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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.195/90

New Delhi this S September, 1994.

Hon'ble Mr. S.R. Adige, Member(A)

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

Shri Mam Chand Sharma (Ex-Sub-Inspector of Police No. D/833, s/o Shri Rang Lal Sharma, r/o 130, Hari Nagar Ashram, P.O. Jangpura, New Delhi).

.....Applicant.

By Advocate Shri Mukul Talwar

Versus

1. The Delhi Administration, Delhi through Lt. Governor,

2. The Commissioner of Police, Delhi, Police Hd. Qtrs. I.P. Estate, New Delhi.

3. The Addl. Commissioner of Police, Police Hd. Qtrs., I.P. Estate, New Delhi.

4. The DCP/Security, New Delhi

..... Respondents.

By Advocate Shri Raj Singh.

JUDGMENT

By Hon'ble Mr. S.R. Adige, Member(A)

In this application, Shri Mam Chand Sharma, Ex-Sub-Inspector, Delhi Police has impugned the order dated 13.5.86 (Annexure-D) passed by the Deputy Commissioner of Police, Delhi terminating the applicant's services, which has been upheld by the appellate authority in his order dated 24.6.87 (Annexure-E) and revisionary order of the Commissioner of Police dated 24.2.88 (Annexure-F).

2. The applicant, who was appointed as a Sub-Inspector of Police on 16.10.69, was proceeded against departmentally on the ground of gross-carelessness, negligence and dereliction of duties.

The Enquiry Officer held that the charges levelled against the applicant were fully proved upon which a show cause notice dated 12.3.86 (Annexure-B) was issued to the applicant as to why the proposed punishment of dismissal from service be imposed. The show cause notice listed unauthorised absence on 17 different occasions besides punishment of censure, forfeiture of approved service etc. as many as on 51 occasions. The applicant submitted a show cause reply (Annexure-C). The Disciplinary Authority after considering the same and also hearing the applicant in person on 25.4.86 ^{and} held that the applicant had not furnished any cogent or reasonable explanation of his unauthorised absence, his incorrigibility and for his retention in a disciplined force. Taking into account the fact that the applicant has failed to improve his work and conduct inspite of series of major and minor punishments inflicted upon him, the Disciplinary Authority by his impugned order dismissed the applicant from service which was upheld in appeal as well as in revision.

3. In appeal, the applicant took the plea that the departmental enquiry was held ex parte; his reply to the show cause notice was not taken into account before inflicting the punishment; and that his dismissal order was based on previous punishments which he has already suffered; and the punishment of dismissal should have been made only in a case of grave misconduct which this was not. These grounds were rejected by the appellate authority and the dismissal order was confirmed. In the revision petition also, the same very grounds were

advanced which were also rejected by the revisionary authority.

4. Learned counsel for the applicant advanced two arguments during hearing. The first argument was that the applicant's past record of service had been taken into account, without forming a specific matter of charge. It was, however, pointed out to counsel that the show cause notice specifically included not only the applicant's present misconduct of being absent on 17 different occasions, but his past lapses on as many as 51 previous occasions also, and Rule 10 of the Delhi Police (Punishment & Appeal) Rules, 1980 specifically provided that the previous record of an Officer, against whom charges have been proved, if it showed continued misconduct indicating incorrigibility and complete unfitness for police service, the ^{penalty in} ~~complete unfitness~~ awarded shall ordinarily be dismissal from service. Upon this the applicant's counsel did not press this particular argument further.

5. The second argument pressed is that the applicant was actually appointed as a S.I. of Police vide order No. 23872/Estt. dated 16.10.69 by the DIG of Police, even if the order was issued by Shri I.J. Verma, Asstt. Inspector General of Police on his behalf, and as such he could not be dismissed by the Deputy Commissioner of Police who was lower in rank to that of appointing authority. In support of the same contention that the applicant was actually appointed by the DIG, an

affidavit has been filed enclosing a copy of list of candidates for the post of S.I. Police prepared by the Staff Selection Board of the DIG's Office which includes the applicant's name at Serial No.56; one Shri Vedpal Singh's name at Serial No.59 and one Shri Gurcharan Singh's name at Serial No.15, and copies of letters sent to Vedpal Singh and Gurcharan Singh from DIG's Office directing them to appear for interview for the said post on 1.10.69 and 4.10.69 respectively. Additional correspondence addressed to Gurcharan Singh from the DIG's office issued have also been filed to support the argument that Gurcharan Singh as well as the applicant were actually appointed by the DIG of Police, even if the appointment letters were issued by the Asstt. I.G Police. In this connection, applicant's counsel also relied on the rulings in Sultan Singh Vs. UOI-ATR 1989(2)CAT 99; Lakhi Ram Vs. UOI-1989(3)SIR CAT 321; Ram Karan Vs. UOI-1975(2)SIR 683 and Ms. Neelam Lata Goswami Vs. UOI-T.A.No.871/85 decided on 17.5.89 in support of the legal preposition that the applicant could not be dismissed from service by an order issued by a functionary subordinate to that by which he was appointed.

