

(90)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO. 292/1988

DATE OF DECISION 29.1.92

SHRI ARJUN SINGH

...APPLICANT

VS.

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM

SHRI S.P. MUKERJI, HON'BLE VICE-CHAIRMAN

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI M.K. GUPTA

FOR THE RESPONDENTS

...SHRI JAGDISH VATS

1. Whether Reporters of local papers may be allowed to see the Judgement? Ys
2. To be referred to the Reporter or not? Ys

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the order dt. 26.11.1985 regarding late confirmation of the applicant and also certain other orders by which the applicant was censured on 1.11.1983 in two cases and the appeal against these orders and the adverse remarks for the period from 1.4.1983 to 4.1.1984. The applicant prayed for the

↓

(2)

following reliefs:-

- (i) To treat and/or to quash the impugned orders mentioned below as illegal, ultra vires and void:-
- Order dt. 26.11.1985 regarding the confirmation of the applicant and others (Annexure 1);
 - show-cause notice dt. 21.9.1983 proposing punishment of censure (Annexure 2);
 - Order dt. 1.11.1983 (Annexure 4);
 - Order dt. 26.7.1984 rejecting an appeal against the punishment of censure (Annexure 6);
 - Order dt. 6.1.1986 rejecting the revision petition (Annexure 7);
 - show-cause notice dt. 21.9.1983 proposing the punishment of censure (Annexure 9);
 - Order of punishment dt. 1.11.1983 (Annexure 11);
 - Order dt. 26.7.1984 rejecting the appeal against the punishment of censure (Annexure 12);
 - Order dt. 6.1.1986 rejecting the revision petition (Annexure 13);
 - Order dt. 26.2.1985 communicating the adverse remarks for the period from 1.4.1983 to 4.1.1984; and
 - Order dt. 29.8.1985 communicating the order of the Commissioner of Police accepting the representation dt. 25.3.1985;
- (ii) to treat the applicant as a confirmed Inspector of Police w.e.f. 25.1.1981; and
- (iii) to quash all the adverse remarks.

2. The brief facts of the case are that the applicant has been working as Inspector of Police since 25.1.1979 and was on probation for a period of two years. However, the applicant was confirmed w.e.f. 28.11.1985 by the order dt. 26.11.1985 under ^{the} Punjab Police Rules 13.19 which are applicable to the Delhi Police personnel. The applicant has referred to various judgements of Delhi High Court whereby after a period of two years from the date of probation, the

↓

(21)

person stands confirmed. The applicant has referred to certain awards and good remarks he has earned during his service. However, in May, 1983 the applicant was given investigation in two cases against Sahara Deposits and Investment India Ltd. under section 406/420 IPC, P3 Krishna Nagar, Delhi. These relate to FIR No.128 dt. 11.5.1983 and FIR No.505 dt. 4.6.1983. The Deputy Commissioner of Police, Crime and Railways issued a show cause notice dt. 21.9.1983 proposing therein the punishment of censure on slowness on the part of the applicant in investigation against the culprits of the FIR 128 of 1983. Another show-cause notice was issued on 21.9.1983 on the FIR 505 dt. 4.6.1983 calling on the applicant as to why he should not be censured for his failure in exercising proper supervision on the S.I. Chatter Singh, who was Incharge of investigation FIR 505 dt. 4.6.1983.

3. By the order dt. 1.11.1983, Deputy Commissioner of Police, Crime and Railways punished the applicant on FIR 128 of 1983 by awarding the punishment of censure. The applicant filed appeal to the Additional Commissioner of Police, CID, Delhi, but the same was rejected by the order dt. 26.7.1984. The applicant filed the revised petition to the Commissioner of Police, but the same was dismissed by the order dt. 6.1.1986.

