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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. No. 553 of 1994

Decided on : 14.12.98.

Shri Lakhmir Singh.....Applicant

(By Shri Shyam Babu.....Advocate)

Versus

Dy. Commissioner of Police & Ors..Respondent(s)

(By Shri Vijay Pandita.....Advocate)

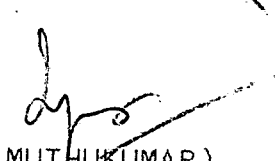
CORAM:

THE HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE MR. J.S. DHALIWAL, MEMBER (J)

1. Whether to be referred to the Reporter or not? 4/7

2. Whether to be circulated to the other Benches of the Tribunal? X


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 553 of 1994

New Delhi this the 14th day of December, 1998. (12)

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE MR. J.S. DHALIWAL, MEMBER (J)

Lakhmir Singh
S/o Shri Jaswant Singh
presently posted as
Sub-Inspector in Old Police Lines,
Delhi.

..Applicant

By Advocate Shri Shyam Babu.

Versus

1. Deputy Commissioner of Police,
Central District, Delhi, Daryaganj,
New Delhi-110 002.
2. Additional Commissioner of Police,
Northern Range,
Delhi,
Police Headquarters,
I.P. Estate,
New Delhi.
3. Commissioner of Police,
Delhi Police, Headquarters,
I.P. Estate, New Delhi.

..Respondents

By Advocate Shri Vijay Pandita.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

In a disciplinary enquiry, the applicant was charged with the misconduct of having entered the house of one Sharif Ahmed @ Kallu Foreman, 2182 Katra Mehar Parwar in a drunken state and on being told by the wife of Sharif Ahmed that he was not at home, the applicant entered another room of Shri Mukhtiar Ahmed, which was on the ground floor and which was open. He was locked inside the room and later on he was rescued and whisked away by one Shri Mohd. Aslam r/o 2041, Kucha Cholan, Nahar Khan street. An ugly situation was averted and later on he was not found at his residence and showed up at the Police Station next morning. He was thus charged with grave

misconduct in violation of Rule 3(1) and 22(B), 22 (C) and 22(D) of the CCS (Conduct) Rules, 1964 punishable under Section 21 of the Delhi Police Act, 1978. After detailed proceedings and recording of evidence and appraisal of evidence, the Enquiry Officer returned the finding that the charge against him had been proved, whereupon the disciplinary authority imposed the punishment of dismissal from service which was upheld by the appellate authority. On his further petition to the revision authority, a lenient view was taken and the punishment was reduced to that of forfeiture of four years of approved service for a period of 4 years entailing reduction of his pay from Rs.1880/-p.m. to Rs.1640/-p.m. and it was directed that he would not earn increments during the period of reduction and on the expiry of the said period, the reduction would have the effect of postponing the future increments also.

2. Applicant challenges the impugned order on the several grounds which are briefly as follows:-

(i) The Enquiry Officer relied upon the statements of persons who never appeared in the enquiry, although they were available. Thus, the applicant did not have opportunity to cross-examine them.

(ii) The revisional authority had himself found that the applicant was given an opportunity to cross-examine the prosecution witnesses except PW-5. The revisional authority should have, therefore, quashed the prosecution enquiry report and the Enquiry officer's report as this had vitiated the enquiry.

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(iii) The applicant has been imposed double punishment both by way of forfeiture of approved service for 4 years entailing reduction in pay and also postponing his future increments for a period of 4 years and this is in violation of Rule 8 of the Delhi Police (Punishment & Appeal) Rules, 1980.

(iv) Copy of the preliminary enquiry report was not supplied and the preliminary enquiry had influenced the mind of the Enquiry Officer.

(v) The Enquiry Officer was not appointed by the disciplinary authority but by an outside agency, namely, DCP, in-charge, by DE Cell and this was not in consonance with Rule 16 of the aforesaid Rules.

(vi) Although two other constables were also found guilty in the preliminary enquiry, departmental action against them were dropped and they subsequently became prosecution witnesses against the applicant on the assurance that they would depose against the applicant and the preliminary enquiry report statements made by these two constables did not reach any logical conclusion.

(vii) Applicant was not supplied copy of the departmental enquiry report and other relevant documents.

