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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

O.A.NO.2298/90

New Delhi, this the 24th day of March, 1995

Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri B.K. Singh, Member(A)

Shri Braham Singh,
s/o Shri Mansa Ram,
r/o Village & P.O. Sarurpur Kalan,
Tehsil Baghpat,
Distt. Meerut, U.P.

... Applicant

By Advocate: Applicant in person

Vs.

1. Commissioner of Police,
Delhi Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.

2. Additional Commissioner of Police (CID),
Delhi Police Headquarters, MSO Building,
I.P. Estate, New Delhi.

3. Deputy Commissioner of Police,
Crime and Railways Delhi,
Delhi Police Hdqrs.
MSO Building, I.P. Estate,
New Delhi.

... Respondents

By Advocate: Shri Rajendra Pandita

O R D E R

Hon'ble Shri J.P. Sharma, Member(J)

The applicant is aggrieved by the order dated 10th May, 1989 passed in a disciplinary departmental proceedings imposing the penalty forfeiting 6 years approved service of the applicant permanently entailing reduction in pay from Rs. 1040/- to Rs. 920/- p.m. He has also assailed the order dated 11.5.89 where the applicant was compelled to proceed on voluntary retirement. He has also assailed the order dated 17.11.89 passed by the Appellate authority as well as the order dated 23.5.90 passed by the Reviewing authority.

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2. A notice was issued to the respondents who contested this application by filing a reply. It is stated that the applicant was detailed to perform reserve duty on the night between 26th/27th February, 1986. He left his duty and wilfully absented himself on the same night and went to his village Sarurpur, P.S. Bhagpat, District Meerut. The applicant alongwith others made a criminal Tress-pass into the house of Subedar Richpal Singh of his village and attempted on his life. A case FIR u/s 452/307 IPC was registered at P.S. Baghpat on 27.2.86. The applicant was released on anticipatory bail but he did not inform the department regarding his involvement in the criminal case. Constable Om Parkash while he was detailed as Assistant Clerk on that night did not record the absence of applicant in ~~daily~~ diary. A disciplinary departmental enquiry was held serving the summary of allegations on the applicant narrating the incident of his absence from reserve duty between the night of 26th/27th February, 1986 and his involvement in a criminal case of attempting on the life of Subedar Richpal Singh in the village Sarurpur, PS Baghpat. The departmental enquiry also proceeded against Constable Om Parkash, who did not note the absence of the applicant and allowed the applicant to proceed his village unauthorisedly and made a false statement that the applicant was very much present in the duty of officer's room for performing the reserve duty on the night of 26/27.2.86 and the applicant did not go to the village. Shri Ganga Sarup, ACP, Crime Branch, who acted as Enquiry Officer submitted his finding on 9.1.88 holding the applicant and Constable Om Parkash guilty of the charge. Agreeing with the finding of the Enquiry Officer, the disciplinary

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authority proposed the punishment of dismissal from service against the applicant and forfeiture of 7 years approved service against Constable Om Parkash for a period of 5 years and a show cause notice was issued. However, in the criminal court the applicant was acquitted of the charge u/s 452/307 IPC which was prosecuted on the basis of FIR dated 27.2.86 lodged by Subedar Richpal Singh of Village Sarurpur. The applicant replied to the show cause notice. The disciplinary authority also examined certain other witnesses S.I. Hari Singh and Constable Om Parkash, co-delinquent. The DCP imposed the punishment of forfeiture of 6 years approved service permanently entailing reduction in his pay from Rs.1040/- p.m. to 920/- p.m. vide order dated 10.5.89. The appeal against the same has been rejected. The applicant, therefore, has filed this application for quashing of the aforesaid orders of punishment.

3. Regarding the fact of forcing the applicant to seek voluntary retirement from service, it is said that he submitted his application for voluntary retirement alongwith a notice on 6.2.89 w.e.f. 1.5.89, but the same notice was not accepted by the competent authority. The applicant again submitted the voluntary notice on 1.5.89 mentioning therein that his father is an old man and not medically fit. He also requested that retirement notice be accepted within 7 days after relaxing the period of 3 months. This notice was accepted ^{on 8.5.89} w.e.f. 12.5.89 as per Rule 48-A, CCS(Pension)Rules, 1972,

4. In the rejoinder, the applicant has reiterated the facts in the O.A. and averred that he was forced to make an application on 1.5.89 to seek voluntary retirement. It is said that the said application

