

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 1389/90

DATE OF DECISION: 17.7.1992

RADHEY SHAM

...APPLICANT

VERSUS

DELHI ADMN. & OTHERS ... RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN (JUDICIAL)

THE HON'BLE MR. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

FOR THE APPLICANT SHRI S.C. LUTHRA, COUNSEL.

FOR THE RESPONDENTS MRS. AVNISH AHLAWAT, COUNSEL.

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

Signature
(I.K. RASGOTRA)

MEMBER(A)

Signature
(P.K. KARTHA)

VICE-CHAIRMAN

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

Shri Radhey Sham while detailed for the V.I.P. security duty in All India Institute of Medical Sciences (AIIMS for short) on 5.5.1987 was found sleeping on a bench in the gallery at 9.45 p.m. and was placed under suspension vide order dated 8.5.1987 and after holding the disciplinary enquiry, the punishment of forfeiture of two years's approved service permanently, entailing reduction in his pay was imposed on him vide order dated 28.9.1987. His appeal against the said order of the disciplinary authority was rejected by the appellate authority on 21.6.1989. The disciplinary authority also ordered that the period spent

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under suspension by the applicant from 5.5.1987 to 11.6.1987 shall be treated as period not spent on duty. Aggrieved by the above orders of the disciplinary authority dated 28.9.1987 and appellate order dated 21.6.1989, the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985. He has prayed for the following reliefs:-

- i) To quash the suspension order, as being illegal, void and not sustainable.
- ii) To quash the whole disciplinary proceedings and the show cause notice, as being illegal, malafide, unconstitutional, bad in law and not sustainable.
- iii) To quash the orders passed by the disciplinary authority and the appellate authority on 28.9.1987 and 21.6.1989, as illegal, unconstitutional and not sustainable.
- iv) To declare Rule 5 of Delhi Police (Punishment and Appeal) Rules, read with sub clause-d clause 1 of Section 21 of the Delhi Police Act, 1978, being ultra vires and bad in law.

2. The applicant admits that he was detailed for V.I.P. duty on 5.5.1987 at 7.45 p.m. in the AIIMS but contends that the main responsibility of the security rested with the Black Commandos of the National Security Guards, besides the plain-clothes personnel detailed on security duty. He further contends that his place of duty was nowhere near the V.I.P. room and that he was not briefed properly for the

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security of the V.I.P. As per standing instructions, armed duty should not exceed three hours at a time but the applicant was detailed for six hours' shift in violation of the standing instructions. Shri S.S. Manan, A.C.P. Hauz Khas made a surprise check at the AIIMS at about 9.45 p.m. when he found the applicant sleeping on a bench with his rifle lay on his side; for this alleged lapse he was placed under suspension. The departmental enquiry was entrusted to Shri Tarsem Lal Sharma, S.H.O., Greater Kailash on 18.5.1987. He further contends that while he was on duty he developed renal colic in the front lumber region at about 8.15 p.m. and, therefore, he reported to the Doctor on duty in the casualty, where he was examined and given some medicines e.g. sedatives or pain killers. He felt dizzy and on Doctor's advice was lying down on the bench for a while. He contends that it is wrong to allege that he was sleeping on the bench. He further submits that he was called by the Enquiry Officer on 26.5.1987 at about 4.00 p.m. and served a memo of the same date along with the summary of allegations. On the same day his statement was recorded whether he admits the allegations or not, in violation of Rule 16(i) of the Delhi Police (Punishment and Appeal) Rules, 1980. Therefore, the Enquiry Officer acted in an undue haste and disregarded mandatory provisions of giving adequate time to the applicant to submit his written statement. He has further faulted the manner in which the enquiry was conducted, as in the oral examination of two prosecution witnesses, only the answers given by them were recorded but the question put

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by him were not recorded. After recording the statements of the prosecution witnesses on 5.6.1987 the Enquiry Officer in his findings held that the charge framed against the applicant is proved on the basis of the evidence on record. The applicant also disputes the statement recorded in the findings "that inspite of repeated instructions to him to file his defence statement he has not cared to do so till date though 15 days have passed by." He further alleges that the copy of the statement of the PWs and DWs was not supplied to him. He was supplied a copy of the statement of PW-1 and PW-3 only. The remaining statement of PWs and DWs were supplied to him on his request on 11.7.1990. The grounds for seekings relief in brief are:-

- i) that the penalty of forfeiture of service is not provided in CCS (CCA) Rules or in any other similar rules and, therefore, it is discriminatory and is infraction of Articles 14 and 16 of the Constitution of India.
- ii) That the forfeiture of service is not one penalty but in fact comprises multiple penalties and suffers from double jeopardy.

3. Shri S.C. Luthra, learned counsel for the applicant submitted that the applicant was not provided adequate opportunity to defend himself, as he was not given 7 days' time to file his defence statement. On 4.6.1987 all the witnesses were summoned but the A.C.P. who was the material witness was not summoned by the Enquiry Officer. Further,

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the Enquiry Officer cross-examined the witnesses himself. The learned counsel further submitted that while the charge memo was served on the applicant on 26.5.1987 the enquiry report was submitted on 22.6.1987 which reflects undue haste in which the proceedings were conducted. The learned counsel further concluded that Rule 5 of Delhi Police (Punishment and Appeal) Rules, 1980, read with clause-d, clause-1 of Section 21 of Delhi Police Act, 1978 is ultra vires and bad in law, as it imposes multiple penalties for the same charge.

