

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 280
ExAxxNox

1986

DATE OF DECISION 9th December 1987.

Ex. Constable Lal Man No. 1815/SD Petitioner
R/o 500/22A, Gali No.10,
Sant Bhikam Singh Colony
Vishwas Nagar, Shandara, Delhi-32.

Shri S.K. Agarwal Advocate for the Petitioner(s)

Versus

The Commissioner of Police Respondent
Police Headquarters, I.P.Estate
New Delhi

Mrs. Avinish Ahlawat, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri S.P. Mukerji, Administrative Member,
and

The Hon'ble Mr. G.Sreedharan Nair, Judicial Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

G.Sreedharan Nair
(G.SREEDHARAN NAIR)
MEMBER (J)

S.P.Mukerji
(S.P.MUKERJI)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

D.A.280 of 1986.

Date of judgment
9th December, 1987.

Ex. Constable Lal Man No.1815/SD
R/o 500/22A, Gali No.10,
Sant Bhikam Singh Colony
Jishwas Nagar, Shandara, Delhi-32.

Applicant.

vs.

The Commissioner of Police
Police Headquarters, I.P.Estate
New Delhi. ...

Respondent.

For applicant: Shri S.K. Agarwal, counsel.

For respondent: Mrs. Avnish Ahlawat, counsel.

CORAM:

The Hon'ble Shri S.P. Mukerji, Admn. Member,
and
The Hon'ble Shri G. Sreedharan Nair, Judl. Member.

(The judgment of the Tribunal was delivered by

The Hon'ble Shri G. Sreedharan Nair)

In this application, the applicant who was a constable attached to the Delhi Police challenges the order dated 17-11-1984 under which the penalty of dismissal from service was imposed upon him. He has approached this Tribunal as the appeal preferred by him against the said order before the Additional Commissioner of Police was rejected and the order of the appellate authority was confirmed by the Commissioner of Police on revision. He has prayed for quashing those two orders as well.

The main ground urged in the application relates to the sustainability of the penalty of dismissal from service. It is alleged that the departmental

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proceedings were initiated against the applicant as well as a Head constable on the basis of an alleged incident in which both of them are stated to have taken part. It is pointed out that though the disciplinary authority had awarded the penalty of dismissal from service as regards both, on appeal the Additional Commissioner has reduced the penalty in the case of the Head constable to one of forfeiture of five years service permanently entailing reduction in his pay, but in the case of the applicant though his appeal was considered subsequent to the aforesaid decision, the appellate authority has confirmed the penalty of dismissal. The application is essentially based on this alleged differential treatment.

In the reply filed on behalf of the respondent, the fact that on appeal the penalty imposed as against the Head-constable was reduced is admitted. However, it is contended that while the revision petition filed by the present applicant was considered by the Commissioner of Police, Delhi, he felt that the said reduction of punishment in the case of the Head-constable was not justified and with a view to enhance the penalty referred the matter to the Delhi Administration for obtaining the approval of the Lt.Governor. It was received on 18-2-1985 (a mistake for 18-2-1986) and that thereafter a show cause notice was issued to the Head-constable on 4-4-1986 proposing the penalty of dismissal from service and that "the case is still in process".

It is not in dispute that the applicant as well as the Head-constable had more or less the same sort of responsibility with respect to the alleged incident.

A perusal of the memorandum of charges and a reading of the report of the Inquiry Officer does not at all indicate that the applicant had an upper hand in the matter. As such, when on the same material, the appellate authority was of the view that the penalty of dismissal from service was not justified in the case of the Head-constable and reduced it to one of ~~six~~ forfeiture of five years' service, in the absence of any convincing explanation on the part of the respondent, a differential treatment is so far as the applicant is concerned, cannot be supported in law.