4. Similarly on the investigation of the FIR No.505 of 1983, the applicant was awarded a punishment of censure by the order dt. 1.11.1983 and the appeal against the same was rejected by the Additional Commissioner of Police by the order dt. 20.7.1984 and the revision against the same was

↓

dismissed by the Commissioner of Police, Delhi. The grievance of the applicant is that all of them passed in both the cases ^{were} non speaking orders and the applicant was not given any opportunity of personal hearing. The said requirement of personal hearing is also provided in the statutory and mandatory form under Rules 6(ii) and 8(ii)(f) of the Delhi Police (Punishment and Appeal) Rules, 1980. According to this provision, the denial of the right of personal hearing before passing impugned order would come in the way of sustaining it as a legal order as has been observed by the Hon'ble Supreme Court in 1973 (1) SLR SC 761. The applicant has also referred to the fact that in FIR 505 of 1983, S.I. Chatter Singh was also issued a show cause notice. Though he was given a punishment of censure, but in appeal, that was set aside. It is said that it is discriminatory that on the same cause, the applicant has been punished while a subordinate has been exonerated. It is also stated by the applicant that because of this punishment, the applicant has been given adverse remarks for the period from 1.4.1984 to 4.1.1985. However, on appeal, this adverse entry was modified and the integrity of the applicant was not doubted, but the other remarks were maintained. Thus the applicant has filed this application for quashing and setting aside the above orders which may prejudice his career.

b

5. The respondents have contested the application. It is stated that the Delhi Police (Promotion and Confirmation) Rules, 1980 were made applicable to all subordinate ranks of Delhi Police under Section 147 of the Delhi Police Act. In accordance with Rule 5(ii) of the Delhi (Promotion and Confirmation) Rules, 1980, all promotions from one rank to another against temporary or permanent vacancies, except in the case of adhoc arrangements shall be made on officiating basis and the employee shall be considered for promotion only on availability of permanent post and on successful completion of probation period of minimum two years provided that the appointing authority may by a special order in each case permit periods of officiating service to count towards the period of probation. These rules came into force on 29.12.1980. Rule 18 of the aforesaid rules further provides that confirmation in all ranks shall be strictly on the basis of seniority when permanent post becomes available. Sub clause (iv) of Rule 18 provides that only member of subordinate rank, who is under suspension or facing departmental/criminal proceedings shall ^{not} be eligible for confirmation. A departmental enquiry shall be deemed to have been initiated after the summary of allegations has been served. It is further stated by the respondents that in order to decide the confirmation of their official, instructions to treat the period of two years immediately preceeding the date of availability of permanent post as vital period and the record of the officer in this vital

le

29

period should determine his footings for confirmation. In minor or major punishment or adverse A.C.R., awarded to the officer during the vital period will be taken into account for this purpose. A minor punishment will have the effect of postponing confirmation for six months and a major punishment or adverse A.C.R. for one year with effect from the date, a permanent post becomes available. Effect of assessment is considered from the date of the default. According to the respondents, a permanent post for the applicant became available w.e.f. 20.11.1984. The period from 20.11.1982 to 19.11.1984 was treated as vital period during which he was awarded two censures on 1.11.1983 for default dt. 11.5.1983 and 4.6.1983 respectively. He was also given adverse remarks for the period from 1.4.1983 to 31.3.1984. In view of the above punishment of censure and adverse remarks, the confirmation of the applicant was postponed for one year from the date of availability of permanent post and as such, the period from 20.11.1984 to 19.11.1985 was treated as probation period in his case and he was confirmed in his appointment w.e.f. 20.11.1985.

6. It is further stated that a show cause notice dt. 21.9.83 for censure was issued to the applicant as he failed to arrest one Miss Benami Sharma in case of FIR 128 dt. 11.5.1983 under Section 406/420 IPC. The show cause notice was later confirmed vide order dt. 1.11.1983. Investigation of case-FIR 505

↓

27

dt. 4.6.1983 was given to one S.I. Chatter Singh and since the applicant was senior investigating officer, he failed to exercise proper supervision on the investigation of S.I. for which he was issued a show cause notice for censure dt. 21.9.1983 which was later on confirmed by order dt.1.11.83. His appeal and revision petitions filed against these orders were rejected by Additional Commissioner of Police (CID) and Commissioner of Police respectively. The applicant was not governed by Punjab Police Rule 13.6 as mentioned by the applicant.

