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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

O.A. No.477/86

Date of decision: 17-9-1990

SHRI RAM KISHAN

.....APPLICANT

VERSUS

UNION OF INDIA

....RESPONDENTS.

SHRI SHYAM BABU

COUNSEL FOR THE APPLICANT

MRS. AVNISHI AHLAWAT

COUNSEL FOR THE RESPONDENTS

CORAM:

THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

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

JUDGEMENT

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

Constable Shri Ram Kishan of Delhi Police, the applicant has filed this application under Section 19 of the Administrative Tribunal Act, 1985 challenging his dismissal from service by the Additional Deputy Commissioner of Police vide order No.5005-75/HAP/C dated 6-9-1985.

2. Briefly, the facts of the case are that the applicant was charge-sheeted on 1-7-1985 for gross misconduct and indisciplined attitude of unbecoming of Government servant in violation of Rule 3(1)(iii) of CCS Conduct Rules, 1964 and thereby having rendered himself liable under Section 21 of Delhi Police Act for departmental action. In the summary of allegations it is alleged that while at the Prosecution Branch as Naib Court the applicant had brought back one accused Puran after producing him in the Court for handing over to Head Constable Sube Singh for lock up. The Head Constable Sube Singh however found smell of alcohol

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coming from the mouth of the accused and refused to take over the accused in his custody until the accused was medically examined. The applicant reported the matter to Sub-Inspector Raja Ram who advised him to have the accused medically examined and offered to provide necessary assistance. The applicant did not act on the advice of Sub-Inspector (SI) Raja Ram and went out with the accused. S.I. Kabal Singh, however, stopped the applicant and took the accused in custody of Constable Bhure Singh to the Police Hospital for medical examination where the accused was found to have consumed alcohol. The intervention of SI Kabla Singh is said to have provoked the applicant and he lost temper and created a scene by using abusing language against senior officers.

After considering the findings of the Enquiry Officer and other relevant record, the Additional Deputy <sup>the</sup> Commissioner of Police passed/order of dismissal against the applicant. The appeal filed by the applicant was dismissed by the Additional Deputy Commissioner of Police. The applicant filed a revision petition on 14-4-1986 which too was rejected by the Commissioner of Police.

The applicant has submitted that the Enquiry Officer had erred in law and fact in holding that charge against him having been "partly proved" particularly in absence of the main eye witness from the enquiry viz. Bhure Singh. Further, the main independent witness, accused Puran was totally ignored who admitted that he had gone to the court after taking wine from his house and that the Additional Deputy Commissioner of Police while controverting the findings of the Enquiry Officer has not heard the applicant. It has been further pleaded that the Additional Deputy Commissioner of

Police, Central District in his orders dated 6-9-1985 was prejudiced in considering the past service record of the applicant and finally that the Additional Deputy Commissioner of Police, Central District was not competent to pass the orders of 6-9-1985. By way of relief the applicant has prayed that the order of dismissal dated 6-9-1985 and the orders by Appellate & Revisionary Authority be quashed.

2. Shri Shyam Babu, the learned counsel appearing for the applicant, submitted that the Enquiry Officer has considered the charge against the applicant in two parts, as under:-

- i) That he rendered facilities to the accused for taking alcohol after the Court had passed orders.
- ii) That he used abusive language to his senior officers and created a bad scene at the lock up.

The Enquiry Officer came to the conclusion that first part of the charge was not approved, but his finding regarding second part of the charge was that the same was "partly proved." The Disciplinary Authority, however, disagreed with the Enquiry Officer that the first part of the charge is not proved without producing any evidence from the record. The Disciplinary Authority also did not accept the qualified finding of the Enquiry Officer of the charge having been "partly proved" and stated that the charge against the defaulter has been proved in full without adducing any convincing reasons.

Shri Shyam Babu, the learned counsel for the applicant also contended that the disciplinary authority was influenced by the past record, as is obvious from the statement in its order "in view of his record I do not find any justification for accepting his prayer".

In support of his case, the learned counsel cited the judicial pronouncement in the case of Ramshai Vs. Board of Revenue, Rajasthan & Ors, 1977 SLJ Rajasthan High Court 241. While it is not for us to interfere with the findings of the Enquiry Officer or the Competent Authority, a perusal of the record shows that there is nothing in the findings of the Enquiry Officer or the Competent Authority which can be considered as arbitrary or utterly perverse.\* From the summary of the allegations (page 29 of the paper book) it is observed that the applicant was charge-sheeted for gross misconduct and indisciplined attitude unbecoming of Government servant in violation of Rule 3(1)(iii) of the CCS Conduct Rules, 1964. The findings is that this charge has been proved by evidence on record. We, therefore, do not find any merit in the argument that conclusion arrived at by the disciplinary authority is without any basis.

