

(17)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA. No. 1735/88

NEW DELHI, DATED THE 15TH DECEMBER, 1993.

Shri Avinash Chander,
S/o Shri Banarsi Lal,
R/o B-486, P.T.S.
Malviya Nagar,
New Delhi.

By Advocate Shri B.S. Charya

Applicant

versus

1. Commissioner of Police,
Delhi Police,
Police Head Quarters,
MSO Building,
I.P. Estate,
New Delhi 110 002.
2. Union of India through
The Secretary
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi.

By Advocate Ms. Avnish Ahlawat
with Ms. Subedha Sharma

Respondents

JUDGEMENT(Oral)
(delivered by Hon. Member(A) Shri P.T. THIRUVENGADAM)

The applicant was working as ASI when he was issued with a show cause notice on 16.5.86(Annex.P4), as reproduced below:

" The service particulars of ASIs (Ex.) for confirmation were called for by PHQ vide endst, No.11793-11850/CB-VII, dated 28.2.86. A report regarding DE/HE/Criminal case against the ASIs (Ex.) posted in this Distt. was asked by then HAE/SD through H.C. Ajay Kumar No.43/SD, instead of the ASIs mentioned in list circulated by the PHQ, resulting which the departmental enquiry pending against ASI Kishan Singh No.2612/SD could not be indicated and this office had to face embarrassment.

ASI Avnish Chander No.2543/SD and H.C. Ajay Kumar No.43/SD are, therefore, called upon to show cause within 15 days from the date of receipt of this notice, as to why their conduct should not be censured. Their replies, if any, should reach this office within the stipulated period failing which it

-2-

will be presumed that they have nothing to say in the matter and the decision will be taken on merits of the case."

2. The applicant submitted the reply on 29.5.86 (Annexure P-5) within the time stipulated for replying to the show cause notice, the relevant portion of which is reproduced below:

".....
That DCE/Hq(I) has requested vide PHQ's endst.No.11793-11850/CB-VII dated 28.2.1986 received on 3.3.1986 in the Estt. Branch/South distt, to send the service particular of ASIs (Ex) for confirmation. Before sending the particulars the report regarding DE/PE/Criminal case was required. As such the Head Assistant, Punishment Branch was requested to give the DE/PE/Criminal report on the following lines:

"Please report whether any DE/PE/Criminal case is pending against the Upper Subordinates posted in this Distt".

On getting the E/PE/Criminal report, the particulars were sent to PHQ on 4.3.1986. As the particulars of ASI Kishan singh was not required to be sent by this District as he was not posted in this District, so the report received from Punishment Branch was not taken seriously.

Further, it is stated that whenever, any such list is received from PHQ, the names of the officers/men posted in the District are earmarked and the report regarding pendency of DE/PE/Criminal cases is asked from Punishment Branch in routine manner on the original reference but it is the responsibility of the Punishment Branch that the report of pending DE/PE/Criminal cases even against the officer/men not posted in this District and included in the list should also be indicated. It is evident from the other reference in which the report was asked for the officers posted in this District, but the Punishment Branch has also mentioned the DE against that officer who was not posted to this Distt (Annexure-A and B is enclosed for perusal).

It would not be out of place to mention here that the particulars of the officer/men posted in this Districts/Units are sent by the District concerned and in addition the information of DE/PE/Criminal case pending in the office against the outsiders (included in reference) is also indicated in the draft

-3-

reply for reference.

However, the lapses pointed out in the notice have been noted for compliance in future. The information sent to PHQ was purely based on the report received from Punishment Branch as the records of the DE/PE/Criminal case is being maintained in the Punishment Branch."

3. On receipt of this reply, the disciplinary authority passed an order on 30.10.86 to the following effect:

".....
2. In response to the said show cause notice ASI Avinash Chander No.2543/SD has submitted his reply on 29.5.86 and HC Ajay Kumar No.43/SD has also submitted his reply on 29.5.86, they have also been heard in person on 20.8.86.

