

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

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REGN. NO.. OA 2142 OF 1990

Date of decision: 20.3.91

Khazan Singh

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri Shankar Raju, counsel for the applicant.

Shri M.K. Sharma, counsel for the respondents.

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Hon'ble Justice Shri Ram Pal Singh, Vice-Chairman (J).

Hon'ble Shri P.C. Jain, Member (A).

(Judgment of the Bench delivered by Hon'ble Justice Shri Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

By this application, filed under Section 19 of the Administrative Tribunals Act of 1985 (hereinafter called the 'Act'), the applicant challenges and prays for quashing Annexure A-4, the appellate order, by which the appellate authority has passed the orders on appeal under Rule 25 (1) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter called the 'Rules').

2. The applicant was posted as Head Constable(Driver) in the 9th Bn. D.A.P. when he received a show cause notice for a minor penalty of censure on 14.12.1989 issued by Respondent No. 2 (Annexure A-1). The applicant submitted his reply to the show cause notice and received an order dated 20.1.1990 from the Deputy Commissioner of Police, 9th Bn. D.A.P., whereby the penalty of censure was

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confirmed upon him (Annexure A-2). Aggrieved by this order of punishment, the applicant preferred an appeal before Respondent No. 1. The appellate authority vide Annexure A-4 set aside the order of punishment of censure and ordered the D.C.P., 9th Bn. D.A.P., to hold a regular departmental enquiry for major penalty against the applicant in consequence of which the Deputy Commissioner of Police, 9th Bn. D.A.P., on 11.5.1990 vide Annexure A-5 served the summary of the allegations (Annexure A-6). Meanwhile, the applicant submitted an application to the appellate authority (Respondent No. 1) for modifying the order passed on 17.7.1990. Vide Annexure A-8, the appellate authority communicated to the applicant, rejecting his application.

3. The respondents filed their counter and opposed the prayer contained in the application. Inter alia, they held that the appellate authority has passed the proper orders.

4. The main thrust of the applicant is that the appellate authority (Respondent No.1) while passing the impugned order on appeal filed by him has acted in contravention of the provisions of Rule 25 of the Rules of 1980. For convenience, Rule 25 is reproduced herein below:

"25. Orders on appeal - (1) On appeal, the appellate authority may,

(a) confirm the impugned order, or

(b) accept the appeal and set aside punishment order, or

(c) reduce the punishment, or

(d) disagree with the disciplinary authority and enhance the punishment after issue

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of a fresh show cause notice to the appellant and affording him a reasonable opportunity (including personal hearing if asked for) against the proposed enhancement;

(e) (Added vide Notification No. F/5/132/81-H(P) Estt. dated 20.7.83) remit the case to the authority which made the order or to any other authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(f) pass such other orders as it may deem fit.

(2) Every order passed on appeal shall contain the reasons therefor. A copy of every appellate order shall be given free of cost to the appellant."

5. The powers of the appellate authority are very well defined in this Rule. When an appeal is preferred against the minor penalty punishment before the appellate authority, the appellate authority may either confirm the order or set it aside. The appellate authority has also power to reduce the punishment. The learned counsel for the respondents, during the time of arguments, was questioned by the Bench that on what provisions of this Rule, he supports the appellate order. The learned counsel for the respondents replied that under Rule 25 (1)(d), the appellate authority disagreed with the disciplinary authority and enhanced the punishment after issuing a fresh show cause notice to the appellate, affording him a reasonable opportunity. But the order of the appellate authority is in clear contravention of this provision. The appellate authority has accepted the appeal and set aside the order of punishment, but further directions by the appellate authority to the disciplinary

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authority for holding a fresh inquiry for major penalty is nowhere provided in Rule 25 of the Rules of 1980. If the appellate authority wanted to remit the case to the disciplinary authority, then he should have clearly done so under sub-rule (e), but the impugned order passed by the appellate authority is in clear contravention of the provisions of the Rules. The appellate authority has clearly exceeded the jurisdiction vested in him. Consequently, the impugned order passed by the appellate authority has to be set aside. This application is allowed and Annexure A-4, the appellate order passed by Respondent No. 1, is quashed. There will be no order as to costs.

(P.C. JAIN)
(P.C. JAIN) 20/3/91
Member (A)

(RAM PAL SINGH)
20.3.91
Vice-Chairman (J)