

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A.No. 2091/90
~~T.A.No.~~

DATE OF DECISION 15 Nov 94

Ex Congl. Krishan Kumar & Co
Shri J. N. Tyagi
110 A-NO. 15/23 Netaji Subhas Marg
Delhi Applicant(s)

Chhajapura, Shekhar
Delhi

By Shri V.P. Sharma, Advocate Versus

Respondents(s)

Delhi Administration

By MS Rajshree Chhabra & Co
MS ADVTS Ahlavan

(For Instructions)

1. Whether it be referred to the Reporter or not? Yes
2. Whether it be circulated to all the Bench of the Central Administrative Tribunal or not? Yes

P. T. Thiruvengadam
Member (A).

(S.C. MATHUR)
Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

D.A.No.2091/90

New Delhi, This the 15th Day of November 1994

Hon'ble Shri Justice S.C.Mathur, Chairman

Hon'ble Shri P.T.Thiruvengadam, Member(A)

Ex-const Krishan Kumar s/o
Shri. J.N.Tyagi
r/o H.No.15/23, Netaji Subhas Marg,
Chajupura, Shahdra
Delhi.

...Applicant

By Shri V.P.Sharma, Advocate

Versus

1. Delhi Administration through the
Secretary
Old Secretariate, Delhi.
2. The Commissioner of Police
Police Headquarters,
I.T.O. New Delhi.
3. The Deputy Commissioner of Police
Central District, Delhi Police
Delhi.

...Respondents

By Ms Rashmi Chhabra for
Mrs Avnish Ahlawat, Advocate

O R D E R

Hon'ble Shri P.T.Thiruvengadam, Member(A)

1. The applicant was working as constable in
Delhi Police and joined service on 15.2.73. On
7.3.88 he was issued a chargesheet in which
the summary of allegations reads as under:-

"It is alleged against Krishan Kumar
No.1258/C that on the night between 26/27
11.87 he created nuisance at public place
in the area of P.S.Lohori Gate, Delhi
under the influence of liquor.

The aforesaid act on the part of Const.
Krishan Kumar No.1258/C, constitute gross

negligence and carelessness rendering him unbecoming of a Govt servant in violation of Rule 3(i)(iii) of CCS(Conduct) Rules 1964, which makes him liable to be dealt with departmentally under section 21 of Delhi Police Act, 1978."

Departmental enquiry was entrusted to SHO/Hauz Qazi, Delhi who completed the same and submitted his findings concluding therein the charge framed and served upon the applicant stood proved. After issue of show cause, notice inflicting penalty of dismissal of service was issued on 24.4.89. Appeal submitted against this punishment was rejected by the Appellate Authority in its order dated 6.11.89. This OA has been filed challenging the order of dismissal dated 24.4.89 and the rejection of the appeal in Appellate Order dated 6.11.89 and for quashing enquiry proceedings. Consequential benefits have also been prayed for.

2. The learned counsel for the applicant raised a number of grounds in support of this case. The main grounds advanced are as under:-

(i) Order of dismissal was passed by the Additional Deputy Commissioner of Police.

It is claimed that the applicant was appointed by an officer of the rank of Additional Supdt of Police(as per then Punjab Police rules) and hence dismissal order was passed without jurisdiction.

(ii) The applicant was not given a copy of the preliminary enquiry report

(iii) Punishment awarded is disproportionate

to the lapse which itself is not properly established.

(iv) The enquiry was conducted ex-parte, and no opportunity was given to the applicant to defend himself.

(v) Medical officer who examined the applicant was never called for examination during the enquiry.

(vi) The dismissal and Appellate orders are non-speaking.

(vii) Charge sheet is vague in that the alleged nuisance has ^{not} been indicated to have been committed on duty or off duty.

(viii) Rule 11(1) and Rule 11(3) of Delhi Police (Punishment and Appeal) Rules 1980 read as under:-

"Punishment on judicial conviction.-

(1) When a report is received from an official source, e.g. a court or the prosecution agency, that a subordinate rank has been convicted in a criminal court of an offence, involving moral turpitude or on charge of disorderly conduct in a state of drunkenness or in any criminal case, the disciplinary authority shall consider the nature and gravity of the offence and if in its opinion that the offence is such as would render further retention of the convicted police officer in service, prima facie undesirable, it may forthwith make an order dismissing or removing him from service without calling upon him to show cause against the proposed action provided that no such order shall be passed till such time the result of the first appeal that may have been filed by such police

officer is known."

x x x

"11(3).- In cases where the dismissal or removal from service of the convicted police officer is not considered necessary, the disciplinary authority may examine the judgment and take such departmental action as it may deem proper."

It was contended that in view of above if after receipt of the report regarding conviction, a charge sheet is issued, the proceedings can result only in punishments other than dismissal or removal.

(ix) The disciplinary and appellate orders are non-speaking.

3. The applicant has stated that he was appointed by the Additional Superintendent of Police in the year 1993. This was prior to the enforcement of the Delhi Police Act, 1978. On the enforcement of this Act, designations of several posts have changed. Schedule III to the Act mentions the equivalent ranks. At Sl.No.5 is mentioned the "Additional Superintendent of Police". The equivalent rank is stated to be "Additional Deputy Commissioner of Police". The impugned order of dismissal was passed by the Additional Deputy Commissioner of Police. It cannot, therefore, be said that the impugned order of punishment has been passed by an authority lower in rank than the authority which appointed him. The applicant's challenge on this count, therefore, fails.

4. The argument of the learned counsel for the applicant that the punishment is vitiated on account of non-supply of the report of the preliminary inquiry may be valid only if he

establishes two things:-

(1) that a preliminary inquiry was held and a report was prepared; and (2) such a report was relied upon during the disciplinary proceedings. Copy of the summary of allegations is annexure A-4. To this is attached a list of witnesses to be examined during inquiry and the list of documents to be relied upon for establishing the charge.