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dated 1.5.89 was forwarded by the Inspector, Crime Branch (IX-A) on 1.5.89 and at that time the said Inspector was also sitting in the room of DCP. ACP Headquarters also sent the application on the same day and he was also sitting in the room of DPC. It is said that it was under pressure that he was made to sign/ submit this application. It is further stated that the punishment was awarded on the same day when the orders accepting application for voluntary retirement were issued i.e. on 10.5.89. It is said that the enquiry was not proper and none of the witnesses deposed against the applicant regarding his absence from duty between the night of 26/27.2.86. The DCP was motivated to pass an order of punishment against the applicant and he again examined Constable Om Parkash who was also departmentally proceeded alongwith the applicant and S.I. Hari Singh, who had since retired. S.I. Hari Singh has given conflicting statement before Inspector T.P. Sharma and then before Ram Chander Sharma. How the witnesses have been relied upon and under what provision the DCP has examined them is not prescribed under the Delhi Police (Punishment & Appeals) Rules, 1980. The punishment order therefore cannot stand.

5. Regarding the relief for quashing the order of acceptance of voluntary retirement, the ld. counsel has not pressed the same. Therefore, we have only to see the order of punishment passed against the applicant by the disciplinary authority on 10.5.89 and upheld by the Appellate authority by the order dated 17.10.89 and by the Revisional authority by the order dated 23.5.90.

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In the finding given by the Enquiry Officer against the applicant as well as Constable Om Parkash it is held that the charge is proved against Constable Braham Singh. However, it appears that Constable Om Parkash, PW-1 stated that no entry was made in the D.D. regarding reserve duty of Shri Braham Singh and that he was present on his duty on the night of 26/27.2.86. Inspector Hari Singh, PW-2 also stated that Constable Braham Singh was on reserve duty from 8 p.m. to 8 a.m. and on that night Constable Braham Singh was not required for any duty. S.I. Ram Chander stated that he could not say whether the Constable Braham Singh was absent from reserve duty during that night. Inspector Ram Chander, PW-4 inquired the complaint made by the complainant of the FIR lodged at P.S. Baghbat by Subedar Richpal Singh which revealed that the applicant visited the village during the night of 26/27.2.86. The complainant, Subedar Richpal Singh was also examined and he corroborated the version in the FIR that the applicant was present in the village in the night between 26/27.2.86 and he attempted on his life alongwith others. On the basis of these evidences, the finding has been arrived at. The disciplinary authority has also examined witnesses Inspector Hari Singh and Constable Om Parkash. However, Constable Om Parkash is a co-delinquent, alongwith applicant and S.I. Hari Singh has given different statements at occasions when he deposed before the Enquiry Officer as well as before D.C.P. In any case this cannot be said to be a case of no evidence but the manner in which the case has been dealt with infringes the principles of natural justice inasmuch as co-delinquent Constable Om Parkash has been believed though he has been equally at fault in not making the entry in the D.D. of the absence of the applicant in the night of 26/27.2.86. He has been left out

given only by a warning of censure while he has another version before the DCP. The standard of punishment adopted by the DCP is also arbitrary. The misconduct alleged against co-delinquent Constable Om Parkash is not in any way less in degree than that of Constable Brahm Singh. Regarding the criminal case, constable Brahm Singh has been acquitted honourably by the Criminal Court. The only fact that has to be considered whether the applicant has absented himself from duty between the night 26/27.2.86.

6. We find that there is a grave error also in accepting the request of premature retirement of the applicant when it was refused in February, 1986 on account of pendency of the disciplinary proceedings against him. There appears to be no justification in accepting his application moved on 1.5.89. The punishment awarded to the applicant on 10.5.89 also cannot be legally passed in a departmental enquiry if the request made by the employee of giving premature retirement is accepted. In this connection, we have summoned the file and we find the application moved on 6.2.89 was with respect to grant of voluntary retirement to the applicant w.e.f. 1.5.89. The second application dated 1.5.89 is a typed one and with all the notings etc. It is reproduced below:-

" Sir,

Respectfully I beg to state that my father is an old man and is not physically well now a days. My presence is very necessary with him. I am unable to serve more in this department in this circumstances. Previously I had submitted 3 months notice for voluntary retirement but the same not accepted by DCP/G.R.

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I, therefore, again submit 3 months voluntary retirement notice from Delhi Police. I request that my retirement notice may kindly be accepted within seven days. I may kindly be retired from Delhi Police before 7.5.89 after relaxing the period of 3 months.

I shall be great thankful to you for this act of kindness.

No Vig/criminal case is pending against me.

Yours faithfully,

sd/-

(BRAHAM SINGH)
Const. No. 258/Crime
D.C. Section.