7. The applicant was conveyed adverse remarks for the period from 1.4.1983 to 4.1.1984 vide letter dt. 20.2.1985. The said A.C.R. was recorded by reporting officer on 15.11.1984 and reviewed by the reviewing officer on 15.2.1985. The same was conveyed to the applicant against his receipt on 28.2.1985. He made a representation against the adverse remarks on 25.3.1985 and on considering his representation, his name was removed from the agreed list of officers from the doubtful integrity, but the remaining adverse remarks remained unchanged.

8. According to the respondents, the applicant has no case.

9. The applicant has filed the rejoinder and reiterated the various averments pleaded in the application. It is stated that under the provisions of Section 149 of the Delhi

le

me

Police Act, 1978, the provisions of Punjab Police Rules, 1934 were continued to apply to the Delhi Police personnel, deemed to have been made under the Delhi Police Act, 1978 till 10.5.1983. In this connection, the applicant has filed copy of the gazette notification (Annexure-4 to the rejoinder) where Rule 22 was inserted and all provisions contained in the Punjab Police Rules related to promotion and confirmation of employees were repealed subject to the provisions contained in the proviso to sub sections (i) & (ii) of Section 149 of the Delhi Police Act, 1978.

10. We have heard the learned counsel at length. The applicant has raised in this application three grievances relating to his service matters. Firstly, he has assailed his non confirmation from due date after completion of probation period. The case of the applicant is that he was promoted as Inspector of Police w.e.f. 25.1.1979 and since he was placed on probation for ^{two years'} period, he stood automatically confirmed w.e.f. 29.1.1981. However, the applicant has been confirmed as Inspector of Police w.e.f. 20.11.1985. According to the respondents, the confirmation could have taken place only on the availability of permanent vacancy in view of the provisions of Delhi Police 1980. (Promotion and Confirmation) Rules, Rule 18 of the said Rules provide that confirmation shall be strictly on the basis of seniority when permanent post becomes available.

↳

NA

It is not disputed that the permanent vacancy to the applicant was available on 20.11.1984. However, since the applicant was awarded two censures on 1.11.1983 for default dt. 11.5.1983 and 4.6.1983 respectively, so he was given adverse remarks for the period from 1.4.1983 to 31.3.1984. Since the punishment of censure and adverse remarks fell during the vital period, i.e., 2 years before the availability of permanent vacancy, so the confirmation was postponed by the competent authority for one year from the date of availability of permanent post. The applicant, however, contended that the punishment awarded to him on censure on 1.11.1983 cannot be sustained in law. The main objection to the punishment awarded to the applicant is that he was not given an opportunity of personal hearing and further one of the Sub Inspectors who was also cause notice and punished with penalty of censure issued show / with him for default of 4.6.1983 which arose out of investigation in FIR 505 dt. 4.6.1983 under Section 406/420 IPC of P.S. Pahar Ganj / but was exonerated in appeal so he could not have been awarded the punishment when the said Sub Inspector, Chhattar Singh was exonerated in appeal by the Deputy Commissioner of Police. We have seen the various orders of punishment passed by Additional Commissioner of Police and Deputy Commissioner of Police in appeal and Commissioner of Police in revision by which the punishment of censure has been maintained. The case of the applicant is governed under