Documents mentioned are:

- (1) calendar under section 92/93/97, Delhi Police Act prepared by S.I. Madan Tuli, P.S. Lahori Gate, Delhi dated 26/27-11-1987;
- (2) CO No.34A dated 26/27-11-1987 P.S. Lahori Gate, Delhi;
- (3) conviction slip of Constable Krishan Kumar No.1258/C by which the applicant was fined Rs.25/- by the court of Shri N.K.Goel, Metropolitan Magistrate, Tis Hazari, Delhi. There is no mention of any preliminary inquiry report. There is no reference to any such report either in the findings of the Inquiry Officer or in the orders of the disciplinary authority, and the appellate authority. From this two things emerge-

- (1) Either no preliminary inquiry was held or
- (2) such inquiry was held and report was submitted but the said report was not relied upon for bringing home the charge of misconduct against the applicant. In either case the order of punishment will not be vitiated. The delinquent official is entitled to be supplied copies of the documents relied upon for holding him guilty and not copies of documents which are not relied upon for the said purpose.

5. In paragraph 4.3 of the original application, the applicant has made the grievance that copy of the preliminary inquiry report was not supplied

to him without stating anywhere that such an inquiry was held. In paragraph 4.3 of the respondent's reply, it has been categorically stated that no preliminary inquiry was conducted against the applicant. Thus, there is lack of factual basis also for the argument advanced by the learned counsel.

6. With regard to quantum of punishment, it has been brought out in the reply filed that the applicant confessed his guilt before the court of law where he was convicted. He created nuisance at a public place under the influence of liquor and being a member of the disciplined force this action reflects badly on the name of the department. Hence the punishment awarded to the applicant which was based on the findings of the D.E. proceedings is proportionate. Since adequacy of penalty cannot normally be gone into, we do not propose to interfere.

7. As regards the allegations that the inquiry was conducted ex-parte and no opportunity was given to the applicant to defend himself, we note from the inquiry findings that the applicant was summoned to join the D.E. proceedings a number of times but he absented himself. Only after this the ex-parte proceedings were conducted. It was the position prior to issue of charge sheet. Even later the applicant did not turn up nor submitted his defence in spite of a large number of opportunities being given to him.

8. The respondents have stated in the reply that it was not felt necessary to examine the doctor as the applicant had confessed his guilt before the court of law where he was convicted.

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No exception can be taken to this.

9. We do not find any merit in the allegation that the chargesheet is vague. The chargesheet was drawn after serving upon the applicant, the documents referred to herein above. The chargesheet read along with the said papers fully conveyed to the applicant the allegations he was required to meet. On these facts the chargesheet cannot be said to be vague.

10. On the basis of clauses (1) and (3) of Rule 11 reproduced above, it was submitted by the learned counsel that it was open to the applicant's disciplinary authority to dismiss or remove him from service on the basis of the conviction recorded by the Magistrate but he did not proceed to do so and instead he directed disciplinary proceedings to be held. This, according to the learned counsel amounts to a conscious decision by the disciplinary authority not to impose the punishments of dismissal/removal from service upon the applicant. On this basis it is urged that in the disciplinary proceeding which has given rise to the present application an order of punishment other than that of dismissal or removal from service could alone be passed but no order of dismissal or removal from service could be passed.

11. We find considerable difficulty in accepting the submission of the learned counsel. The marginal hearing of Rule 11 is 'Punishment on Judicial Conviction'. It deals with punishments which may be awarded forthwith on the basis of judicial decision alone without doing anything further. Where forthwith dismissal or removal from service is not considered necessary, the disciplinary authority may direct departmental action. At

the departmental action the disciplinary authority may award any punishment prescribed in the rules, including the punishments of dismissal or removal from service. Sub-rule (1) deals with forthwith action while sub-rule (3) deals with initiation of disciplinary proceedings. The two sub-rules have to be read together. If the submission of the learned counsel is accepted, anomalous result may follow. Under sub-rule (1) the disciplinary authority will be entitled to impose the extreme penalty of dismissal or removal from service without giving opportunity of hearing to the delinquent but the same disciplinary authority will not be entitled to impose those penalties after giving opportunity of hearing. Thus the disciplinary authority is placed in worse position by complying with principles of natural justice. This could never be the intention of the framers of the rules. The only way to avoid the anomaly is to read the word "forthwith" before the words "dismissal or removal from service" in clause (3). For the discussion herein, we are of the opinion that the disciplinary authority was not debarred in the present proceedings under clause (3) from imposing the impugned punishment of dismissal from service.

12. We do not find that the disciplinary order is a non-speaking order. It is an established position where the disciplinary authority agrees with the findings of an inquiry office, no further detailed reasoning is required. We however note that the appellate order dated 6-11-1989 has not taken into account all the points raised in the appeal. But, since we have considered these points in detail in this order, it would be futile to remit the case to the appellate authority.

13. We also note the observations of Their Lordships of Hon'ble Supreme Court in State Bank of India, Bhopal Vs. S.S.Koshal in civil appeal No.237/1994 decided on 12-1-94 (1994) 27 ATC 134 in a case of disposal of the appeal by the Appellate Authority. It has been observed that the Appellate Order of affirmance and the fact of the Appellate Authority stating that it had considered the grounds of appeal have resulted in the appellate order being treated as a speaking order.

14. In the circumstances, the O.A. is dismissed.
No costs.

F.T. Thiruvengadam
15/11/94
(F.T. THIRUVENGADAM)
Member(A)

S.C. Mathur
(S.C. MATHUR)
Chairman.

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