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In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No.OA-459/88 Date: 15.7.1993.

Shri Sri Niwas .... Applicant

Versus

Union of India & Ors. .... Respondents

For the Applicant .... Mrs. Avnish Ahlawat, Advocate

For the Respondents .... Shri B.S. Oberoi, Proxy for Shri Anup Bagai, Counsel.

CORAM: Hon'ble Mr. J.P. Sharma, Member (Judl.)
Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. To be referred to the Reporters or not? yes.

JUDGEMENT

(By Hon'ble Mr. J.P. Sharma, Member)

The applicant was working as Constable (Armourer) in the Delhi Police and was served with a summary of allegations dated 12th February, 1987 to show cause as to why action in the departmental proceedings under Section 21 of the Delhi Police Act, 1978 be not taken against him on account of non-revealing the fact of his arrest in a case under Section 498-A I.P.C., P.S. Beri, District Rohtak and in a case under Section 160 I.P.C. P.S. Jhajhar, District Rohtak, Haryana. The earlier case was instituted on the F.I.R. dated 30.4.1985 and the second case was instituted on F.I.R. dated 4.9.1986. The applicant submitted reply to the aforesaid showcause notice and the departmental proceedings were drawn

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against the applicant under Delhi (Punishment and Appeal) Rules, 1980. Shri Balwant Singh, Inspector, who was the Enquiry Officer, charged the applicant as follows:-

> "While posted in 10th Battalion as Armour, you failed to inform the department about your arrest having been made in case FIR No.181 under Section 498 (a) I.P.C. dated 30th April, 1985 of P.S. Beri (Rohtak) and in case FIR No.189 under Section 160 I.P.C. dated 4.9.1986 of P.S. Jhajhar (Rohtak) respectively. This act on your part amounts to grave remisness in the discharge of your duties and render you liable for departmental action under Section 21 of the Delhi Police Act, 1978."

2. The Enquiry Officer, on the basis of the evidence on record and the defence statements of the witnessas, returned the finding of guilt against the applicant. A show-cause notice thereafter was issued on the basis of enquiry dated 15.7.1987 on 7th August, 1987, proposing the punishment of forfeiture of 3 years' approved service permanently, entailing a reduction from Rs.1240/- to Rs.1150/- per month. The applicant submitted his reply to the aforesaid show-cause notice on 21st August, 1987. After considering the reply, the disciplinary authority, Deputy Commissioner of Police, by the order dated 27th August, 1987, passed the order of punishment, forfeiting his one year's approved service temporarily for a period of one year, entailing reduction in his pay from Rs.1240/-

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to Rs.1210/- per month with immediate effect. The applicant preferred an appeal to the Additional Commissioner of Police (Annexure F-1) which was rejected after hearing the applicant in person by the order dated 10.12.1987. Aggrieved by these orders, the present application has been filed on 15th March, 1988.

3. The applicant has claimed the relief that the impugned punishment orders dated 27th August, 1987 and the order dated 10th December, 1987, be quashed and he be given all arrears of salary and other consecuential benefits.

4. The respondents contested this application and in the reply opposed the grant of relief claimed by the applicant. It is stated that the applicant intentionally concealed the facts of his arrest and subsequent release on bail in the two criminal cases referred to in the charge memo. and did not inform the department. The above facts came to the knowledge of the department on the basis of a complaint. The enquiry has been held according to the rules and the applicant has been given adequate opportunity to defend his case.

5. We have heard the learned counsel for both the parties at length and perused the records. The contention of the learned counsel for the applicant is that she is not pressing the case on merit but on the ground that the wrong act alleged against the applicant of not informing

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about the criminal cases filed against him under Section 498-A I.P.C. in 1985 and under Section 160 I.P.C. in August, 1986, is not giving information about the pending cases to the department. The contention of the learned counsel is that this is not a misconduct under the rules. The apolicant was never arrested, nor has he been convicted in any of those cases, but rather he was acquitted subsequently. In fact, in the case under Section 498-A I.P.C., the applicant, apprehending his arrest, sought anticipatory bail from the Court of Sessions Judge, Rohtak and thereafter, he was never arrested. A copy of the order of the Sessions Court has been filed as Annexure to the application. It is further contended that the respondents have wrongly averred in their reply that Government of India Instruction No.3 below Rule 10(1) of the C.C.S.(CCA) Rules, is applicable to the case of the applicant, which requires that the department should be informed about the involvement in any criminal case which is likely to have effect on his service. Thus, by not informing the respondents, in view of the provisions under Rule 10(1) of CCS(CCA) Rules in Instruction No.3 of the Government of India, misconduct has been committed. This, according to the learned counsel for the applicant, is not applicable to the present case. The learned counsel for the respondents, however, referred to Rule 3 of the C.C.S.(CCA) Rules, 1965, which lays down

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the categories of Central Government employees who are covered by these rules. It is emphasised by the learned counsel for the respondents that since the Ministry of Home Affairs has not excluded the application of rule 3 of the above rules to the Delhi Police and only excluded the Special Delhi Police Estt., these rules do apply to the case of the applicant. When these rules apply, Instruction No.3 under Rule 10 (1) of the CCS(CCA) Rules very much applies to the case of the applicant.