As regards the second point, learned counsel for the applicant Shri Shyam Babu, raised the question of the competency of the Disciplinary Authority viz., Additional Deputy Commissioner, who passed the order of dismissal. It was contended by the learned counsel that the Additional Deputy Commissioner of Police is a lower authority than the appointing authority and that no such authority can dismiss/remove a Government servant from service. The action of the disciplinary authority was in contravention of Article 311 of the Constitution of India. The learned counsel submitted that this ground although not taken up in the appeal was agitated in the revision petition but the Revisionary Authority while rejecting the revision petition affirmed that

\*1989 SCC-177 -Parma Nanda Vs. Union of India

the Additional Deputy Commissioner of Police is competent to award punishment in terms of Rule 4 of Punishment & Appeal Rules, 1980. The appointment of the applicant was made by the Commandant, Delhi Armed Police who is equivalent in rank to the Superintendent of Police (SP). The equivalent of SP in rank is Deputy Commissioner of Police and not Additional Deputy Commissioner of Police. The learned counsel sought to fortify his argument from the case of Babaji Charan Rout Vs. State of Orissa & Others reported in SLJ 1982 (1) - 496. In the cited case the petitioner was reduced to a lower rank by the Collector which admittedly was a authority inferior to the Revenue Divisional Commissioner who had reduced the rank of the petitioner. The reference to the past conduct of the petitioner was in distinctly different context, as will be obvious from the part of the punishment order quoted by the High Court in the judgement:-

"...I am satisfied that Shri Rout did not behave with a sense of responsibility and is unsuitable to discharge the responsibilities of the post of R-I.

He has also been punished in the past with stoppage of increment but that does not seem to have brought about any change in his performance or attitude towards his job.

I, therefore, order his reduction to the rank of R.C.M. with effect from the date....."

The relevant part of the disciplinary authority's order referring to the past service in the case of the applicant is as under:-

"In his written reply the defaulter has prayed that he has put in 35 years of service during which he has earned several rewards. He has also prayed that he is a father of school going children and that lenient view may be taken. I have examined his service record and find that he has earned 22 rewards and 2 punishments in 1973 and 1980. The first major punishment in 1973 was for manhandling SI Chokhey Singh. The second minor punishment in 1980 was for a serious lapse in duty while posted at J.P.N. Hospital. In view of his record I do not find any justification for accepting his prayer. Const. Ram Kishan No.1004/C, in view of his conduct is not fit for retention in a discipline force. He is hereby dismissed from service w.e.f. the date of issue of this order."

The reference to his past record of service in this case is distinguishable from the facts of the case dealt with by the Orissa High Court, as the reference to the past record here has arisen on account of the specific prayer of the applicant. The reference to past record was not made ab initio for the purpose of arriving at the decision to impose a penalty on the delinquent official.

The next case cited by the learned counsel for the applicant in regard to the competency of the disciplinary authority is that of Ajaib Singh Vs. Gurbachan Singh - AIR - 1985 - SC - 1619 in support of his argument that Additional DCP was not competent to pass orders of dismissal as he was lower in rank than the Deputy Commissioner of Police who was the appointing authority in the case of the applicant.

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In the case of the Ajaib Singh Vs. Gurbachan Singh -AIR-1985-SC-1619, their Lordships of the Supreme Court held that the Additional District Magistrate is not of the rank of District Magistrate but below that rank. The facts of the case are, however, distinguishable as that view was taken on the ground that the Additional District Magistrate had not been notified as the District Magistrate by the Government under Section 10(1) of the Cr. P.C. The Hon'ble Supreme Court held that unless such an appointment was made under Section 10(1) of the Cr.P.C., even if an officer is exercising the powers of the District Magistrate and there being a vacancy in the Office of the District Magistrate under Section 11 of the Cr. P.C., he is still not the District Magistrate until he is appointed as such under Section 10(1) of the Code. Since such notification had not been issued in that case, the Additional District Magistrate was held to be below the rank of District Magistrate. The case of Kumar Pal Singh Vs. Union of India & Others 1985(1) Delhi High Court 493 was also cited by the learned counsel to buttress the same argument. In this case, the decision of the Additional District Magistrate was not considered valid as Rule 6.38 of the Punjab Police Rules clearly provides that:

"It is the District Magistrate who on receipt of an information regarding the Commission by a Police Officer has firstly to decide whether the investigation of the complaint shall be conducted by a Police officer or made over

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to a selected Magistrate having 1st class powers and thereafter under sub-section (2) to decide whether there should be a judicial prosecution or the matter should disposed of departmentally." The District Magistrate has to be appointed under Section 20(1)."

