicant on account of the details about the nature of evidence to be led by each witness having not been given in the list of witnesses. We find that the applicant has had sufficient and full opportunity to cross-examine each and every witness in relation to the charge levelled against him and, in this view of the matter, we are satisfied that no prejudice has been caused at all to the applicant.

4. The only other important contention pressed by the learned counsel for the applicant is regarding the allegation of malafide on the part of the applicant. To deal with this, we have also carefully perused the report of the enquiry officer and the orders passed by the disciplinary authority and later by the appellate

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authority. The enquiry officer has, for good or bad reasons, upheld the charge levelled against the applicant and his finding has in turn been upheld by the disciplinary authority. However, the appellate authority has taken a different view. We would like to reproduce the following paragraph reflecting the view expressed by the appellate authority in its order dated 21.2.97.

> "Considering the evidence in its totality, the preponderance of probability of evidence goes in favour of proving the charge against the appellant. The undersigned, however, finds that the impugned order dated 15.4.96 is not very happily worded by the disciplinary authority. It goes to state that even though allegation is of a very serious nature, however, the defaulter had requested for leniency and accordingly, the punishment in question had been imposed upon him. Request for leniency is no ground for imposing a lighter punishment as invariably the defaulters would request for leniency. If the charge of a serious nature involving corrupt practices etc. is proved, it should normally lead to dismissal of the delinquent from service. However, in this case, since there is no convincing evidence of malafides on the part of the appellant, the undersigned does not propose enhancing of the punishment though, all the same, there is no reason to interfere with the punishment already imposed in view of the fact that the charge against the delinquent has been proved on grounds of negligence atleast. As such there is not force in the appeal and the same is hereby rejected."
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> (emphasis added)

5. The appellate authority has, as can be seen, found no convincing evidence about malafide on the part of the appellant (applicant in this case). He has on the other hand held that the charge against the delinquent (applicant in this case) has been proved on grounds of negligence.

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6. On the question of the guilt of the applicant, we cannot hold a better view than has been expressed by the appellate authority. Thus, in effect, the charge that remains is that of negligence and not of malafide on the part of the applicant. The applicant has not been tried on the charge of negligence. That can be done now and we order accordingly in the following terms:-

7. In keeping with the orders of the appellate authority, the charge of negligence against the applicant has been sustained. However, the applicant would need to be tried separately on this charge. The appellate authority will take note of this and have a proper enquiry made in accordance with the law and procedure limited to the said charge of negligence. That is to say, the appellate authority will have an enquiry officer appointed for the purpose and the rest of the proceedings will be taken up as per the prescribed procedure. It is clarified that the enquiry now to be made on the basis of this order will be a further enquiry to be made in continuation of the enquiry already made.

8. The impugned orders dated 15.4.96, 21.2.97 and 5.2.96 are hereby quashed and set aside, and the OA is disposed of with direction as above, without any order as to costs.

(Ashok Agarwal)
Chairman

(S.A.T. Rizvi)
Member (A)

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