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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No.2562/89.

New Delhi, this the 17th day of May, 1994.

SHRI J.P. SHARMA, MEMBER(J).

SHRI B.K. SINGH, MEMBER(A).

Shri Raj Bir Singh,
Head Constable No.4227/DAP,
Son of Shri Shiv Narain,
aged about 35 years,
resident of Village & P.O. Barahi, Distt. Rohtak,
(Haryana), employed in Delhi Police Force.

...Applicant

By advocate : Shri Shankar Raju.

VERSUS

1. The Commissioner of Police,
Police Headquarters, M.S.O. Building,
I.T.O., New Delhi-110002.

2. The Additional Commissioner of Police,
(Security and Training),
Police Headquarters,
M.S.O. Building, I.T.O.,
New Delhi.

...Respondents

By advocate : Mrs. Maninder Kaur.

O R D E R (ORAL)

SHRI J.P. SHARMA :

The applicant initially joined as Constable in Delhi Police on 15-4-1976 and was promoted as Head Constable on 28-1-1987. He faced a criminal trial under section 92/93/97 of Delhi Police Act, 1978 on the basis of prosecution launched by P.S. Tuglak Road on the accusation that on 6/7-8-88, he consumed liquor while on duty and under the influence of liquor created nuisance in the public. On this ^{accusation} ~~accusation~~, the criminal court held the applicant guilty and he was ^{convicted} ~~convicted~~ ~~acquitted~~ and punishment imposed was penalty of conviction till the rising of the court. Thereafter,

the departmental proceedings were initiated against the applicant by serving a summary of allegations dated 15-9-88 where it is said that the applicant committed misconduct as well as gross negligence and carelessness and dereliction of duties by consuming liquor while on duty on 6.8.88 while posted at P.S.O. to P. Parthasarthy. After the evidence was recorded, the applicant was charged that he was arrested in a case under section 92/93/97 of Delhi Police Act, 1978 and later released on bail and that he consumed liquor while on duty as said above. Hari Singh, ACP submitted his inquiry report dated 1-5-89 holding that the allegations levelled against the defaulter H.C. are not substantiated except that he was sentenced to undergo T.R.C. by the Court of Munsif, Metropolitan Magistrate, New Delhi. The show cause notice was served by disciplinary authority Deputy Commissioner of Police and he considered the reply submitted by the applicant imposed the punishment by the order dated 4.9.89 whereby 2 years approved service was forfeited permanently for a period of 2 years entailing reduction in his pay from Rs.1,100 per month to Rs.1,050 per month, with immediate effect. He will not earn increment of pay during the pay of reduction and on the expiry of this period, the reduction will not have the effect of postponing his future increments of pay. The suspension period from 7.8.88 to 16.6.89 is also treated as not spent on duty for all purposes and intents. The applicant preferred under rule 23 of the Delhi Police (Punishment and Appeal) Rules, 1980 to the Addl. Commissioner of Police who while considering this appeal by the order dated 8-12-89 issued a show cause notice to the applicant that the punishment awarded by the disciplinary authority is not commensurate with the misconduct and he proposed a punishment of dismissal from service and issued a show cause notice, as said above, calling the applicant to submit any representation within 15 days from the receipt of the same. The present application was filed on 21.12.89. The Bench by its order dated 22.12.89 ordered the maintenance of status quo as of ^{the} today and that order continues and was made absolute by the order dated 2-3-90. The applicant in this application has prayed that the show cause notice annexure-8 be set aside; the

show cause notice issued earlier by the show-cause authority; the suspension period be treated for all purposes as spent on duty.

2. The respondents contested this application and opposed the grant of the reliefs on the ground that the applicant has committed a misconduct and he was punished by a criminal court and subsequently the departmental inquiry was initiated against him. It is stated that the application is barred by section 21 of the Administrative Tribunals Act, 1985. It is stated that under rule 11 of the Delhi Police (Punishment and Appeal) Rules, 1980, the applicant could have been ~~punished~~ outright as he has been sentenced to imprisonment by the criminal court. However, the departmental inquiry was initiated as per Delhi Police (Punishment and Appeal) Rules and the Additional Commissioner of Police was justified in issuing the show cause notice. The applicant, therefore, according to the respondents, has no case.

3. We heard the learned counsel at length and perused the records. The first contention of the learned counsel is that the punishment imposed by the disciplinary authority is totally illegal. It is stated that since inquiry officer has exonerated the applicant of the charge and in the show cause notice issued by the disciplinary authority, no reasons, whatsoever, were given by the concerned authority of disagreement with the inquiry officer. Since the order of disciplinary authority is illegal, though he filed an appeal, on which, a show cause notice was issued, yet he can challenge this show cause notice as the punishment ^{pro} imposed is of dismissal which could not be passed in the case of the applicant. The learned counsel for the applicant emphatically pressed on the basis of certain authorities that the Tribunal has a scope to interfere even in interlocutory orders and in such orders which are patently illegal. Without going through those authorities, in this case the order of disciplinary authority is pending for consideration before statutory body under rule 25 of the Delhi Police (Punishment and Appeal) Rules, 1980. Under said clause (D) of rule 25, there is a power even to enhance the punishment on the appeal filed by a charged official

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against the punishment imposed by the disciplinary authority. It is in the principles of natural justice that the punishment cannot be enhanced without issuing a show cause notice. The matter is yet under consideration before the appellate authority and the appellate authority, after due application of mind, may withdraw the show cause notice, even may modify the punishment imposed by the disciplinary authority which is under appeal. We cannot, therefore, visualise what is to be done in the case by the appellate authority. The presumptions and surmises entertained by the applicant that the proposed punishment would be the likely result of the appeal cannot be accepted. Administrative orders are also expected to be passed on balanced reasonings.

4. The application is, therefore, misconceived at this stage and has no merit. The order of interim direction dated 22.12.89 made absolute by the order dated 20.3.90 is vacated.

5. The appellate authority, therefore, shall proceed to decide the appeal of the applicant and the applicant, if so desires, may file representation against the show cause notice, if not already filed, and thereafter the appellate authority shall decide the appeal after considering the points raised in the appeal as well as in the aforesaid representation, if any, of the applicant.

6. The application, therefore, is dismissed as devoid of merit, with liberty to the applicant, to assail any final order passed and may even take the grounds already taken in this application and the respondents appellate authority is directed to dispose of the appeal after considering the representation of the applicant to the show cause notice. Costs on parties.


(B.K.SINGH)
MEMBER (A)


(J.P.SHARMA)
MEMBER (J)