

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2430/90 199
T.A. No.

DATE OF DECISION 1-2-1991Shri Jagdish Singh

Petitioner

Applicant

Shri Shunker Raju, Advocate for the Petitioner(s)

Versus

Addl. Commissioner of Police & ans. Respondent sMs. Kum Kum Jain,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K.KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K.CHAKRAVORTY, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
 MR. D.K.CHAKRAVORTY, MEMBER)

The applicant who is working as Assistant Sub Inspector(Driver) in the Delhi Police filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (a) To quash the impugned orders at Annexure A-7; and
- (b) To set aside the impugned orders at Annexure A-8 and the departmental enquiry initiated vide Annexures A-9.

2. The applicant applied for medical leave for seven days from 10.8.88 and produced a medical certificate issued by the Directorate of Health Services, Delhi Administration in support

of his application for leave. The respondents granted him casual leave for 9.8.88 and directed him to appear before the Civil Surgeon on 11.8.88 for a second medical opinion. The Civil Surgeon, who examined him, found that he was suffering from Diarrhea and advised that rest for two days with effect from 11.8.88 be given to him.

3. On 22.8.88, the Assistant Commissioner of Police issued to him the following show cause notice proposing to impose the minor penalty of censure on him:-

" Const.(Driver) Jagdish Singh, No.6341/DAP appeared before the undersigned for the grant of three days Casual Leave with three days permission on 9.8.88 which were not allowed due to leave arrangements in connection with the Independence Day. Instead, he was offered 1(one day)C.L. so that he can attend his family but he declined and went away.

Next day he absented himself, intentionally in order to avoid official duty and went on medical rest without taking the prior permission of the Competent Authority which is violation of rule 16.5 of C.C.S(Leave)Rules-1972.

The above said act on the part of Const. (Driver) Jagdish Singh, No.6341/DAP amounts to gross misconduct, negligence and indiscipline.

He is, therefore, called upon to show cause as to why his conduct should not be censured for the above said lapse. His reply, if any, should reach the undersigned within 15 days from the date of receipt of this notice failing which it will be presumed that he has nothing to say in his defence and the case will be decided on its merits."

4. After considering the explanation given by the applicant, the Assistant Commissioner of Police confirmed the proposed penalty of censure.

5. On 17.11.88, the applicant preferred an appeal against the aforesaid order. The appellate authority passed the impugned order dated 3.5.90 at Annexure A-7 whereby he set aside the punishment of censure and ordered a regular departmental enquiry to be held against him for absenting himself from duty. The operative part of his order reads as follows:-

" I have carefully gone through the appeal, parawise comments and other relevant record. I feel by arbitrarily absenting himself from duty, the appellant has committed a misconduct which is far too grave and it cannot be dismissed by a Censure. If every member of the force is permitted similar treatment, it will be difficult to run a police organisation. The punishment of censure is set-aside and under rule 25 of the Delhi Police(Punishment & Appeal) Rules, 1980, a regular departmental enquiry is ordered to be held against the appellant for absenting himself from duty."

6. In pursuance of the above order, the Deputy Commissioner of Police ordered a regular departmental enquiry against the applicant by order dated 12.7.90. Thereafter, on 13.10.90, the applicant had been served with the Summary of Allegations, vide Annexure A-9.

7. The applicant has contended that the holding of a regular departmental enquiry against him is

illegal and in violation of Rule 25 of the Delhi Police(Punishment and Appeal) Rules, 1980 which reads as under:-

" 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 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) remit the case to the Authority which made the order or to the 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 therefore. A copy of every appellate order shall be given free of cost to the appellant."

8. It has been argued that under the above rule, the Appellate Authority may pass any one order among clauses (a) to (f) but he cannot order two simultaneous alternatives in the appellate order. In the present case, the Appellate Authority has set aside the order of punishment after accepting the appeal and, thereafter, ordered a departmental enquiry against him. He has further contended that such an order is in violation of Government order contained

in DG P&T letter No.3/171/72-DISC-I dated 9.2.73 wherein it has been directed to the Appellate Authority not to pass an order, in appeal, comprising both the alternatives for example, setting aside the penalty as well as remitting the case to the disciplinary authority.

9. The respondents have contended in their counter-affidavit that the Appellate Authority is competent to set aside the penalty of censure and order for conducting a regular enquiry under Rule 25, extracted above.

10. We have gone through the records of the case and have considered the rival contentions. The learned counsel for the applicant relied upon the decision of this Tribunal in Girraj Singh Vs. Commissioner of Police, New Delhi and others, 1989(4) SLJ(CAT) 921, to which one of us (P.K.Kartha) was a party. In that case, after quoting Rule 25 of the Delhi Police (Punishment and Appeal) Rules, 1980, the Tribunal noted that the Rules did not empower the Appellate Authority to remand the case to the disciplinary authority for further enquiry. In the instant case, the applicant has reproduced the provisions of Rule 25 from which it appears that clauses (e) and (f) were added vide Notification No.F/5/132/81-H(P) Estt. dated 20.7.83. In Girraj Singh's case, the disciplinary authority had passed the order of punishment on 23.5.83 which was prior to the issue of the aforesaid notification. Girraj Singh's case is, therefore, distinguishable.

11. In our view, the power envisaged in clause (f) of Rule 25(1) of the Delhi Police (Punishment and Appeal) Rules, 1980, is very wide. The Appellate

Authority may, in an appropriate case, set aside the order passed by the disciplinary authority in a proceeding initiated by him for minor penalty and direct that authority to initiate fresh enquiry in the light of the facts and circumstances of the case. In that event, it is for the disciplinary authority to apply his mind and consider whether proceeding for a minor penalty or for a major penalty should be initiated. In either case, the enquiry should be strictly in accordance with the relevant rules.

12. In the light of the foregoing discussion, we are of the view that there is no infirmity in the impugned order passed by the Appellate Authority on 3.5.90. We, however, direct that the departmental enquiry should be completed and final orders passed as expeditiously as possible but, in any event, not later than four months from the date of communication of this order. The applicant is directed to cooperate with the conduct of the enquiry. In case he is aggrieved by the final order passed by the disciplinary authority, he will be at liberty to file a fresh application in the Tribunal after exhausting the remedy of appeal under the Delhi Police (Punishment and Appeal) Rules, 1980. The application is disposed of accordingly. The interim order passed on 14.1.91 restraining the respondents from passing final orders in the departmental enquiry is hereby vacated. There will be no order as to costs.

Deekshant —
(D.K.CHAKRAVORTY)
MEMBER

carried
1/2/91
(P.K.KARTHA)
VICE CHAIRMAN