

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 404/1988. DATE OF DECISION: December 2, 1988

Shri Raghubar Tiwari Applicant.
V/s.

Delhi Administration &
Others Respondents.

CORAM: Hon'ble Shri T.S. Oberoi, Member (J).
Hon'ble Shri P.C. Jain, Member (A).

Shri G.D. Gupta, counsel for the applicant.
Mrs. Avnish Ahlawat, counsel for the respondents.

P.C. JAIN, MEMBER (A): JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is a Constable in Delhi Police, has prayed for the following reliefs: -

- " a) to allow the application of the applicant with costs.
- b) to issue appropriate order or orders, direction or directions:
 - i) quashing the order dated 20-9-85 of the Addl. Commissioner of Police remanding the case back to the Disciplinary Authority from the stage of notice.
 - ii) declaring that the order dated 20th September, 1985 is illegal and without jurisdiction.
 - iii) quashing the show cause notice dated 31.10.1985 received by the applicant on 11.11.1985 proposing to impose on the applicant the penalty of forfeiture of three years approved service permanently entailing proportionate reduction in pay and allow the applicant all consequential benefits.
 - iv) quashing the order dated 20-3-1986 imposing upon the applicant the penalty of forfeiture of 3 years' approved service temporarily for a period of 2 years entailing reduction in his pay.
 - v) declaring that the findings of the Enquiry Officer are perverse and quashing the order dated 30-7-85 imposing on the applicant

penalty of Censure.

- vi) declaring that the show cause notice dated 15-5-87 for proposing to remove the name of the applicant from promotion list 'A' is illegal and unconstitutional.
- vii) quashing the show cause notice dated 15.5.87 and the order dated 28-7-87 ultimately removing the name of the applicant from promotion list 'A' and declaring that the petitioner is entitled for promotion as per the Promotion List 'A' with all consequential benefits.
- viii) quashing the order dated 30th October, 1986 and 23rd February, 1987 rejecting the detailed appeal and revision petition of the applicant.
- c) to issue such other order or orders, direction or directions as deemed fit and proper by this Hon'ble Tribunal to meet the ends of justice."

2. The facts of the case, in brief, are as under: -

The applicant, while posted at Police Post at Ballimaran, Police Station Hauz Quazi as beat Constable, was charged with gross misconduct and negligence in discharge of his official duties in that on 26.10.83 he visited the premises No.2777, Gali Pipal Mahadev, H.Q. Delhi where unauthorised construction of partition wall was going on. ^{not reporting about the} He had demanded Rs.200/- for/construction of that partition wall from the landlords and accepted Rs.100/- from Shri Santosh Kumar Srivastava. He again visited on 1.11.83 and took Rs.100/- from Shri Ashok Kumar Srivastava. Similarly on 4.11.83 and 24.11.83 he again visited and took Rs.42/- and Rs.50/- respectively from Ashok Kumar Srivastava and Santosh Kumar Srivastava. In this manner, he accepted Rs.292/- from the landlords for permitting them to raise a partition wall in the said premises. The fact that an unauthorised partition wall was coming up in the area of the beat of the applicant was not brought to the notice of his immediate senior officers nor any DD entry was recorded by him to that effect. Assistant Commissioner of Police, Kamla Market, Delhi, in his report dated

(12)

29.11.84 submitted to Addl. D.C.P./C (Annexure 'E') came to the conclusion that the charge against the applicant had been partly proved. On the basis of the findings of the Assistant Commissioner of Police, a show cause notice dated 20.12.84 was issued (Annexure 'F') which was modified by another show cause notice dated 12-6-85 (Annexure 'G') in which a punishment for the forfeiture of three years of his approved service permanently entailing proportionate reduction in his pay was proposed, under the signatures of Addl. Dy. Commissioner of Police, Central District, Delhi. Explanation of the applicant to the show cause notice is at Annexure 'H'. Vide his order dated 30.7.85 (Annexure 'I'), the Addl. Dy. Commissioner of Police, Central District, Delhi, awarded the punishment of 'Censure' against the proposed punishment of forfeiture of three years of approved service entailing proportionate reduction in his pay. The said order was, however, set aside by the Addl. Commissioner of Police, Delhi (Annexure 'J') with his observation that after having gone through the facts of the case, he was convinced that the punishment awarded to the applicant for such a serious charge was not commensurate with the gravity of his misconduct. By the same order, the Addl. Commissioner of Police, Delhi, ordered for denote departmental proceedings to be taken up against the applicant from the stage of notice by DCP/C himself and appropriate orders passed in the case. Accordingly, another show cause notice dated 31.10.85 was issued to the applicant under the signatures of the Dy. Commissioner of Police, Central District, Delhi, in which again the punishment of forfeiture of three years of approved service permanently entailing proportionate reduction in the pay of the applicant was proposed. On the reply of the applicant dated 29.11.85 (Annexure 'L'), the Deputy Commissioner of Police, Central District, Delhi, vide his order dated 20.3.86, awarded a punishment of

