

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 827 of 1994

(3)

New Delhi, dated the 10th December, 1997

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

Rattan Singh,
Ex-Const. No.134/CRP, 1841-C,
S/o Shri Ram Chhal,
R/o Vill. Yaqubpur,
P.S. Jhajjar,
Dist. Rohtak
Haryana. ... APPLICANT

(By Advocate: Shri Shankar Raju)

VERSUS

1. Commissioner of Police,
Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi-110002.
2. Addl. Commissioner of Police,
C.I.D.,
Police Headquarters,
M.S.O. Building,
I.P. Estate, }
New Delhi-110002.
3. Dy. Commissioner of Police,
Crime & Railway Police Headquarters,
I.P. Estate,
New Delhi-110002. ... RESPONDENTS

(By Advocate: Shri Surat Singh)

ORDER (Oral)

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns the Disciplinary
Authority's Order dated 29.4.92 (Annexure A-1)
dismissing him from service which has been
upheld vide appellate order dated 21.4.93 (Ann A-6)

2. Applicant was proceeded against
departmentally on the allegations that while
posted in the Intelligence Cell of Crime and
Railway he was detailed for duty on 20.8.84
as driver on a police vehicle " attached

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with the Intelligence Cell located at vellodrome, but he did not park the vehicle there after duty, and took the said vehicle under influence of liquor to Kingsway Camp Police Station quarters without any order from the competent authority, and without making any departure entry in the daily diary. The said vehicle became damaged/ suffered loss on account of fire, and applicant thereby travened the instructions of S.O. No.133/77. A case FIR No.595 dated 21.8.84 u/s 436 IPC was also registered against him in the Kingsway Camp P.S., Delhi.

3. The E.O. in his report dated 5.8.85 held the charge against the applicant to have been proved. The D.E. was however, kept in abeyance till the decision in the aforesaid criminal case registered against him was received.

4. The aforesaid criminal case ended in the applicant's acquittal vide judgment dated 9. 8.91, as the prosecution had failed ^{to} in its duty to discharge its burden ^{of} proving the guilt ^{of the} accused.

5. A copy of the E.O.'s findings were served upon the applicant who upon receiving the same submitted his ^{representation} r / on 10.12.91. Upon receipt of the applicant's representation and giving him a personal hearing, the Disciplinary Authority issued the

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impugned order dated 29.4.92 which was upheld vide appellate order dated 21.4.93 against which the present O.A. has been filed. (15)

6. We have heard Shri Shankar Raju for applicant and Shri Surat Singh for Respondents.

7. Shri Shankar Raju has taken four grounds. Firstly he has asserted that Rule 15(2) Delhi Police (P&A) Rules has been violated. Secondly he has asserted that Rule 12 of the aforesaid Rules has been violated. Thirdly he has contended that while on the one hand the applicant was dismissed as result of the D.E., at the same time applicant was granted promotion by the Respondents during the pendency of the D.E., which showed that the dismissal order has been passed without proper application of mind. Lastly he has also complained that there is violation of Rule 14(4) Delhi Police (P&A) Rules.

8. In so far as the first ground is concerned, admittedly Inspector B.R. Nanda submitted a P.E. report dated 21.8.84 a copy of which was furnished to the applicant along with the list of documents enclosed with the summary of allegations on 31.8.84, and which forms Exhibit PW 1 in the D.E. ^{In} the statement of Inspector B.R. Nanda in the D.E. ^{is informed that P.E. report while stating} he has ~~stated~~ that the applicant was found under the influence of liquor and the Police Control Room record revealed that the

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applicant had sprinkled petrol on the vehicle and set the same on fire. ^{This} ~~undeniably~~ ~~undeniably~~ discloses the commission of a cognizable offence. Under Rule 15(2) Delhi police (P&A) Rules where the P.E. discloses the commission of a cognizable offence the D.E. shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal cases should be registered and investigated or a departmental enquiry should be held.

9. In the present case no material has been furnished by the respondents to establish that the prior permission of the Addl. Commissioner of Police was obtained as to whether a criminal case should be registered and investigated or a departmental enquiry should be held. In fact in their reply to Para 5(1) of the O.A. the Respondents have taken the stand that Rule 15(2) is applicable when a criminal offence or cognizable offence is made out and as the instant case was one of allegation of misconduct there was no necessity to take the approval of the Addl. Commissioner of Police concerned under Rule.

10. Manifestly the aforesaid stand taken by Respondents is clearly at variance with the provision of Rule 15(2) Delhi Police (P&A) Rules.

11. In this connection we are fortified by the C.A.T., P.B. judgment dated 7.8.97 in O.A. No. 757/95 Ex H.C. Suresh Chand Vs. U.O.I. & Ors. where in it has been settled that where the commission of cognizable offence leads to the registration of FIR against a delinquent police official, a simultaneous D.E. requires the prior approval of the Addl. Commissioner of Police under Rule 15(2), and the omission of such approval is fatal to the D.E.

12. As the O.A. is entitled to succeed on this first ground we do not consider it necessary to go into the other grounds raised by Shri Raju against the impugned order.

13. Accordingly the impugned Disciplinary Authority's order as well as that appellate authority's order are quashed and set aside. Applicant should be reinstated in service within one month from the date of receipt of a copy of this order. It will be open to Respondents to place the applicant under suspension after his reinstatement, conduct the D.E. against him afresh after fulfilling the requirements of Rule 15(2) Delhi Police (P&A) Rules and in accordance with rules, and there after determine the manner in which the intervening period between the date of

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dismissal and the final orders in the D.E. is
to be treated.

14. The O.A. stands disposed of in terms
of Para 13 above. No costs.

Lakshmi Swamini Than

(Mrs. LAKSHMI SWAMINI THAN)
Member (J)

S.R. Adige
(S.R. ADIGE)
Vice Chairman (A)

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