3. I have carefully gone through their replies and their personal submissions which is considered and found quite unsatisfactory. I do not find any valid reason to deviate from the proposed punishment. Therefore, the conduct of ASI Avinash Chander No.2543 and HC Ajay Kumar No.43/SD is hereby censured.

"Censured for sending wrong particulars to PHQ in respect of ASI Kishan Singh No.2612/SD, while posted in Esstt. Branch/SD."
....."

4. The applicant submitted an appeal against the punishment of censure. In his appeal dated 2.12.86, a number of grounds have been raised and the applicant questions the statement in the notice inflicting the punishment that the applicant had been given a personal hearing on 20.8.86. He had also taken the stand that whatever report was obtained from the Punishment Branch, was forwarded to PHQ. Some other grounds have also been raised in the appeal. The appeal was disposed of by the Appellate Authority on 29.4.87, upholding the punishment of censure passed by the disciplinary authority. Further, revision

D

-4-

petition was filed by the applicant, which was also rejected as time barred.

5. This OA has been filed challenging the disciplinary and appellate orders as well as praying for confirmation from an earlier date on the plea that the confirmation was delayed consequent to the order of censure.

6. The learned counsel for the applicant raised a number of grounds to bring out that he(the applicant) was not responsible for the alleged lapse in not forwarding to the PHQ the pending disciplinary enquiry against ASI Kishan Singh.

7. The order passed by the disciplinary authority has been specifically challenged as a non speaking order, in that, various points raised in reply to the show cause notice have not been discussed. The disciplinary authority has merely stated that after going through the replies and personal submissions, he found them quite unsatisfactory.

8. As regards the appellate authority's order, the case of the applicant is that it is a mechanical reproduction of the earlier order by the disciplinary authority and the appellate authority had not applied its mind. The various points observed in the appeal by the applicant have not at all been discussed at the time of disposing of the appeal.

9. The learned counsel for the respondents argued that the disciplinary order cannot be held to be non-

-5-

speaking one, as this order has been issued after due consideration of the reply furnished by the applicant. The lapse of the applicant had been clearly mentioned in the show cause notice for which satisfactory explanation has not been furnished. As regards the appellate order, it is again the contention of the respondents that the points raised have been considered.

10. After hearing both the counsel, we note that the order of the disciplinary authority does not discuss any of the points raised in the reply given by the applicant in his letter dated 29.5.86 in reply to the show cause notice dated 16.5.86. We do not propose to go into the merits of the points raised in the reply. The application of mind by the disciplinary authority is not evident from the order passed by him on 30.10.86. The order merely states that the disciplinary authority had carefully gone through the replies and the personal submissions which the disciplinary authority has considered and found quite unsatisfactory. There is absolutely no discussion on the merits or otherwise of the various points mentioned in the reply to the show cause notice. It is an accepted position in law that a non-speaking punishment order cannot be sustained. Accordingly, we have no hesitation in quashing the order of the disciplinary authority.

11. As regards the order of the appellate authority, we note that only some of the points raised in the appeal have been considered but again there is no evidence to show that all the points have been

given due consideration. We have no hesitation in quashing the appellate order also though the appellate order by itself would have become infructuous with the quashing of the disciplinary authority's order.

12. The learned counsel for the applicant raised the issue regarding delayed confirmation. The main ground advanced by him is that the delayed confirmation has arisen due to the order of censure passed by the disciplinary authority. Having quashed the order of censure, we do not propose to go into the detail as to how this delay has taken place. It is needless to say that the applicant will be entitled for confirmation from the correct date, if the delay in confirmation has arisen due to the order of censure passed on 30.10.86.

13. While passing the above orders, we give liberty to the respondents to proceed with the disciplinary case from the stage of receipt of the reply by the applicant in his letter dated 29.5.86.

14. The OA is disposed of on the above lines. No costs.

P. J. *Thiru*

(P.T. THIRUVENGADAM)
MEMBER(A)
15.12.93

MS Roy
(C.J. ROY)
MEMBER(J)
15.12.93