forfeiture of his three years approved service temporarily for a period of two years entailing reduction in his pay from Rs.302/- P.M. to Rs.264/- P.M. with effect from the date of issue of that order i.e., 20.3.86. (Annexure 'M'). The applicant submitted his appeal to the Additional Commissioner of Police (Range), Delhi (Annexure 'N'), but the same was rejected, vide orders of the Addl. Commissioner of Police, Range, Delhi dated 30.10.1986 (Annexure 'O'). He filed a revision petition to the Commissioner of Police, Delhi on 11.12.1986 (Annexure 'P'), but the same was also rejected vide orders of the Commissioner of Police, Delhi dated 18.2.87, endorsed to the DCP/Central District, Delhi on 23.2.87. Consequent upon the rejection of his appeal and also the revision petition, the applicant was issued another Show Cause Notice on 15.5.87 (Annexure 'Q') calling upon him to show cause as to why his name should not be removed from the promotion list 'A' as he had failed to maintain an exemplary standard of conduct and as per para 4 of S.O. No.91, infliction of major punishment was a bar to admission of name to promotion list 'A', 'B' & 'C'. The applicant submitted his explanation (Annexure 'R') dated 29.5.1987, but the same was not accepted and the Deputy Commissioner of Police HQ(I), Delhi vide his order dated 28.7.87 removed the name of the applicant from promotion list 'A'. The O.A. was filed in February, 1988 praying for the reliefs stated in para 1 above.

3. The respondents have contested the O.A. by filing a counter-reply, to which a rejoinder has also been filed. We have gone through the record of the case and heard the learned counsel for the parties.

4. The main ground taken by the applicant in regard to the order dated 20.9.1985 passed by the Addl. Commissioner of Police for starting the de-novo departmental proceedings against the applicant from the stage of notice, is that the said order has been passed under Punjab Police Rules

which have no application after the Rules of 1980 framed under the Delhi Police Act, 1978, and there is no power with the Appellate Authority to order for the de-novo departmental proceedings from the stage of notice. Thus, according to the applicant, the order dated 20.9.1985 was without jurisdiction and violative of Articles 14 and 16 of the Constitution. The charge for which the applicant had been found guilty was a minor one and no major punishment could be inflicted upon. The punishing authority did not have any power to review its own order. The punishment proposed in the show cause notices as also the penalty of forfeiture of the applicant's three years approved service temporarily for a period of two years finally imposed upon him vide order dated 20.3.1986 are said to be illegal and not proportionate to the charge for which the disciplinary authority held the applicant guilty. The Disciplinary Authority had not given any reasons for his findings that the applicant succeeded in winning over the complainants. Also, learned counsel for the applicant stressed at the bar that statements in preliminary investigation are not relevant. The Disciplinary Authority did not have any jurisdiction to differ with the Enquiry Officer since the Appellate Authority had remanded the case to the Disciplinary Authority only for the short ground that the punishment imposed on him was not commensurate for the charge for which he had been held guilty. No cogent reasons have been assigned by the Appellate/revision authority for rejecting the detailed appeal and the revision petition of the applicant. Learned counsel for the applicant laid emphasis at the time of oral submissions that the revision order is a non-speaking order. As regards the removal of the name of the applicant from the promotion list 'A', the case of the applicant is that once his name had been included in that list, it could not be removed under para 4 of S.O. 91 and such an act violates Articles 20 and 21 of the Constitution. Also, according to the applicant, it amounts

20

to the double jeopardy as once the applicant had been given the punishment of forfeiture of three years' approved service temporarily for a period of two years, his promotion could not be stopped on the ground that a major punishment had been inflicted on him, and such an action violates Articles 14, 20 and 21 of the Constitution. Further, the order dated 28.7.87 does not assign any reasons for rejecting the detailed reply of the applicant dated 29.5.1987. Thus, according to the applicant, the order dated 20.9.1985 of the Addl. Commissioner of Police remanding the case back to the Deputy Commissioner of Police from the stage of notice, show cause notice dated 31st October/11th November, 1985, the order dated 20.3.1986, finally imposing upon the applicant the punishment of forfeiture of three years' approved service temporarily for a period of two years and orders dated 31.10.1986 rejecting the appeal of the applicant, order dated 23.2.1987 rejecting the review petition of the applicant, show cause notice dated 15.5.1987 for proposing to remove the name of the applicant from promotion list 'A' and the order dated 28.7.1987 ultimately removing the name of the applicant from promotion list 'A' are wholly illegal, void, ineffective, arbitrary, malafide, unconstitutional and are liable to be set aside.

