

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench
NEW DELHI, INDIA

DATED THE 29th DAY OF JUNE, 1999

CORAM : Hon'ble Mr. R.K.Ahoja, A.M.
Hon'ble Mr. S.L.Jain, J.M.

ORIGINAL APPLICATION NO.687 OF 1997

Ex Constable Rajendra Singh

S/o Shri Asha Ram

R/o Vill & Post Ailum, P.S.Kandla

Distt. Muzaffar Nagar (U.P.)

.... Applicant

C/A Shri Dalip Singh, Adv.

Versus

Union of India through

1. Deputy Commissioner of Police

9th Bn. DAP No.2, Police Lines,

Pitampura, New Delhi.

2. Senior Additional Commissioner of Police

Police Head Quarter II P.Estate,

New Delhi - 110002

.... Respondents

Shri Ajesh Luthra
(C/R ~~Shri Jayant Kaushik~~, Adv. proxy of Mrs. J.Kaushik)

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

This is an application under section 19 of the
Administrative Tribunal Act 1985 to quash the order
No.F.XVI/243/96/9663-65/AP-1 dated Delhi 31.10.1996 by
Senior Additional Commissioner of Police (AP & P), Delhi

S.L.Jain

and order no.25594/659/HAP 9th Bn. DAP dated Delhi 18.7.96
by which the applicant is removed from service.

2. The applicant was performing his duties at the residence of PP Shri Indrajit Singh at B-70 East of Kailash New Delhi and his duty as PSO with the same PP was from 8 A.M. to 8 P.M. He did not attend his duties from 29.10.94 to 20.4.95 as he ~~was~~ suddenly fell ill when he was off duty. His relatives took him to his native village Ailum in the district Mu zaffar Nagar, U.P. He was treated by the Medical Officer incharge of PHC and advised ~~bed~~ rest with effect from 29.10.94 to 20.4.95. On 21.4.95 the said Health Centre gave him a fitness certificate and he resumed his duties on 21.4.95. On resumption of duties he submitted the original Medical Certificate in support, of his illness. He also informed under UPC to Shri U.K.Chaudhary, Additional Deputy Commissioner of Police (Security), New Delhi and resumed duty and recorded his arrival in the daily diary of E Block Security Line, New Delhi. A departmental enquiry under the provisions of Delhi Police (Punishment and Appeal) Rules 1980 was ordered against him by Additional Deputy Commissioner of Police (Security), New Delhi vide order dated 7.4.95 which was decided by D.C.P. 9th Bn. DAP dated 18.7.96. The said decision is in violation of Rule 14(4) along 14(3) of Delhi Police (Punishment and Appeal) Rules 1980. Police Head Quarter Circular issued by no.4035-4115/CR III dated 16.2.95 is also contravened as two different authorities ~~one~~ initiated and other ~~one~~ decided are involved in completion of the disciplinary proceedings. Initially enquiry was entrusted to Leela Ram of Security Unit who served summary of allegation upon the applicant, in the course of enquiry proceedings the enquiry was entrusted to Shri J.S.Joon while only three witnesses, namely, Constable Vijai Singh, Dharam Singh and ~~absentee~~ clerk/ security to be examined

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on behalf of the prosecution, constable Raj Kumar was also examined and Constable Ajai Kumar was examined as a court witness which is clearly violative of rules of natural justice and thereby contravened rule 16(VIII) of Delhi Police (Punishment and Appeal) Rules 1980. The Enquiry Officer exceeded its jurisdiction in the recording its finding and also proceeded ex parte when an application was filed seeking adjournment on medical ground. Findings of enquiry were also not served on the applicant but sent through special messenger to the applicant's wife, hence this O.A. for the above ~~said~~ relief.

3. The respondent resisted the claim and prayed for ~~dismissal~~ of the O.A. along with cost.

4. The Delhi Police (Punishment Appeal) Rules 1980, the Rule 14(3) and 14(4) are as under:-

14(3) Punishments mentioned at Sl.No.(i) to (vii) in Rule 5 supra shall be awarded by appointing authorities only after a regular departmental enquiry. All Deputy Commissioners of Police, Addl. Commissioners of Police shall exercise this authority over all officers of the subordinate ranks irrespective of the fact whether such an officer had actually appointed the concerned subordinate police officer and whether or not he was actually working under him. The procedure for holding departmental enquiries is explained in Rule 16 below.

14(4) The disciplinary action shall be initiated by the competent authority under whose disciplinary control the police officer concerned is working at the time it is decided to initiate disciplinary action.