6. We have given this matter our careful consideration. Article 311(1) of the Constitution states that "no person, who is a member of a Civil Service of the Union or an All India Service or a Civil Service of a State or holds a Civil post under the Union or a State, shall be dismissed or removed by an authority subordinate to that by which he was appointed. In Ramanand Singh Vs. State

of Bihar & another- 1982(2) SIR 693, the Hon'ble Supreme Court took the view that what was of crucial importance for Article 311(1) of the Constitution was not as to who in law was the competent authority to make the appointment but who in fact was the authority who made the order of appointment? The relevant extract is quoted below:-

".....Therefore, it would appear that the appointment was made by the Commandant General even though Rule 5 conferred power on the Provincial Government to make such appointments. It is quite likely that the amendment referred to in the judgment of the High Court may have been made with retrospective effect. We are left to guess work but this positive order would show that the appellant was appointed as Company Commander by the Commandant General. Therefore, Commandant General had the power to dismiss him. The dismissal order would not be void on the ground that it is made by an authority lower than the appointing authority. Therefore, the contention of the appellant must be negatived."

7. It is, no doubt, true that in Ram Karan's case (Supra) relied upon by the applicant, it was held that petitioner Ram Karan's promotion as a Head Constable took place under the orders of the I.G. of Police himself, even though the Asstt. I.G. of Police had signed the order promoting the petitioner, and, therefore, that petitioner's services could not be terminated by an officer of the rank of Superintendent of Police. In that judgment, it was stated that it is well known that the AIG of Police ^{only} functions on behalf of the I.G. of Police. Similarly, in Sultan Singh's case (Supra) relied upon by the applicant, it was noted that though the order promoting petitioner Sultan Singh

as Head Constable on 6.8.75, was signed by the Asstt. I.G. of Police, it was not sufficient to hold that it was a promotion made by the Superintendent of Police and the Asstt. I.G. of Police was given the powers of District

Superintendent of Police only as late on 6.5.76, Ms. Neelam Lata Goswami's case, also followed the line of reasoning in Ram Karan's case (Supra).

8. In Lakh Ram's case (Supra), it was held that as the applicant had been appointed in 1949 when only the Dy. Inspector General of Police / Senior Superintendent of Police had power to appoint, the dismissal order passed by the Superintendent of Police was beyond his authority.

9. Be that as it may, a similar issue arose in O.A. No. 146/88 Ramjit Singh Vs. UOI. In that O.A., Ramjit Singh, who joined service as a Constable in Delhi Police w.e.f. 7.3.59, asserted that he was appointed by the S.S.P. representing the DIG of Police, i.e. his assertion was that his appointing authority was the DIG of Police and the order of dismissal dated 8.8.85 passed by the Deputy Commissioner of Police was without authority. By the Tribunal's judgment dated 1.9.93, this ground was negatived. After referring to the Hon'ble Supreme Court's decision in Ramanand Singh's case, quoted above, that what was of crucial importance for Article 311(1) of the Constitution was not as to who in law was the competent authority to make the appointment but who in fact was the authority who made the order of appointment, the Tribunal held

that;

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" Even in a case where the authority competent to make the appointment under the relevant law was a superior authority and the appointment was actually made by a lower authority, the lower authority who made the appointment that was competent to pass an order of dismissal without infringing the provisions of Art. 311 (1) of the Constitution. The learned counsel for the petitioner submitted that the decision of the Tribunal in Lakhi Ram's case has been followed by the Tribunal in as many as eight cases later. It is enough to say that as Lakhi Ram's case cannot be regarded as laying down the law correctly as the same is in conflict with the decision of the Supreme Court in Jagjit Singh's case, the subsequent decisions of the Tribunal following Lakhi Ram's case cannot be regarded as laying down the law correctly."

10. The materials furnished by the applicant and referred to in paragraph 5 above, are not sufficient to hold that the applicant was actually appointed by the Dy. Inspector General of Police and not the Asstt. Inspector General of Police. ^{The "copy} _{1 (Ann A) clearly shows it was issued under the signature of Asstt. Inspector General and there is nothing in it, to indicate that he was acting on behalf of the Deputy Inspector General of Police.} That being the position, it must be held that ^{apparently} he was actually appointed by the Asstt. Inspector General of Police, and in that view of the matter, having regard to the discussion above, we see no infirmity if the impugned dismissal order was passed

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by the Deputy Commissioner of Police who admittedly is not subordinate to the Asstt. Inspector General of Police. This application, therefore, fails and is dismissed. No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

Adige
(S.R. ADIGE)
MEMBER (A)

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