^{position}
The decision would have been different if on the material on record before the Inquiry Officer it was established that the two officers involved had different roles to play, one being less serious than the other. We are fortified in taking this view by the decision of the Supreme Court in Dalbir Singh vs. Director General, C.R.P.F. (1987 (4) S.C. 152). In that case, the Supreme Court held that there is no justification for differential treatment in the matter of imposition of penalty in identical circumstances as in the instant case.

Counsel of the respondent submitted that since the Commissioner of Police had proposed to issue a show-cause notice to the Head-constable in order to impose the penalty of dismissal from service on him, it cannot be said that the penalty that has been imposed on the Head-constable had become final. As the averment in the reply filed by the respondent is that the matter is "still in process", we wanted to ascertain from the present counsel of the respondent as to the ~~particular~~ stage of the proceedings. We have been informed that since the Head-constable has voluntarily retired from service,

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there was no occasion for proceeding with the matter. On a consideration of the facts of this case and the sequence of events, we are of the view that the issue of the show-cause notice dated 4-4-1986 cannot and does not make any real distinction in the matter. The applicant had preferred his revision petition before the Commissioner of Police on 26-6-1985. The Commissioner of Police is stated to have obtained sanction from the Lt.Governor for issue of notice proposing enhanced penalty as against the Head-constable on 18-2-1986. Evidently, it was after the filing of the revision petition by the applicant pointing out this factor that the Commissioner wanted to proceed in the matter. It is stated in the reply that after the sanction is obtained, on 4-4-1986 show-cause notice was actually issued to the Head-constable proposing the penalty of dismissal from service. If that be so, we fail to understand why the Head-constable even if he had made a request for voluntary retirement was permitted to do so. In the reply which has been filed on 4-8-1986, the statement is that the case is still in process. The applicant had filed this application in January 1986. Thus it can safely be presumed that even if the Head-constable was allowed to retire voluntarily it was after the filing of the present application and after the issue of the show-cause notice proposing to enhance the penalty to one of dismissal from service. As such, the issue of the said notice cannot be pressed into service to meet the plea of the applicant

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that a differential treatment has been meted out to him in the matter of imposition of penalty. On the material on record, it cannot but be stated that as regards the Head-constable, the penalty imposed and was subsisting on the date of filing of this application was only that of forfeiture of five years service. If that be so, the plea of the applicant that as far as he is concerned, on the same set of facts, as a result of the proceedings initiated on the same transaction, a higher penalty has been imposed, upon him than on his superior officer, the Head-constable, ~~has to be accepted~~.

It was strenuously submitted by counsel of the respondent that the applicant who belonged to a disciplined force should not have indulged in the act that is attributed to him. We are in full agreement with the counsel on this point. But the real question that is posed before us is whether when his superior officer, ~~who~~ is expected to be more disciplined in the matter, was also involved in the same incident, and the same act was attributed to both of them for the purpose of imputing misconduct, and when on the latter only a lesser penalty is imposed, can the extreme penalty of dismissal from service be imposed on the applicant? As we are of the view that it will be unjustified, ¹⁵ interference is called for in the matter of penalty that has been imposed on the applicant.

In the result, we quash the order of the disciplinary authority dated 7-11-1984 as confirmed

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by the order of the appellate authority dated 6-6-1985 and of the revisional authority dated 11-11-1985, in so far as it relates to the penalty imposed on the applicant. We direct the respondent to modify the order of penalty by imposing the penalty that has actually been imposed on the Head-constable and on the same terms. The applicant shall be reinstated in service forthwith. However, in ~~the~~ view of the peculiar facts and circumstances of this case, we are not allowing arrears of salary and allowances till the date of reinstatement. There shall however be continuity of service for the purpose of pension.

We wish to emphasise that the charge of a member of the Police Force clandestinely misappropriating seized ~~etc~~ property is a serious charge, grave enough to merit ^{IF} dismissal from service and this order shall not be treated as a precedent.

The application is allowed as above.

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10.12.1987
(G.SREEDHARAN NAIR)
Member (J)

SM
(S.P.MUKERJI)
Member (A)

S.V.