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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 1328/88 .. Date of decision: 21.05.93

Sh. Jai Kishan .. Applicant

Versus

Union of India .. Respondents

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Hon`ble Sh. A.B. Gorthi, Member (A)

Hon`ble Sh. C.J. Roy, Member (J)

For the applicant .. Sh. A.S. Grewal, Counsel.

For the respondents .. Sh. V.K. Rao, Counsel.

JUDGEMENT

(Delivered by hon`ble Sh. A.B. Gorthi, Member (A)

The applicant who is a Sub-Inspector was subjected to departmental disciplinary proceedings which resulted in the award of forfeiture of two years of approved service entailing reduction of pay from Rs. 1880/- p.m. to Rs. 1820/-p.m. Aggrieved by the infliction of the penalty, he has prayed in this application that the order imposing the penalty be quashed along with the orders of the Appellate and Revision Authorities, who rejected his appeals.

2. The applicant was on duty at F.R.R.O. of Palam Airport, New Delhi on 12.10.85. When three passengers namely, Sobha Singh, Govind Singh and Sadhu Singh arrived at Delhi Airport, the applicant allowed them entry by putting 'NO

L.O.C. stamp on their Disembarkation Cards. As the said passengers were in the list of look out cases, the applicant was held responsible for putting the stamp 'NO L.O.C.'. A charge sheet was served on him and it was followed by a regular departmental enquiry. The enquiry officer found the applicant guilty of charge, although, there was no sufficient evidence before him to establish the charge against the applicant. Thereafter, the penalty was imposed by the authority who was not competent to do so. The applicant's appeal as well as his request for a review of the penalty were turned without proper consideration.

3. The respondents, in their counter affidavit, have stated that the enquiry was conducted properly wherein sufficient evidence was adduced. The disciplinary authority was competent in this case to award the penalty on the applicant. The applicant's appeal was duly considered by the appellate authority who rejected the same by means of a reasoned order. Similarly his request for review also was turned down by the competent authority, with ~~is~~ a speaking order.

4. The learned counsel for the applicant strongly contended that the applicant was not posted under the administrative control of the punishing authority. In this regard, the reply affidavit clarifies that the applicant was at the relevant time posted to a Unit under the control of the disciplinary authority and hence, the latter had the authority and power to proceed against the applicant.

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5. The learned counsel for the applicant vehemently contended that prior to passing the penalty order, the disciplinary authority failed to issue a show cause notice to the applicant as required by Rule 16 (XII) (C) of the Delhi Police (Punishment & Appeal) Rules, 1980. The learned counsel for the respondents has drawn our attention to an amendment introduced in 1986, under which the amended Rule 16(XII) (C), reads as follows :

"If the disciplinary authority having regards to its findings on all or any of the charges and on the basis of the evidence adduced during the enquiry is of the opinion that any of the penalties specified in rule 5(i to vii) should be imposed on the police officer, it shall make an order imposing such penalty and it shall not be necessary to give the police officer any opportunity of making representations on the penalty proposed to be imposed."

6. As per the amended rule, there is now no requirement of issuing a show case notice to the delinquent employee before imposing the penalty on him.

7. Another important issue raised by the applicant's counsel is that there were several irregularities committed by the enquiry officer in the actual conduct of inquiry. We have perused the enquiry proceedings and are satisfied that there is no such irregularity as would warrant our interference. We also find that it cannot be said that the accused was prejudiced in any manner by any of the alleged irregularities in the enquiry proceedings.

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8. As regards the penalty order, the contention of the applicant's counsel is that two punishments were awarded which is not permissible under Section 21 of the Delhi Police Act, 1978. The relevant portion of the penalty order reads as follows:

"2 years approved service of S.I. Jai Kishan No. D-462 (under suspension) is hereby forfeited permanently entailing reduction in his pay from Rs. 1880/- p.m. to Rs. 1820/- p.m. only."

9. From the above, it is apparent that the applicant was awarded the penalty of forfeiture of two years approved service, which is legally in order. As regards the reduction of his pay from Rs. 1880/- p.m. to Rs. 1820/- p.m., it cannot be viewed as a separate punishment but is a consequence of the punishment of forfeiture of two years approved service. A mention of the same, however, seems to have been made in the penalty order itself for making explicit what is implied otherwise. We, therefore, hold that the said award cannot be said to be in violation of Section 21 of the Delhi Police Act.

10. Finally it was contended by the applicant's counsel that the Appellate Authority and Revisioning Authority did not apply their minds to the case of the applicant and disposed of his representations without assigning reasons. We do not find any merit in this contention. A perusal of the order of the Appellate Authority, which is Annexure-D to the

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application and the order of the authority disposing of the revision petition, which is at Annexure-G, will clearly show that the authorities had analysed the facts of the case and applied their mind to the merits of the case before rejecting the appeal and the revision petition of the applicant.

11. In view of what is stated above, we do not find any justifiable ground for setting aside the penalty imposed upon the applicant or for granting him any other relief. The application is dismissed.

No order as to costs.

( C.J. Roy )

Member (J)

21/3/93

(A.B. Gorathi)

Member (A)

21 May 93