

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 1964/88
T.A. No.

199

DATE OF DECISION 31.1.1991.

Shri Surinder Kumar Petitioner

Shri Shanker Raju Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mrs. Avnish Ahlawat Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

T.S. Oberoi
(T.S. OBEROI)
MEMBER (J)
31.1.91.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)
31.1.91.

CENTRAL ADMINISTRATIVE TRIBNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1964/88 DATE OF DECISION: 31.1.1991.

SHRI SURINDER KUMAR APPLICANT

VERSUS

UNION OF INDIA & ORS. RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI SHANKER RAJU, COUNSEL

FOR THE RESPONDENTS MRS. AVNISH AHLAWAT

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

The issue for consideration in this application is whether the Reviewing Authority can invoke Rule 16.28 of Punjab Police Rules, 1934 for enhancing the penalty imposed by the Appellate Authority after the coming into effect of Delhi Police (Punishment and Appeal) Rules, 1980.

Shri Surinder Kumar, Sub-Inspector, Delhi Police has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order No. 17326-37/CR-I dated 3.10.1988, of the Reviewing Authority, viz. Commissioner of Police, Delhi, dismissing him from the force with immediate effect (Annexure A-17 of the application). The applicant joined Delhi Police as a SubInspector, on 12.4.1977 and was posted in P.S. Hauz Quasi, Delhi on 7.7.1985 when he detected unauthorised and illegal construction in and over shop No.386, Chowk Hauz Qazi, Delhi by one Shri Triloki Nath Gupta on

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10.7.1985. The applicant is alleged to have abused and harassed Shri Triloki Nath and illegally detained him at the Police Station and released him only after he allegedly received Rs. 500/- as illegal gratification. The applicant was served a charge-sheet on 24.1.1985 along with articles of charge and other documents and departmental enquiry was instituted against him under Section 21 of the Delhi Police Act, 1978. In the course of the departmental enquiry 5 prosecution and 6 defence witnesses were examined. Based on the evidence as adduced in the Enquiry Report, the Enquiry Officer came to the conclusion that "the charge against the defaulter, Sub-Inspector regarding abusing, harassing and accepting Rs. 500/- from Shri Triloki Nath is proved." Thereafter the Disciplinary Authority issued a show cause notice to the applicant along with findings of the Enquiry Officer to the defaulter Sub-Inspector on 2.3.1987. He was asked to submit his reply to the show cause notice and permitted to appear before the Disciplinary Authority in Orderly Room with prior permission, if he so desires. Finally the Disciplinary Authority awarded the punishment of forfeiture of five years' approved service permanently entailing reduction in his pay from Rs. 1760/- per month to Rs. 1640 per month vide order dated 16.6.1987 at Annexure A-10 w.e.f. the date of issue of this order.". As the reduction of pay in the punishment order issued by the Disciplinary Authority was only by 2 stages below the pay actually drawn by him, a corrigendum

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dated 20.8.1987 was issued vide Annexure A-11 reducing 5 years' forfeiture of approved service to 2 years' forfeiture. The applicant preferred appeal to the Appellate Authority on 3.8.1987 which was rejected on 13.1.1988. Thereafter, the applicant preferred a revision petition to the Commissioner of Police vide Annexure A15 against the order of the Disciplinary Authority and upheld by the Appellate Authority on 21.5.1988. The Commissioner of Police reviewed the case vide order dated 1.8.1988 and came to the conclusion that the "charges against Sub-Inspector Surinder Kumar, D/1575 were extremely grave and called for the ultimate penalty. I, therefore, provisionally proposed to review the order passed by Addl. C.P. (R), Delhi and intend to dismiss him from the force." The applicant was, accordingly "called upon to show cause within 15 days of its receipt as to why the proposed punishment of dismissal should not be inflicted upon him."

The applicant submitted his explanation to the show cause notice on 19th August, 1988, and the Revisionary Authority vide order dated 3.10.1988 (Annexure A-17) passed the final order dismissing him from the Force "with immediate effect".

2. The Counsel for the Applicant, Shri Shankar Raju submitted that the impugned order of dismissal from service by the Commissioner of Police was illegal as the Revisionary Authority has no powers to enhance the penalty under Rule 16.28 of the Punjab Police Rules as the same have been repealed by implication on enforcement of Delhi

Police (Punishment and Appeal) Rules, 1980. The Commissioner of Police was, therefore, not competent to exercise the powers under Rule 16.28 of Punjab Police Rules. The learned counsel submitted that in Yogendar Pal Singh Vs. Union of India AIR 1987 SC 1015 the Hon'ble Supreme Court has held that:

"It is well settled that when a competent authority makes a new law which is totally inconsistent with the earlier law and that two cannot stand together anylonger. It must be construed that the earlier law had been repealed by necessary implication by the later law."