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On perusal of Rule 14(4) it is clear that the competent authority under whose disciplinary control the police officer concerned is working at the time, it is decided to initiate disciplinary action as competent to initiate the same while Rule 14(3) prescribes the authorities who can inflict the punishment. The authorities competent to inflict the punishment are ~~all~~ Deputy Commissioner, Additional Commissioners of Police, in respect of punishment prescribed in Rule 5(i) to 5(vii) removal from service is mentioned in rule 5(ii). The applicant is removed from service. Hence Rule 14(3) read with rule 5 comes in operation. The penalty of removal from service can be imposed only by Deputy Commissioner of Police and Additional Commissioner of Police.

5. In the present case Deputy Commissioner of Police, 9th Bn. DAP, Delhi has inflicted the punishment of removal who is empowered authority under rule 14(3) of Delhi Police (Punishment Appeal) Rules 1980.

6. We are ^{not} in agreement with the argument and pleadings raised by the applicant that the disciplinary authority who has initiated the proceedings should also award the punishment which is based on the fact that an enquiry was ordered by Additional Deputy Commissioner of Police (Security), New Delhi and the punishment is awarded by the Deputy Commissioner 9th Bn. DAP Delhi.

7. The applicant has filed along with his O.A. the certificate of posting dated 31.10.94 to prove that he has informed about his illness to the Additional Deputy Commissioner of Police (Security), New Delhi. Even the respondents have stated in their C.A. that the applicant was asked to appear before the Medical Officer, Muzaffar

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Nagar for certain medical opinion but he failed to comply with the said orders. Thus it is a fact that the applicant informed about his illness to the Superior Officers well in time.

8. The enquiry proceeding was also proceeded *ex parte*. The applicant has also filed certificate of posting dated 12.10.95, 2.1.96, 4.5.96. Certainly they relate to period when disciplinary proceedings were started and has not come to an end as disciplinary proceedings came to an end on 18.7.96 and commenced on 7.4.95.

9. The respondents alleged that the name of constable Raj Kumar was cited in the list of witnesses and constable Ajai Kumar was examined as court witness.

10. The copy of the enquiry report along with show cause notice was served on applicant's wife and the applicant replied to the said show cause notice in compliance of the same. Thus the applicant is ~~in any~~ ^{no} way prejudiced at this stage. Hence there can be no ground in respect of the same to quash the departmental action proceedings.

11. The applicant has relied on 1994 SCC (L&S) 1131 *Union of India and others vs. I.S.Singh* for the proposition that where application was filed seeking adjournment on medical ground not accompanied by medical certificate, proper course for enquiry officer was to demand the medical certificate and he ought not to have proceeded *ex parte*. On the basis of the same his contention is that he has applied for adjournment during DAR proceedings on 12.10.95 2.1.96, 4.5.96 and his application for adjournment was not duly considered which resulted in miscarriage of justice. The applicant has not filed the documents. All

the applications were sent through Under Certificate of Posting dated 17.10.95, 4.5.96 and 2.1.96. There is nothing on record which goes to prove that what steps were taken in DAR proceedings on or near about the days mentioned above.

12. As there is no dispute that after serving of the charge-sheet on the applicant, the applicant never remained present during DAR proceedings and there is allegation that during the said proceedings he was ill bedridden, hence in view of the decision referred above Union of India and others v. I.S.Singh, it was desirable for the Enquiry Officer to demand the medical certificate from the applicant, after submission of the same or if not submitted by the applicant to decide the matter whether to proceed ex parte or not.

13. As Shri Ajai Kumar constable was also examined as a court witness, In absence of the applicant, was not relied upon as prosecution witness, it gives a surprise to the applicant who has no chance to cross-examine or rebut his evidence.

14. In the result, O.A. is allowed, Order No.F.XVI/243/96/9663-65/AP-1 dated Delhi 31.10.96 by Senior Additional Commissioner of Police (AP & P), Delhi and Order No.25594/659/H&P 9th Bn. DAP dated Delhi 18.7.96 by which the applicant is removed from service, are quashed. The respondents are at liberty to start afresh after the stage of serving the charge-sheet on the applicant within a period of one month after the service of the copy of the order and conclude the enquiry within 4 months thereafter. The applicant shall be served on

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the address given by him in O.A. in respect of further enquiry proceedings and if there is a change in his address he shall submit the same to the Enquiry Officer after obtaining an acknowledgement therefor. No order as to cost.

S. B. Doss
JUDICIAL MEMBER

R. K. Doss —
ADMINISTRATIVE MEMBER