The Additional District Magistrate did not acquire the powers of the District Magistrate as the District Magistrate has to be appointed under Section 20(1) of the Cr.P.C. to exercise the powers provided under Rule 16.38 of Punjab Police. Here again a specific notification under a particular rule was required, but that was not done. This case too is distinguishable.

Lastly, the learned counsel cited the case of Bhim Singh Vs. UOI & Others (in T.712/85) decided by the Tribunal on 30-11-1988. This case is also of no help to the applicant as the Additional Superintendent of Police was not vested with the powers and duties of a District Superintendent of Police at the relevant time, as the powers of DSP were vested from a specific date prospectively.

3. The respondents in their written statement have contested all the grounds taken by the applicant in projecting his case. Mrs. Avnish Ahlawat, learned counsel for the respondents submitted that under Rule 4 of Delhi Police Appointment and Recruitment Rules, 1980, DCP, Additional DCP and any other officer equivalent in rank are appointing authorities for the rank of SI to Constable. These authorities are also the disciplinary authorities for the said ranks as provided in Rule-5 of Delhi Police Punishment and Appeals Rules, 1980. The learned counsel that due to the heavy work load in the Police Districts in Delhi, more than one Deputy Commissioner

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of Police is posted in each district. The seniormost DCP is designated as Deputy Commissioner of Police, and others are designated as Additional Deputy Commissioner of Police. All of them however have the same rank and enjoy the same pay and allowances etc. The pay scale of Deputy Commissioner of Police is Rs.3000-4500/-. After he has rendered four years service he is automatically placed in the scale of Rs.3700-5700/- and after another 4 years, he moves into the pay range of Rs.4500-5700. The next promotion grade is in the pay scale of Rs.5900-6700. When an Additional DCP is posted to Delhi Armed Police he is designated as DCP. The learned counsel therefore contended that the rank, the powers, the pay scale, allowances etc. of the DCP/Additional DCP is the same. However, the seniormost person posted in the District is designated as DCP while the others of the same rank posted in the same district are designated as Additional DCP. In this connection the learned counsel cited the decision dated 14th July, 1988 in T-175/87 decided by the CAT, PB, New Delhi in the case of Vinodi Lal Vs. Union of India & Others and the case of Iqbal Singh Vs. Inspector General of Police & Others reported in AIR 1970s Delhi-240. In the former case the appointment was made by the Senior Superintendent of Police and orders of reduction were passed by the Superintendent of Police who was alleged to be lower in rank than the Senior Superintendent of Police. The Tribunal held that:-

"An authority can be considered subordinate to another authority only where an authority is higher in rank than the other. If for administrative purposes, out of several Superintendents of Police, the seniormost Superintendent of Police is designated as Senior Superintendent of Police and is also

assigned certain supervisory powers, he does not become higher in rank than other Superintendents of Police....."

In the latter citation Iqbal Singh Vs. Inspector General of Police & Others-AIR-1970-Delhi-240 Delhi High Court have dealt with a similar case. The relevant portion contained in paragraph-13 of the judgement is reproduced below:-

"13. The last submission has no merit because it was a Senior Superintendent of Police who had promoted the petitioner to the rank of Head Constable by the order dated 27-2-1957 and the order of dismissal is by an offer holding the rank of Superintendent of Police. We cannot accept the contention that the dismissing authority was below the rank of the appointing authority. In both cases the authority was a Superintendent of Police. Seniority in service did not cause any disparity in rank. (emphasis supplied). We find support from the observations contained in a Full Bench judgement of this Court in Union of India Vs. Surajbhan dated the 23rd May, 1969 by which LPA No.86-D of 1965 (FB)(Delhi) was disposed of. It was noticed in that judgement that in terms of Rule 16.1(2) of the Punjab Police Rules, 1934, a Superintendent of Police was expressly empowered to dismiss even an Assistant Sub-Inspector. The Full Bench had relied upon a decision of the Supreme Court in Union of India Vs. Jagjit Singh 1969 SLR 356 - (AIR 1970 SC 122). In our view the Superintendent of Police was competent to pass the impugned order of dismissal because he was not subordinate to authority, namely, the Senior Superintendent of Police, by whom the petitioner had been appointed."

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In view of the above discussions, we are of the view that Additional DCP is not an authority subordinate to that of DCP but the seniority in service, does not cause any disparity in rank. We therefore do not find any merit in the contention that the Additional DCP was not competent to pass the orders of dismissal in the present case.

5. In view of the above discussions and in the facts and circumstances of the case the application fails and is dismissed without any orders as to the costs.

*S. Singh*  
( I.K. RASGOTRA )  
MEMBER (A) 13/9/90

*AB*  
( AMITAV BANERJI )  
CHAIRMAN