

Central Administrative Tribunal
Principal Bench

O.A.No.1585/94

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 4th day of August, 1999

In the matter of :-

Constable Ashok Kumar, No.2404/SD
Delhi Police, through
Mrs. Avnish Ahlawat, Advocate
243, Lawyers' Chambers
Delhi High Court
New Delhi

....Applicant

(By Advocate: Ms. Vihba Mahajan, proxy of
Mrs. Avnish Ahlawat)

Versus

1. Government of NCT of Delhi
Through Commissioner of Police, Delhi
Police Headquarters
M.S.O. Building, I.P. Estate
New Delhi - 110 002
2. The Additional Commissioner of Police
South Range, Delhi Police
Police Headquarters
M.S.O. Building
I.P. Estate
New Delhi 110 002
3. The Additional Deputy Commissioner
of Police, South District
Delhi Police
Hauz Khas, New Delhi
4. Inspector Rajender Singh
Enquiry Officer
to be served through
Deputy Commissioner of Police/HQ(I)
Police Headquarters
M.S.O. Building, I.P. Estate
New Delhi 110 002

....Respondents

(By Advocate: Shri S.K. Gupta)

O R D E R

[Hon'ble Shri R.K. Ahooja, Member(A)]

The applicant was proceeded against in the departmental enquiry on the charge of being wilfully and unauthorisedly absent from duty for a total period of 95 days. The charge was admitted by the applicant and the disciplinary authority finding the charge as

proved, proceeded to impose the penalty of dismissal from service. The applicant filed an appeal before the appellate authority, the Additional Commissioner of Police who modified the penalty to forfeiture of three years of approved service entailing subsequent reduction in his pay. It was also ordered that the applicant will not earn increments of pay during the period of reduction and that on the expiry of this period the reduction will have the effect of postponing his future increments of pay.

2. The aforesaid order has been challenged before us on various grounds. The applicant submits that his absence from duty was not wilful as he had to go to the village to attend to his ailing wife who was suffering from T.B. At no time he was treated as a habitual absentee and no adverse remarks to this effect were made in the ACRs. He also alleges that he admitted the charges against him only under duress from the enquiry officer. He also submits that he was not given a proper opportunity to defend himself as no defence assistant was provided. Finally, he submits that the penalty imposed on him of forfeiture of three years service with a further stipulation that for the next three years he will not earn any increment, amounted to double punishment inasmuch as, as a result, he will lose not three but six increments in his pay.

3. The aforesaid allegations have been denied by the respondents. The learned counsel for the applicant has made before us a plea that since the impugned order of the disciplinary authority also regularised the period


of absence as leave without pay, the basis of allegation against the applicant disappeared and the applicant could not be punished in terms of the law laid down by the Supreme Court in State of Punjab Vs. Bakshish Singh 1995 SCALE 580. We are unable to agree with this argument since in our view the ratio of the State of Punjab Vs. Bakshish Singh (supra) is not applicable to the present case. In that case the penalty imposed was an order of dismissal. At the same time, the period of absence from duty was regularised and converted into leave without pay. On that basis the charge of absence from duty did not survive. In the present case, the order of the appellate authority, the Additional Commissioner of Police is not an order of dismissal from service but that of forfeiture of service for a period of three years. In that situation the applicant will continue in service even after the imposition of the penalty. It, therefore, becomes necessary that his period of absence should be settled in one form or the other since it would be directly related to his seniority, pay and retiral benefits. The position of a delinquent official who is not visited with the ultimate penalty of dismissal is thus entirely on a different footing. The penalty order in the case of applicant does not, therefore, become infructuous merely because it contains an order as to the period of absence and how it is to be treated in his service record.

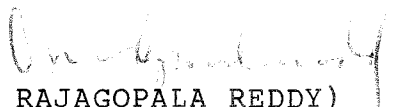
4. We may also note that this plea was neither taken by the applicant before the appellate authority nor in the O.A. before us.

5. We also do not find any merit in the other contentions of the applicant. The applicant has nowhere stated or alleged that he had asked for a defence assistant but the same facility was not provided to him. The allegation regarding the pressure from the enquiry officer also stands uncorroborated. We, however, find that the last ground taken by the applicant, namely, that he has been given two punishments, is valid. Section 21 of the Delhi Police Act states the punishments which can be imposed on any policeman of subordinate rank - (a) dismissal; (b) removal from service; (c) reduction in rank; (d) forfeiture of approved service; (e) reduction in pay; (f) withholding of increment; and (g) fine not exceeding one month's pay. In the present case, the punishment imposed on the applicant is reduction in pay by three steps with a further stipulation that the applicant will not earn any increment during the currency of punishment, i.e. for another three years. Clearly, the applicant has been awarded two separate punishments, i.e. reduction in pay and secondly withholding of increments. In our view Section 21 permits the imposition of only one punishment for an offence though normally a more severe punishment would include in itself some of the lower punishments. The penalty of reduction in pay, however, does not include in itself the withholding of future increments from the reduced level of pay. We, therefore, hold that the applicant could not have been given both the punishments simultaneously for the same charge. Accordingly, we maintain the more severe punishment,

i.e. forfeiture of service entailing reduction in pay on a permanent basis but set aside a further punishment that he will not earn future increments for a period of three years.

6. In the result the O.A. is partly allowed. There will be no order as to costs.


(R.K. AHOOJA)
MEMBER (A)


(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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