

Central Administrative Tribunal
Principal Bench

O.A. No. 1533 of 2000

New Delhi, dated this the 20th November 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Hd. Const. (Driver) Krishan Chand,
No. 4125/PCR NOW No. 81/security (PIS No.
28850935),
S/o Shri Ram Swaroop Sharma,
R/o RZ-F-566, Gali No. 22,
Sadh Nagar, Palam Colony,
New Delhi-110045. ..Applicant

(By Advocate: Shri Arvind Singh)

Versus

1. Union of India through
L.G., Delhi,
NCT of Delhi, Raj Niwas,
Delhi.
2. The Commissioner of Police, Delhi,
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.
3. The Dy. Commissioner of Police,
Police Control Room,
MSO Building, I.P. Estate,
New Delhi.
4. Shri J.L. Sharma,
Asst. Commissioner of Police,
Enquiry Officer,
Police Control Room,
through the DCP/HQ (I),
Police Headquarters,
I.P. Estate,
New Delhi-110002. .. Respondents

(By Advocate: Shri Ashwani Bhardwaj
proxy counsel for Shri Rajan Sharma)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the E.O's report dated
15.7.94 (Ann. A); the Disciplinary Authority's
order dated 10.8.94 (Ann. b); the appellate
authority's order dated 24.2.95 (Ann. C); and the
L.G., Delhi order dated 25.5.2000 enhancing the



punishment (Ann. D). He also seeks a declaration that Rules 25A, 25B and 25 C Delhi Police (Punishment & Appeal) Rules are unconstitutional, and ^{the} ~~for~~ period of suspension to be treated as period spent on duty.

2. Applicant and Const./driver Dalbir ^h Singh were jointly proceeded against departmentally on the allegation that on night of 12.3.94 the staff of PCR van Z-70 misbehaved with a lady Ms. Nirmala when she was standing at a bus stand at Kapashera Mor for the purpose of going home. They tried to outrage her modesty and one of them caught her hand, and offered her an orange. Under this fear she telephoned the complainant Shri Ram Narain to reach Kapashera Mor. The complainant reached the spot and took the lady in his car. On the way they were intercepted by the defaulters in a white Gypsy. One of them was in plain ^{clothes} ~~clothes~~ and the other was in uniform. It is further alleged that it was Constable/driver Dalbir Singh who was in plain clothes and had consumed liquor at [?] his friend's behest, and it is he who asked applicant Kishan Chand who was on duty at the time at PCR Van Z-70 to chase the car. Applicant thereupon left the RAP to chase the car at his own accord leaving the Van in charge and gunman at the spot when they were attending the checking officer. The complainant had further informed that they were under the influence of liquor and had used derogatory language against senior officers.

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3. Applicant was placed under suspension vide order dated 25.3.94 (Ann. E), which was subsequently revoked on 14.6.94.

4. The E.O. in his report dated 15.7.94 held the charge against applicant as proved. A copy of the same was furnished to applicant for representation if any on 20.7.94.

5. Thereupon, after giving applicant a personal hearing, the disciplinary authority agreeing with the E.O.'s findings by his order dated 10.8.94 imposed upon applicant the penalty of reduction in pay by 2 stages from Rs.1320/- p.m. to Rs.1260/- p.m. with immediate effect on the present time scale of pay for a period of two years. Applicant would not earn increments of pay during the period of reduction and on expiry of the period, the reduction would have the effect of postponing the reduction would be treated as period not spent on duty.

6. Applicant's appeal was rejected by order dated 24.2.95.

7. Thereupon applicant submitted a revision petition to Respondent No.1 on 10.4.95 (Ann. D), upon that Respondents issued applicant a show cause notice under Rule 25(C) Delhi Police (P&A Amendment) Rules for dismissal from service (Ann. Q). A corrigendum was issued on 21.5.99 (Ann. G) that the

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show cause notice be read under Rule 25(A) and not under Rule 25(C) Delhi Police (P&A Amendment) Rules, 1994.

8. Meanwhile applicant submitted his reply to the show cause notice on 23.10.98 (Ann.R).

9. Thereupon the L.G., Delhi by his order dated 25.5.2000 did not dismiss applicant from service, but enhanced the punishment imposed by the disciplinary authority and upheld by the appellate authority, to one of reduction in rank from the post of Head Constable/Driver to that of Constable (Driver) and applicant would draw his salary at the initial stage in the pay scale of Constable (Driver) and earn increments of pay in the usual manner.