6. We have considered the rival contentions raised on this legal plea. Firstly, we find that there is a specific notification dated 17.12.1980, a copy of which is filed as Annexure F-4 to the application and this has been issued under the powers conferred by Section 5 of Delhi Police Act, 1978. In this notification, an enabling provision has been given whereby as many as 23 Central Rules governing the services of Central Government employees in different organisations of Government of India have been made applicable to all subordinates, civilians and Class IV employees of the Delhi Police, in addition to the rules and regulations made under the Delhi Police Act. The learned counsel for the respondents, however, argued that so far as C.C.S.(CCA) Rules, 1965 are not inconsistent with the Delhi (Punishment & Appeal) Rules, 1980, would apply in all such cases in the departmental proceedings. In fact, a perusal of Rule 3 of the Delhi (Punishment and

Appeal) Rules as well as Rules 26, 27, 28 goes to show that there is a different impact of the application of these rules regarding those delinquent employees who are suspended. The Instruction No.3 of Government of India under Rule 10 (1) of C.C.S.(CCA) Rules, 1965 is under the heading 'Suspension'. The suspension has been separately dealt with under Delhi Police (Punishment & Appeal) Rules. Thus, it cannot be said that the Government of India instructions issued under Rule 10 (1) have got a statutory force and shall be applicable in the present case. It is particularly so, because there is a different rule of suspension, i.e., Rule 26 in Delhi Police (Punishment and Appeal) Rules. When there is a specific provision and procedure for departmental enquiry and it is broadly laid down in the statutory rules which have been framed under Delhi Police Act, 1978, by no stretch of imagination, it can be inferred that CCS(CCA) Rules, 1965 either by implication or as a saving provision apply in the departmental proceedings against the subordinate staff of Delhi Police Force.

7. The argument of the learned counsel for the respondents has been further tested by the fact that the applicant was never arrested in the criminal case under Section 498-A I.P.C. as he had been granted anticipatory bail by the Sessions Judge, Rohtak. Even the Government

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of India Instruction says that an employee who has been arrested, has to give information about that fact to the authorities. As regards the criminal case under Section 160 I.P.C., this is a minor offence and bailable then and there. The moment a person is taken into custody, he has a right to claim the bail that very moment. The arrest in such a case is only of technical nature. The bail cannot be refused. Thus, it has not come on record that the applicant suffered any detention, as defined in the criminal law. The nature of the case also goes to show that the main dispute was between the son and the daughter-in-law of the applicant. Since the applicant was associated with the family as its head, he was also involved in that criminal case and the case under Section 160 I.P.C. was a consequence of that criminal case. Who was at fault, or whether the cases actually had any substance, is clear from the fact that the applicant had not been convicted and it is stated by the learned counsel for the applicant that the applicant had been acquitted.

8. In view of the above discussion, we come to a definite finding that the C.C.S.(CCA) Rules, 1965 are not applicable in case of a subordinate Police staff whi is tried departmentally under the Delhi Police (Punishment and Appeal) Rules, 1980.

9. We also come to a finding that there is no evidence on record that the applicant any time was detained in

custody after his arrest, or he was even arrested. The anticipatory bail granted to the applicant is a clear evidence of that fact.

10. We have gone through the report of the Enquiry Officer and we find that the application of CCS(CCA) Rules, 1965, though not specifically mentioned in the impugned orders, do not have any application to the case of the applicant and any punishment awarded on that account, cannot be sustained. The appellate authority also did not consider this aspect. Only in para.4 running into a few lines, the whole of the conclusion has been drawn without going into the fact whether concealment of a fact amounted to a misconduct or not. In this connection, we have also gone through the CCS(Conduct) Rules, 1964 which are applicable to all Central Government employees. The non-supply of information about the involvement of a case, does not amount to misconduct unless an arrest has been made thereof, which may be said to be unbecoming of a Government servant.

11. The applicant has also since retired from service.

12. In view of the above facts and circumstances, the impugned order of punishment, therefore, cannot be sustained and the same orders are quashed. We further direct that the applicant shall be paid his pay, etc., as if no punishment order has been passed. We, however, refrain from

passing any order of further promotion as the same has not been claimed by the applicant in the present application. However, if the applicant was reverted by virtue of the impugned order, he shall be restored to his post with all benefits of pay ordering from the date his immediate junior has been promoted, or he was working in the promotional post. In the circumstances, the cost will be borne by the parties.

(B.N. Dhoundiyal)
A.M.

(J.P. Sharma) 15.7.93
Member(J)