Further in the case of Om Prakash Vs. UOI OA No. 51/90, decided on 20.7.1990, the Tribunal has held that the power of review under Rule 16.28 and Rule 16.32 of Punjab Police Rules cannot be invoked and the same has been expressly repealed by Delhi Police (Punishment and Appeal) rules, 1980. In TA No.694/85, Sohan Lal Vs. Lt. Governor, Delhi decided on 23.5.1988, the Tribunal held that the provisions of Punjab Police Rules relating to review are inconsistent with the Delhi Police (Punishment and Appeal) Rules, 1980 and hence the power of review cannot be exercised by the Commissioner of Police after coming into force of Delhi Police Act, 1978. The learned counsel averred that the Delhi Police Act or the Punjab Police (Punishment and Appeal) Rules, 1980 do not have any provision of revision and review and hence the impugned order at Annexure A-7 passed by the Commssioner of Police

exercising the powers under Punjab Police Rules, 16.28 and 16.32 is without jurisdiction and is legally not sustainable. He further submitted that presuming that the Commissioner of Police is competent to review the order, according to Rule 16.28 of Punjab Police Rules action has to be initiated within six months after the date of the orders sought to be reviewed, except with the prior approval of the Lt. Governor. In the present case the order of 2 years forfeiture of service was passed by the Disciplinary Authority on 20.8.87 and the appellate order was passed on 31.1.1988, but the Show Cuase Notice for imposing the penalty of dismissal from service was issued on 1.8.1988 after more than six months from the date of the order which was sought to be reviewed. In the absence of the permission of the Lt. Governor of Delhi, and there is no indication in the order to that effect, the impugned order of dismissal is time-barred. The impugned order is also bad in law as the Reviewing Authority has not indicated any reason for disagreeing with the disciplinary authority in coming to the conclusion that an enhanced penalty should be imposed upon the applicant. The learned counsel also relied in the case of M.L. Chakravorty Vs. U.O.I. 1989(1) ATKT CAT 201, where it has been held that:

"the Reviewing Authority is not competent to enhance the penalty without indicating the reasons for disagreement with the Disciplinary Authority".

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The learned counsel further submitted that the applicant was denied a personal hearing by the Reviewing Authority which is obligatory under the Punjab Police Rules 16.28 (3). He, therefore averred that the order of dismissal passed by the Commissioner of Police was without any competence and therefore illegal and liable to be set aside.

Another ground taken by the learned counsel is that the penalty imposed by the Disciplinary Authority and upheld by the Appellate Authority is tantamount to double punishment. He submitted that not only 2 years approved service has been forfeited but simultaneously the pay of the applicant has been reduced. He submitted that Section 21 of the Delhi Police Act, 1978, distinctly interprets forfeiture of approved service and reduction in pay as two distinct punishment. Thus for a single misconduct, the applicant has been awarded two major punishments. The learned counsel also assailed the order of the Appellate Authority as a non-speaking. In this connection, he cited the decision of the Hon'ble Supreme Court in Ram Chander Vs. UOI ATR 1986(2) SC 252 wherein it has been held that Appellate Authority must pass a reasoned order dealing with the contentions raised by him in appeal. The learned counsel maintained that the order of the Appellate Authority is a nonspeaking order. The learned counsel also assailed the conduct of the enquiry and cited judicial dicta to support that the inquiry proceedings were not held properly.

3. Mrs. Avnish Ahlawat appearing for the respondents submitted that in accordance with

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Section 149 of Delhi Police Act of 1.7.1978 only the enactment specified in Schedule II ceased to be operative. The learned counsel submitted that the purpose of Section 149 is first to repeal the acts which have ceased to be effective and they are: (a) the Police Act, 1861; (b) Section 40 Punjab Police Act, 1872 as in force in Delhi; (c) the provision of Bombay police Act, 1951 as in force in Delhi. The second objective is to make this fact known that whatever action has been taken would be deemed as action taken under this Act. The learned counsel submitted that first proviso clearly saves the operation of Punjab Police Rules in the Union Territory of Delhi. She, therefore, averred that Rule 16.28 of the Punjab Police Rules is still applicable as long as it is not inconsistent with the Delhi Police (Punishment and Appeal) Rules. Regarding Sohan Lal Vs. UOI - TA No.694 /85 decided by the Principal bench of the Tribunal on 23.5.1988, the learned counsel submitted that an SLP No.1236/88 has already been filed and admitted in the Hon'ble Supreme Court. The Hon'ble Supreme Court has also granted a stay order from the operation of the judgement.

The learned counsel further submitted that although the Reviewing Authority issued a Show Cause Notice after six months from the date of the order sought to be reviewed but this was done after obtaining the approval of the Lt. Governor.

Regarding the double punishment imposed by the Disciplinary Authority and upheld by the

Appellate Authority, the learned counsel clarified that forfeiture of approved service and reduction of pay is not tantamount to double punishment.

Section 21 of the Delhi Police Act, lists the following punishments which can be imposed:

- (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.

The forfeiture of approved service is a harsh punishment as compared to reduction in pay. Again Section 5 of the Delhi Police (Punishment & Appeal) Rules defines the punishment as prescribed under Section 21 of Delhi Police Act, 1978.