Forwarded please

sd/-

Insp.I X-A, Crime Branch
1.5.89

Immediate put up a file

AC-II

Sd/-

1.5.89 "

A perusal of this application shows that his retirement notice may kindly be accepted within 7 days and he should be retired from Delhi Police before 7.5.89 after relaxing the period of 3 months. The order passed on this application is reproduced below:-

ORDER

In pursuance of Rule 48-A(3-A) of CCS Pension Rules, 1972, the notice dated 1.4.89 tendered by Constable Braham Singh No. 258/Crime seeking voluntary retirement, is hereby accepted at his own request. The constable will be deemed to have retired with effect from 12.5.89(F.N.) The constable will not apply for commutation of a part of his pension before the expiry of the period of notice of three months as envisaged in the rules.

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2. He should deposit all Govt. belongings including appointment Card, Identity card and CGHS card etc. in his possession before proceeding on retirement and clear all the Govt. dues.

3. He is in occupation of Q.No.19, Sector No. XII, Police Colony, R.K. Puram, New Delhi (Crime Quota).

sd/-

(A.K. KANTH)
Deputy Commissioner of Police
Crime & Railways, Delhi

S.I.P./O.B.

No. 10541-650/Ett, C&R Delhi dated the 11.5.89 "

It goes to show that this order was communicated to all concerned on 11.5.89 so it must have been signed one day earlier i.e. on 10.5.89. Here it may be recalled that in ^{al} the department file that this order was accepted by DCP on 10.5.89. The file also goes to show that the DCP has accepted this application on 8.5.89. It was only the draft which was put up and was signed by the DCP concerned on 10.5.89 when already applicant was allowed to retire prematurely even assuming by the order dated 10.5.89 w.e.f. 12.5.89 the punishment imposed upon the applicant cannot be effected forfeiture of six years service because in that event his service period will be reduced below 20 years. The applicant joined the service with the respondents as Constable on 28.7.68 so by May, 1989 he has completed about 20 years, 7 months service and a few days in the month of May. If six years service is forfeited permanently by the impugned order dated 10.5.89 then his service shall stand reduced from 20 years to 14 years. The record does not show whether the respondents have taken this fact into account or not. We are on the point that a person who has been directed to retire prematurely on 12.5.89 by the order dated 10.5.89

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cannot by a subsequent order of the same date, be imposed a punishment as his premature retirement application has been accepted earlier on 8.5.89 and only a formal order was to be issued. The applicant has requested for giving premature retirement w.e.f. 7.5.89 after giving relaxation of the provisions of 3 months notice under Rule 48-A of CCS(Pensions) Rules, 1972. When the said relaxation has been granted, the respondents cannot take any other date of effecting premature retirement as in this case dated 12.5.89. It clearly goes to show that the applicant was pressed for moving premature retirement and the procedure adopted in his case in forwarding the application, making recommendation on the same date i.e. 1.5.89 with the report that no disciplinary proceedings are pending against him goes to show that the department wanted to get rid of the applicant in any manner whatsoever. When the applicant has been forced to seek voluntary retirement he cannot be therefore after his retirement shall be deemed to be in service w.e.f. 7.5.89 as the competent authority has accepted his application without any reservation. He cannot be punished in the departmental enquiry except as provided under Rule 9 of the CCS(Pensions) Rules, 1972. That can only affect his pension and cannot give him any disadvantage of his earlier service. His pension papers were already ordered to be drawn that he can move for commutation of pension hence.

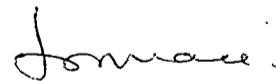
7. We have heard the learned counsel for the respondents at considerable length and also perused the various statements recorded in the disciplinary department enquiry. We also gone through the judgement of the Criminal court acquitting the applicant. The whole of the record maintained by the

respondents of the personal file as well as departmental enquiry file leaves no doubt that the premature retirement was granted to the applicant only as a concession to get rid of him and inspite of that he has also been punished which is not justifiable and may also not according to the provisions of Rule 48-A of the CCS(Pensions)Rules, 1972 but that issue is not being adjudicated upon as having not been pressed. This however will effect the order of punishment.

8. We therefore find that the order of punishment in this case is totally without jurisdiction and cannot be sustained as the applicant's application of premature retirement was accepted on 8.5.89 and therefore the original application is allowed only to this extent that the punishment awarded to the applicant by the order dated 10.5.89 and upheld by the Revisional and Appellate authority is quashed and set aside. By virtue of this order the applicant shall get all the benefits of his service and shall be entitled to re-imbursement of any deduction from his pay and his retirement benefits be refixed and paid to him within 3 months from the date of receipt of this order. In the circumstances, the parties to bear their own cost.


(B.K. SINGH)

MEMBER (A)


(J.P. SHARMA)

MEMBER (J)

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