↓

Delhi Police (Punishment and Appeal) Rules, 1980. Rule 6 thereof lays down that the punishment of censure shall be called minor punishment and can be awarded after serving a show cause notice giving reasonable time to the defaulter and considering the written reply as well as oral deposition, if any, for which opportunity shall be afforded on request. In the present case, the applicant has submitted his reply to the show cause notice (Annexures A3 and A1C dt. 6.10.1983. In this reply, the applicant has clearly stated that he be permitted to appear and explain his position in person. The grievance of the applicant is that he has not been given a personal hearing and as such, there is a clear statutory violation of Rule 6(ii). The show cause notice issued to the applicant (Annexure-2) dt. 21.9.1983 by the Deputy Commissioner of Police, some fault was found with the applicant in not discharging the duties in investigating the case FIR 128 dt. 11.5.1983 and not supervising properly the investigation of FIR case No.505 of 4.6.1983, which was handed over for investigation to S.I., Chatter Singh. Normally this Court cannot sit in appeal over the various orders inflicting punishment of censure on the applicant, but at the same time, the procedure prescribed should have been strictly followed as the ultimate punishment is likely to affect the service career of the applicant. The applicant being deprived of his ^{statutory right of} personal hearing, has a legitimate grievance in as much as he could have in his own

way convince the disciplinary authority regarding bonafide in investigating the case FIR No.128 of 1983, and in properly supervising the investigation of the case FIR No.505 of 1983 which was being investigated by S.I., Chatter Singh. In fact, the delay in the confirmation of the applicant which should have been normally w.e.f. November, 1984 has been postponed for one year because of these censure punishments. Since there is an irregularity of procedure and the applicant has ^{not} been afforded fullest opportunity in explaining his case, both the censure punishments cannot be maintained in view of the fact that the applicant was not afforded proper opportunity of explaining his case. Though the learned counsel for the applicant argued that he shall not be governed by Delhi Police (Promotion and Confirmation) Rules, 1980, but it is not so. These rules were framed under Section 147 of Delhi Police Act and were published in the official Delhi Gazette on 29.12.1980 and shall be deemed to have been in force on that particular date. The applicant was Inspector of Police w.e.f. 25.1.1979 and had not completed two years of probation by 29.12.1980. As such, his confirmation has to be done according to the Delhi Police (Promotion and Confirmation) Rules, 1980. The applicant wants to take help of newly added Rule 22 to the aforesaid confirmation rules by notification dt. 10.5.1983 where the provisions contained in the Punjab Police Rules were repealed, but that will not help the applicant because Rule 18 of the said Rules has

le

(23)

come into force w.e.f.29.12.1980. As such, the confirmation of the applicant could have been on the availability of permanent vacancy, i.e., from November, 1984, but that has been deferred for one year because of two censure entries awarded to him before the date of availability of a permanent vacancy in November, 1984. The appellate and revisional authority also, i.e., the Additional Commissioner of Police and Commissioner of Police did not allow him personal hearing, though he desired the same in writing.

11. In view of the above facts, the order of punishment awarded to the applicant by the disciplinary authority by the order dt. 1.11.1983 and the order of the appellate authority dt. 26.7.1984 and order of the revisional authority dt. 6.1.1986 in show cause notice issued regarding investigation of FIR No.128 of 1983 are set aside and similarly the punishment of censure dt. 1.11.1983 and the order of the appellate authority dt. 26.7.1984 and that of the revisional authority dt. 6.1.1986 on the show cause notice issued in FIR case No.505 of 1983 are quashed and set aside. However, the prayer of the applicant regarding the quashing of show cause notice dt. 21.9.1983 regarding both the FIR case No.128 of 1983 and FIR case No.505 of 1983 is

le

disallowed. The respondents, however, shall be free to proceed with the show cause notice on the basis of the reply furnished by the applicant to this show cause notice and after giving a personal hearing to the applicant in both the cases, the disciplinary authority shall pass the necessary orders and the applicant shall be free to pursue the departmental remedy, if he is dissatisfied with the orders of the disciplinary authority. As a consequence of this, the deferment of the confirmation of the applicant with effect from the date of the availability of permanent vacancy, i.e., w.e.f. 20.11.1984 is also set aside. The confirmation of the applicant shall be governed under Rule 18 of the Confirmation Rules aforesaid of 1980. The prayer of the applicant that he stood automatically confirmed with effect from completing the period of two years of probation, i.e., w.e.f. 29.1.1981 is disallowed. The applicant can at the most be confirmed in his appointment on the date of availability of the permanent vacancy w.e.f. 20.11.1984 and that only when he is cleared in both the departmental show cause notice discussed above.