(viii) The Enquiry Officer failed to appreciate the statements made by the defence witnesses and he had also cross-examined the witnesses as no Presenting Officer was

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appointed.

(ix) The Enquiry Officer's findings are arbitrary, perverse and are based on surmises and conjectures.

(x) The Enquiry officer also relied upon the statement given by PW-6 but he did not appear in the witness box nor was he subjected to cross-examination by the applicant.

3. In the counter-reply, the respondents have denied the pleas and the grounds taken by the applicant. They have stated that the revisional authority had carefully gone through the whole record and had modified the punishment to that of forfeiture of approved service by 4 years entailing reduction in pay. They maintain that there was no violation of Rule 8 of the Delhi Police (Punishment & Appeal) Rules, 1980. They aver that the punishment awarded to the applicant was justified as his misconduct had been proved in the enquiry which had been accepted by the disciplinary authority and even the revisional authority and revisional authority had only taken a lenient view in the matter and had modified the punishment.

4. The learned counsel for the applicant argued on the pleadings and also on the grounds taken in the application. The main thrust of his argument was that the Enquiry officer relied on the statements of persons who were examined during the preliminary examination but they

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were not produced as witnesses during the preliminary enquiry although they were available. By this, the applicant was denied the opportunity of cross-examining these persons. The Enquiry officer also had relied on those statements in violation of Rule 12 and Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980. He refers to the decisions in 1996(1) SLJ 562 - Khairati Lal and Others Vs. U.O.I. and relied on Om Prakash Meena Vs. Commissioner of Police and Another - O.A. No. 1474 of 1992 that non-supply of preliminary enquiry report had vitiated the departmental enquiry. In Prem Pal Singh Vs. U.O.I. & Another - O.A. 874 of 1996 the same plea was accepted by the Tribunal. He also relies on some other judgments to contend that the punishment imposed by the revisional authority was not in conformity with Rule 8 of the Delhi Police (Punishment & Appeal) Rules, 1980 as the applicant was imposed with double penalty. He also pointed out how the Enquiry Officer relied on the statement by someone, namely, one Baljit Singh in the preliminary enquiry and he was not even a prosecution witness.

5. The learned counsel for the respondents on the other hand relied on State of Tamil Nadu Vs. K.V. Perumal, 1996 (5) SCC 474 and certain other cases.

6. We are of the considered view that it may not be necessary to go into the entire gamut of disciplinary proceedings. The revisional authority, namely, Commissioner of Police has after exhaustive perusal of the relevant documents on record and the revision petition had

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concluded that the charge against the petitioner for his misconduct of going to a place that too for said investigation work under the influence of alcohol was proved in the enquiry beyond doubt and at the same time he had come to the conclusion that the applicant was not given due opportunity to cross-examine the prosecution witnesses and, therefore, the provisions of Article 311 (2)(b) of the Constitution seemed to have been violated and it was on this ground that he had taken a lenient view and imposed a punishment of forfeiture of 4 years of approved service for a period of 4 years. The punishment also entailed not only reduction of pay but also postponement of future increments of pay. We are persuaded to observe that when the revisional authority had found that the enquiry had been vitiated due to the fact that the applicant was not given due opportunity to cross-examine the prosecution witnesses except PW-5, he should have quashed the enquiry and should have ordered a ~~further~~ enquiry in the matter. Secondly, the punishment was modified by forfeiture of service of 4 years for a period of 4 years with the additional stipulation that this reduction in pay would have the effect of postponing his future increments also. We agree with the learned counsel for the applicant that this amounts to double punishment and is not in accordance with Rule 8 (d) of the Delhi Police (Punishment & Appeal) Rules, 1980 as decided in our order in OA 1612/94 - Atal Singh Vs. DCP, Delhi and also the order of the Tribunal in Prem Prakash Meena (Supra). For these reasons, the impugned order cannot be sustained.

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7. In the conspectus of the above discussion, the impugned orders of the revisional authority, disciplinary authority and appellate authority are set aside. The application succeeds and is allowed. There shall be no order as to costs.


(J.S. DHALI WAL)
MEMBER (J)

Rakesh


(K. MUTHUKUMAR)
MEMBER (A)

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