4. The stand of the respondents is that the enquiry has been conducted against the applicant in accordance with the Delhi Police (Punishment and Appeal) Rules, 1980 and that there was no lacuna in the enquiry proceedings. The applicant has been given full opportunity, as in response to the show cause notice he was also heard in person on 17.9.1987 by the disciplinary authority and it was only after considering his oral submissions in O.R. as well as other records available on the D.E. file that the disciplinary authority imposed the punishment of 'forfeiture of two years approved service permanently' treating suspension period as period not spent on duty vide order dated 28.9.1987. A copy of the said order was received by the applicant on 3.10.1987. He filed an appeal on 31.10.1987 but the same was rejected vide appellate order dated 21.6.1989.

The learned counsel for the respondents Mrs. Avnish Ahlawat stressed that Delhi Police is a disciplined and

uniformed force and such lapses as sleeping on the V.I.P. duty have to be viewed seriously and dealt with firmly in accordance with the Rules to ensure effective functioning of the disciplined force.

5. The applicant has also filed a rejoinder.
6. We have heard the learned counsel of both the parties and considered the matter carefully. The Enquiry Officer in his report has come to the conclusion that the charge against him is proved on the basis of the evidence on record. We also find that there is an implicit admission of the charge by the applicant when he states that he was lying on the bench due to his indisposition and the treatment received by him in the casualty of the AIIMS. This is not a case where there is no evidence of delinquency on the part of the applicant. The jurisdiction of the Tribunal cannot be equated with an appellate jurisdiction. Their Lordships in **Union of India Vs. Parma Nanda 1989 (1)**

SCALE 606 held:-

"The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the

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jurisdiction of the competent authority. If the penalty can lawfully be imposed and it is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."(emphasis supplied)

Further, it is not the case of the applicant that he was actively performing the duty. His case is that he suddenly had an attack of renal colic and, therefore, under the influence of the drugs administered by the casualty of AIIMS, he was resting by lying down on the bench. If he was unable to perform the duty, right course for him would have been to contact his superiors on the telephone with a view to obtain relief. On the other hand, he has sought to justify his lying down on the bench with his rifle on the floor on the ground that first he was indisposed and secondly he was detailed for six hours duty instead of three hours. In these circumstances and in view of the law declared by the Hon'ble Supreme Court in **Parma Nanda** (supra) case, we are not inclined to interfere with the enquiry proceedings or the punishment imposed by the Disciplinary Authority, as these cannot be held arbitrary and utterly perverse.

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The applicant has also challenged Rule 5 of Delhi Police (Punishment and Appeal) Rules, 1980 read with Section 21 of the Delhi Police Act, 1978 on the ground that the punishment of forfeiture of two years' service amounts to multiple punishment/double jeopardy. This aspect of the matter had been considered by the Tribunal in OA No.1964/88

Shri Surinder Kumar Vs. Union of India & Ors. decided on 31.1.1991 where it was noted that:-

"Regarding the double punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority, the learned counsel clarified that forfeiture of approved service and reduction of pay is not tantamount to double punishment. Section 21 of the Delhi Police Act, lists the following punishments which can be imposed:

- (a) Dismissal
- (b) Removal from Service
- (c) Reduction in Rank
- (d) Forfeiture of approved service
- (e) Reduction in pay;
- (f) Withholding of increment; and
- (g) Fine, not exceeding one month's pay.

The forfeiture of approved service is a harsh punishment as compared to reduction in pay. Again Section 5 of the Delhi Police (Punishment & Appeal) Rules defines the punishment as prescribed under Section 21 of Delhi Police Act, 1978.

Forfeiture of approved service and reduction of pay constitute two distinct punishments. The approved service can be forfeited under Rule 8(d) of Delhi



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Police (Punishment & Appeal) Rules, 1980 permanently
or temporarily or for a specified period as under:

- '(i) for the purpose of promotion or seniority
(permanent only)
- (ii) Entailing reduction in pay or deferment of
an increment or increments (permanently or
temporarily).'

In the present case, the learned counsel for the respondents submitted that upto 1985, the forfeiture of service for specified number of years permanently also resulted in reducing the qualifying service by corresponding number of years when the forfeiture of approved service was permanent. Reduction in pay permanently meant that for specified period the defaulter will draw the reduced pay. Thereafter he will be restored to the original pay. When forfeiture of service is accompanied by reduction in pay temporarily he draws lower pay for the specified period but is restored the increments which were not drawn during the period of punishment after the specified period of punishment is over. After 1985, however, the position has been reviewed and forfeiture of service permanently for a specified number of years does not entail the loss of qualifying service for pensionary benefits etc. She averred that forfeiture of approved service does not constitute double punishment and in the case under discussion

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the punishment is without cumulative effect. The learned counsel further submitted that this point has not been agitated by the applicant in his appeal before the appellate authority."

Accordingly, we are of the view that Rule 5 of the Delhi Police (Punishment & Appeal) Rules, 1980, empowering imposition of punishment of forfeiture of approved service cannot be held ultra vires in the above circumstances, as it does not constitute multiple/double punishment. The respondents have already reviewed the law and the forfeiture of service permanently for specified number of years no longer entails the loss of qualifying service for pensionary benefits etc. We are, therefore, not impressed by the argument that Rule-5 read with Section 21 of the Delhi Police Act, 1978 are in violation of the Constitutional provisions.

In view of the above discussion, the Application does not merit our interference on the basis of the material placed before us. Accordingly the same is disallowed and dismissed.

There will be no order as to costs.

Subhash
(I.K. RASGOTRA) 17/7/92
MEMBER (A)

Subhash 17/7/92
(P.K. KARTHA)
VICE-CHAIRMAN

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