10. Aggrieved by the aforesaid order, applicant has filed the present O.A.

11. We have heard applicant's counsel Shri Arvind Singh and respondents' proxy counsel Shri Ashwani Bhardwaj.

12. The first question for adjudication is whether the L.G., Delhi's order dates 25.5.2000 is intravires or not. In this connection our attention was invited to the CAT, Principal (Full) Bench order dated 14.9.2000 in O.A. No. 77/97 Head Constable Rajpal Singh and Others Vs. U.O.I. & Others and connected cases in which it was held that Rule 25 (B) Delhi Police (P & A Amendment) Rules is ultravires

(18)

the provisions of the Delhi Police Act. Respondents' counsel Shri Ashwani Bhardwaj conceded during hearing that the same reasons which impelled the Full Bench to hold Rule 25(B) Delhi Police (P&A Amendment) Rules to be ultravires the Delhi Police Act in the aforesaid order dated 14.9.2000 would be applicable in the case of Rule 25(A) Delhi Police (Punishment & Appeal) Rules. Nothing has been shown to us by respondents to establish that the aforesaid Full Bench's order dated 14.9.2000 has been stayed, modified or set aside.

13. Under the circumstances the L.G.'s Delhi's order dated 25.5.2000 purported to have been passed under Rule 25(A) Delhi Police (P & A) Rules is quashed and set aside, as Rule 25 (A) Delhi (P&A Amendment Rules) is ultra vires the Delhi Police Act.

14. We are then left with the disciplinary authority's order dated 15.7.94 and the appellate authority's order dated 24.2.95. During hearing applicant's counsel assailed the same on certain grounds.

15. Firstly it was contended by him that copies of certain documents which he claimed to be relevant, and which were listed at the bottom of his letter dated 28.4.94 (Ann. I) were not supplied to applicant, which prejudiced him in his defence in the disciplinary proceeding. This ground is clearly an afterthought, because in applicant's defence statement dated 5.7.94 (Ann. M) applicant has not

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taken this ground. In his representation dated 4.8.94 (Ann. N) there is only a vague assertion that relevant documents were not supplied to him despite repeated requests, but when he made those requests, how those documents were relevant, and to what extent applicant was prejudiced by their non-supply has nowhere been established. The incorrectness of the assertion that relevant documents were not supplied is further borne out by the fact that in Para 9 of applicant's appeal he has asserted that copy of the P.E. report was not supplied to him, but a perusal of the D.e. file maintained by respondents which was shown to us reveals that applicant acknowledged receipt of the P.E. report ^{over} his signature. Hence this ground fails.

16. It was next contended that the Addl. Commissioner of Police who had ordered an enquiry into the matter at the instance of complainant Shri Ram Narain, Advocate was not examined, which vitiated the enquiry. Applicant's counsel asserted that it was the Addl. Commissioner of Police who was the complainant, but this not correct as the actual complainant was Shri Ram Narain. Non-examination of the Addl. Commissioner of Police does not vitiate the enquiry in the course of which the charge has been established on the basis of other evidence. Hence this ground also fails.

17. The next ground taken is that there were certain contradictions in the PCR Form, and there was no mention of this incident in the checking report,



but this is a ground which involves reappraisal of evidence, which the Tribunal in the exercise of writ jurisdiction is precluded from doing.

18. Suffice it to say that this not a case of no evidence. The order of the disciplinary authority and appellate authority are not arbitrary or perverse. They ^{were} ~~are~~ competent to pass the same. The D.E. was conducted in accordance with rules and instructions and applicant got full opportunity to defend himself.

19. In the result the O.A. succeeds and is allowed to the extent that the L.G., Delhi's order dated 25.5.2000 is quashed and set aside for the reasons discussed above. The order of the disciplinary authority's order dated 10.8.94 as upheld by the appellate authority dated 24.2.95 shall, however, stand. Applicant should be restored to the rank of Head Constable (Driver) as if the order dated 25.5.2000 had not been passed, and the disciplinary authority's order dated 10.8.94 shall be enforced, if not already enforced. These directions shall be implemented within three months from the date of receipt of a copy of this order. No costs.

A. Vedavalli
20/11/2001

(Dr. A. Vedavalli)
Member (J)

S.R. Adige

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

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