5. The case of the respondents is that the O.A. is barred by limitation as the appellate order was passed on 30.10.85 and that filing of the revision petition does not extend the limitation. They have refuted the various grounds taken by the applicant by denying the same. According to them, the Punjab Police Rules have been saved under Section 149 of the Delhi Police Act, 1978. The order of the disciplinary authority was reviewed under Rule 16.28 of the Punjab Police Rules. They have also denied that the order of the Addl. Commissioner of Police is a non-speaking order and that the disciplinary authority is ~~not~~ bound to accept it.

the findings of the Enquiry Officer. They have stated that the Punjab Police Rules, so far as they are not inconsistent with the Delhi Police Act, 1978 are applicable to the Delhi personnel and that the proceedings of departmental enquiry were held under the proper rules and full opportunity was given to the applicant. The appeal as also the revision petition filed by the applicant were rejected after considering the facts on merits. They have also averred that S.O. 91 does not violate Articles 20 and 21 of the Constitution and under this order name can be removed from promotion list 'A' if the officer is awarded a major punishment subsequently.

6. The objection of the respondents on the point of limitation is not tenable as the appeal and the revision petition filed by the applicant were duly considered and the applicant filed this O.A. within the limitation prescribed under the Administrative Tribunals Act, 1985.

7. In Shri Sohan Lal Vs. Lt. Governor, Delhi & Ors. (TA-694/85 - CW 573/61) decided on 23.5.1988, a Bench of this Tribunal, happened to examine Rule 16.28(1) of the Punjab Police Rules vis-a-vis the provisions of the Delhi Police Act, 1978, wherein it was held that the provisions of the P.P. Rules relating to review do not appear to be consistent with the provisions of the Delhi Police Act which does not provide for the same. Although the facts of this case are not the same as are in the present O.A., it was observed that the power of review cannot be exercised by the Inspector General of Police after the Delhi Police Act came into force with effect from 1-7-1978. Thus, the Delhi Police Act does not envisage a review of the type provided under Rule 16.28(1) of the Punjab Police Rules which read as follows: -

"The Inspector General, a Deputy Inspector General, and a Supdt. of Police may call for the records of awards made by their subordinates and confer, enhance, modify, or annul the same or make further investigation or direct such to be made before passing orders.

It was also brought to notice that in the above cited T.A. on an SLP No.12361 of 1988 filed by the respondents, the Hon'ble Supreme Court had granted stay orders on 3.4.89.

8. Section 149 of the Delhi Police Act, 1978, inter alia, provided as follows: -

"Ceaser of operation of certain enactments and savings. (1) on the commencement of this Act the enactments specified in Schedule II shall cease to be in force in Delhi:

Provided that -

(1) all rules and standing orders made (including the Punjab Police Rules, as in force in Delhi), appointments made, powers conferred, orders made or passed, directions and certificates issued, consent, permit, permission or licence given, summons or warrants issued or served, persons arrested or detained or discharged on bail or bond, search warrants issued, bonds forfeited and penalties incurred under any such enactment shall, in so far as they are consistent with this Act, be deemed to have been respectively made, conferred, passed, given, issued, served, arrested, detained, discharged, forfeited or incurred under this Act."

From the above, it is clear that Section 149 of the Delhi Police Act, 1978 saves the P.P. Rules to the extent they are consistent with the Delhi Police Act of 1978. The provisions of the Delhi Police Act in so far as they relate to the power of review vested under Rule 16.28(1) of the P.P. Rules are inconsistent as there is no provision of such a review in the Delhi Police Act, 1978.

9. Coming back to the present O.A., we find that the departmental inquiry was conducted under Section 21 of Delhi Police Act, 1978 as is evident from the show cause notices dated 18.12.84, 12.6.85, order dated 30.7.85 etc. As such, the order dated 19.9.85 passed by the Addl. Commissioner of Police, Vigilance, Delhi under the P.P. Rule 16.28 ordering for denovo departmental proceedings against ~~xx~~ the applicant is not legally valid and the same is hereby set aside and quashed. Consequently, the show cause notice dated 31.10.1985, order dated 20.3.1986, and orders dated 30th October, 1986 and 23rd February, 1987 rejecting the

22

appeal and revision petition of the applicant are also set aside and quashed, as prayed by the applicant. However, we do not find any justification to quash the order passed by the Addl. Deputy Commissioner of Police, Central Distt., Delhi, dated 30.7.85 whereby the applicant was awarded the punishment of 'Centure' and that order will stand. The name of the applicant was removed from promotion list 'A' vide order dated 28.7.87 on the ground that he had been awarded a major punishment. Now that only the penalty of 'Censure' stands, which is a minor penalty, the order dated 28.7.87 passed by the Deputy Commissioner of Police H.Q.(I), Delhi as also the show cause notice dated 15.5.87 issued to the applicant prior to the order dated 28.7.87 are also set aside and quashed and with that the applicant shall be entitled for promotion as per the promotion list 'A' with all consequential benefits. The O.A. is thus partly allowed to the extent of the reliefs granted herein. There shall be no order as to costs.

2/11/87
(P.C. JAIN) / 2/11/87
Member (A)

2/11/87
(T.S. OBEROI)
Member (J)