Forfeiture of approved service and reduction of pay constitute two distinct punishments. The approved service can be forfeited under Rule 8(d) of Delhi Police (Punishment & Appeal) Rules, 1980 permanently or temporarily or for a specified period as under:

- "(i) for the purpose of promotion or seniority (permanent only)
- (ii) Entailing reduction in pay or deferment of an increment or increments (permanently or temporarily)."

In the present case, the learned counsel submitted that upto 1985, the forfeiture of service

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for specified number of years permanently also resulted in reducing the qualifying service by corresponding number of years when the forfeiture of approved service was permanent. Reduction in pay permanently meant that for specified period the defaulter will draw the reduced pay. Thereafter he will be restored to the original pay. When forfeiture of service is accompanied by reduction in pay temporarily he draws lower pay for the specified period but is restored the increments which were not drawn during the period of punishment after the specified period of punishment is over. After 1985, however, the position has been reviewed and forfeiture of service permanently for a specified number of years does not entail the loss of qualifying service for pensionary benefits etc. She averred that forfeiture of approved service does not constitute double punishment and in the case under discussion the punishment is without cumulative effect. The learned counsel further submitted that this point has not been agitated by the applicant in his appeal before the appellate authority.

4. We have heard the learned counsel of both the parties and considered their submissions carefully. We have also taken note of the written arguments submitted by the learned counsel for the applicant on 12.1.1991.

In the case of Yogender Pal Singh & Ors. Vs. UOI, AIR 1987 SC 1015 similar matter had come up before their Lordships in the Supreme Court where the absence of express provision in the Delhi Police

(Appointment and Recruitment) Rules, 1980 corresponding to Rules 12.14 and 12.15 of the Punjab Police Rules, 1934 had come up for consideration which stood repealed w.e.f. 31st December, 1980. Their Lordships observed that:

"Section 149(2) of the Act no doubt provided that the rules framed under the Police Act of 1861 would continue to be in force after the Act came into force in so far as they were consistent with the Act but at the same time Section 147 of the Act authorised the Administrator (Lt. Governor of the Union Territory of Delhi) to make rules regarding recruitment to, and the pay, allowances and all other conditions of service of the members of Delhi Police under clause (b) of Section 5. It is not disputed that rule 12.14 and rule 12.15 of the Punjab Police Rules, 1934 and the Rules promulgated on December 31, 1980 dealt with the identical subject, namely, the rule of recruitment of Constables to the Delhi police service. Therefore, on the promulgation of the Rules on December 31, 1980 which covered the subject dealt with by rule 12.14 and rule 12.15 of the Punjab Police Rules, 1934 had the effect of repealing by necessary implication rule 12.14 and rule 12.15 of the Punjab Police Rules, 1934 even though initially there was no express provision in the Rules to the effect that

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rule 12.14 and rule 12.15 of the Punjab Police Rules, 1934 stood repealed w.e.f. December 31, 1980. It is well settled that when a competent authority makes a new law, which is totally inconsistent with the earlier law and that the two cannot stand together anylonger it must construed that the earlier law had been repealed by necessary implication by the later law."

Applying the above test it appears to us that Rule 16.28 of the Punjab Police Rules stood repealed w.e.f. December 31, 1980 as no corresponding provision has been made under the powers vested in the Lt. Governor in terms of Section 147 (2) of the Delhi Police Act. In the circumstance, we are of the view that Rule 16.28 of Punjab Police Rule could not be invoked by the respondents in absence of an express provision under the Delhi Police Rules, 1980 and as Rule 16.28 of Punjab Police Rule, 1934 stood repealed by implication.

We, therefore, hold that the action of the reviewing authority in issuing the show cause notice by invoking Rule 16.28 of Punjab Police Rules, 1934 for enhancing the punishment and imposing the ultimate penalty of dismissal from service, is without competence and, therefore, cannot be legally sustained. Accordingly we set aside the order of the Commissioner of Police dated 3.10.1988 dismissing the petitioner with immediate effect (Annexure A-17). We, however do not find sufficient justification for our interference in the order

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passed by the disciplinary authority on 16.6.1987 for the forfeiture of 2 years approved service entailing reduction in pay from Rs.1760/- p.m. to Rs. 1640/- p.m. as amended vide corrigendum dated 20.8.1987 and upheld by the Appellate Authority vide his order dated 13.1.1988. The application thus partially succeeds. Accordingly, we order and direct that the respondents shall reinstate the applicant in service. He shall be restored in his position as obtaining on the date of his dismissal and he shall be entitled to all consequential benefits except that the punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority on 16.6.1987 as amended on 20.8.1987 and 13.1.1988 respectively shall be allowed to run its normal course in accordance with the rules.

We further direct that these orders shall be implemented within 4 weeks from the date of communication of this order.

There shall be no orders as to costs.

Abhijit
(I.K. Rasgotra)
Member (A)

31/1/91

Abhijit 31.1.91
(T.S. Oberoi)
Member (J)

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