12. The applicant's second grievance is ^{about the} ~~adverse~~ remarks which were communicated to him by the order dt. 26.2.1983

↓

32

(Annexure-14). These adverse remarks were awarded to the applicant on 19.2.1985 by Additional Commissioner of Police and pertained to the period from 1.4.1983 to 4.1.1984. The applicant has preferred representation against these adverse remarks and the appellate authority, Deputy Commissioner of Police deleted the adverse remarks only of to the extent/ordering deletion from the A.C.R. the name of the applicant from the list of officers having doubtful integrity. The Deputy Commissioner of Police by the order dt. 29.8.1985 (Annexure-15) observed, "Name removed from the aggrieved list of officers of doubtful integrity vide No.12708-91/CA viz.dt. 24.4.1985." The applicant has another/^{third}grievance also that the Deputy Commissioner of Police in the order has also mentioned the period of adverse remarks from 1.4.1984 to 4.1.1985, but it appears to be a typographical error as the remark related to the period from 1.4.1983 to 4.1.1984. The prayer of the applicant, therefore, in this respect that this remark relates to period from 1.4.1983 to 4.1.1984 is allowed. Now regarding the rest of the adverse remarks, there are general observations by Additional Commissioner of Police in which it is also mentioned that the conduct of the applicant was censured in two defaults of 11.5.1983 and 4.6.1983 regarding two FIR Nos.128 of 1983 and 505 of 1983. Since the applicant has already made a representation against these adverse remarks and the punishment of censure awarded

↓

to the applicant in two cases of default has been quashed, so the representation on the adverse remarks for the aforesaid period from 1.4.1983 to 4.1.1984 shall be disposed of afresh. It is because of this fact that the adverse remarks given to the applicant in the aforesaid period is also linked with the censure punishment awarded to him.

13. In view of the above discussion, the application is partly allowed and is disposed of as follows :-

- (a) The punishment of censure awarded to the applicant on the show cause notice issued on the default investigation of FIR Nos.128 of 1983 and 505 of 1983 by the order dt. 1.11.1983 and the appellate and revisional orders passed on appeal against these punishment orders by the Additional Commissioner of Police and Commissioner of Police are also set aside. However, it shall be open to the respondents to consider the reply to ^{both} the show cause notice dt. 21.9.1983 and decide that representation against this show cause notice after affording the opportunity of personal hearing to the applicant.

22

6

- (b) The representation against the adverse remarks of the applicant for the period from 1.4.1983 to 4.1.1984 shall be decided afresh after the decision on the show cause notice aforesaid as said in para-(a) above.
- (c) The matter of confirmation of the applicant shall be decided after the decision of the reply to the show cause notice and the representation against the adverse remarks as said in paras-(a) & (b) above. In case, the applicant is not found fault with on account of the show cause notice and the adverse remarks awarded to him are expunged, then in that case, his case shall be considered by the respondents for confirmation from the date of availability of permanent vacancy from 20.11.1984.
- (d) The adverse remarks given to the applicant shall be treated for the period from 1.4.1983 to 4.1.1984 and not from 1.4.1984 to 4.1.1985 as observed by the Deputy Commissioner of Police in the order dt. 29.8.1985 (Annexure-15).
- (e) The respondents are directed to finalise all these matters of the applicant within a period of three months from the date of receipt of this order and in case, the applicant is not found fault with, he shall be given

re

↓

9/

due benefits of promotion etc. and in case, the applicant is still aggrieved, he can come afresh for redress of his grievances.

In the circumstances, the parties shall bear their own costs.

J.P. Sharma

(J.P. SHARMA)
MEMBER (J)

29.1.92

S.P. Mukerji

(S.P. MUKERJI)
VICE-CHAIRMAN

Reviewed by me.

J.P. Sharma

29.1.92