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CENTRAL ADMINISTRATIVE TRIBUNAL,
Principal Bench

O.A. No. 2454 of 1990

New Delhi, dated the 13th NOVEMBER 1995.

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Suraj Pal Singh (D-2673) (1167/D),
Ex. Sub-Inspector,
S/o Shri Gobind Singh,
R/o G-5, Police Colony, Mehram Nagar,
New Delhi.

... APPLICANT

(By Advocate: Shri Shyam Babu)

VERSUS

1. Delhi Administration through
the Chief Secretary,
5, Shyam Nath Marg, Delhi.
2. The Addl. Commissioner of Police,
Northern Range, Police Hqrs.,
I.P. Estate, New Delhi.
3. Dy. Commissioner of Police,
North District,
Delhi.
4. Addl. Commissioner of Police,
North Delhi.

... RESPONDENTS

(By Advocate: Shri S.K. Sinha
proxy counsel for Shri
Jog Singh)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application, Shri Suraj Pal Singh, Ex. Sub-Inspector of Police has impugned the order of punishment dt. 20.8.87 permanently forfeiting three years approved service of the applicant entailing reduction of his pay from Rs.1760/- to 1640/- p.m. from the date of issue of the order and treating the suspension period from 5.11.86 to 1.3.87 as not spent on duty (Annexure M); the appellate order dated 25.1.88 (Annexure O) rejecting the appeal and the subsequent order dated 12.9.1990 amending the punishment order by adding the words "for a

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period of three years having cumulative effect" after the word "forfeited permanently" (R.M.P.)

2. The punishment order which is thus impugned now reads as under:-

"Accordingly three years approved service of S.I. Suraj Pal Singh No.1160/D is hereby forfeited permanently for a period of three years having cumulative effect entailing reduction of his pay from Rs.1760/- to Rs.1640/- p.m. from the date of issue of this order. The period of his suspension from 5.11.86 to 1.3.87 is treated as not spent on duty."

3. Shortly stated the applicant was proceeded against departmentally on the charge that the applicant while posted at P.S. Ashok Vihar on 2.11.86 while investigating a criminal case, had arrested three persons, and had brought 8-9 persons but they were let off after extorting Rs.400/- from them; secondly it was alleged that while deputed for the disposal of a D.D. entry regarding an information of a quarrel, the applicant arrested four persons under secs.107/151 Cr.P.C., and during enquiry he got four persons medically examined, out of whom two were reported to have been injured with a sharp pointed object, as certified by the doctor, which was a sufficient ground to register a case under section 324 IPC but the applicant did not register a case under section 324 IPC, and merely arrested the persons concerned under section 107/151 Cr.P.C; thirdly it was alleged that the applicant mis-

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behaved with the SHO Ashok Vihar on 4.11.86 and made false allegation against him in the presence of his subordinates.

4. The applicant was placed under suspension on 5.11.86 but was reinstated on 2.3.87.

5. The Enquiry Officer held all the charges against the applicant to be proved, on the basis of which the applicant was called upon to show cause as to why the three years approved service should not be forfeited permanently and his suspension period be treated as not spent on duty.

6. Upon receipt of applicant's reply, the impugned punishment was imposed vide order dated 20.8.87, which was upheld in appeal vide order dated 25.1.88, and on 12.9.90 an addendum was issued vide Annexure-P against which this O.A. has been filed.

7. We have heard Shri Shyam Babu for the applicant and Shri S.K.Sinha for the respondents.

8. The first ground taken by Shri Shyam Babu is that the impugned punishment apart from being illegal and arbitrary, violates Article 20 of the Constitution as it punishes the applicant more than once for the same offence. It is asserted that the impugned punishment causes reduction in the applicant's pay from Rs.1760/- to Rs.1640/- p.m. besides punishing the applicant by treating his period of suspension from 5.11.86 to 1.3.87 as not spent on duty, which causes loss of pay as well as seniority to the applicant which is an independent punishment. At the outset it may

be stated that Article 20 has no relevance to this case, because the prohibitions imposed by that Article are strictly relevant to criminal process and not to departmental proceedings. While Clause (1) is concerned with the substantive law of criminal liability, Clause (2) is concerned mainly with the stages of procedure. No doubt, Article 20(2) incorporates a provision against "double jeopardy" by which prosecution and punishment after an earlier punishment for the same offence is barred, but the term "offence" has to be taken as defined in Section 3(38) General Clauses Act, applied to the Constitution by Article 367, i.e. an act or omission punishable by law and the word "prosecution" used in Article 20(2), would not cover departmental proceedings not held before a criminal court. Furthermore the word "Punishment" used in Article 20 (2) has been defined to mean a judicial penalty awarded by a Criminal Court as distinguished from a statutory authority (Thomas Dana Vs. State of Punjab AIR 1959 SC 375; S.Rai Vs. Collector Customs AIR 1958 SC 355; Narayan Lal Vs. Mistry- AIR 1961 SC 29) and would not include other penalties such as disciplinary action in the case of public servants (Rama Vs. Superintendent of Police- AIR 1967 Mysore 220).

9. Shri Shyam Babu has also sought support for this ground from Section 21 Delhi Police Act 1978 which states that any of the following punishments may be awarded namely dismissal, removal from service, reduction in rank, forfeiture of approved service, reduction in pay, withholding of increment, and fine not exceeding one month's pay. Shri Shyam Babu has argued that the above section lays down

that only one of those punishments may be inflicted, but in the applicant's case, not only have his services been forfeited, but his pay has also been reduced which means that he has been inflicted with multiple punishments. It needs to be noted

in this connection that Section 21 Delhi Police ¹⁹⁷⁸ Act does not state that any one of the above punishments may be awarded. Moreover, Rule 8(d) Delhi Police (Punishment & Appeal) Rules, which incidentally has not been impugned, while outlining the principle for inflicting penalties, specifically provides for the awarding of the punishment of forfeiture of approved service which in turn would entail reduction in pay, or deferral of increment(s). Hence, neither Article 20 of the Constitution, nor Section 21 Delhi Police Act ¹⁹⁷⁸ avails the applicant.

10. In so far as the question of suspension of the applicant is concerned, it must be remembered that under FR 54-B(3) which is fully applicable to the Delhi Police vide Notification dated 17.12.80, the applicant would have been entitled to treat the suspension period as duty for pay and allowances only where he was fully exonerated of the charges, and the competent authority held the suspension wholly unjustified. In the present case, the applicant was not completely exonerated, but was punished. Hence the respondents cannot be faulted for not treating the suspension period as duty. Hence the first ground fails.

11. The next ground taken is that the punishment order not only reduces the applicant's salary but does so with cumulative effect, and hence violates Rule 8(d) Delhi Police (Punishment & Appeal) Rules, which reads

thus:

"Forfeiture of approved service:-
Approved service may be forfeited
permanently or temporarily for
as specified period as under:

- i) for purposes of promotion or seniority
(permanently only);
- ii) entailing reduction in pay or deferrals
of increment or increments (permanently
or temporarily)."

Examining the impugned order in the background of this sub-rule, we find firstly that it permanently forfeits 3 years approved service. This means that for purposes of seniority or promotion, the number of years of service put in by him will be deemed to be three less than the actual number put in. This is fully consistent with Rule 8(d) (i). Secondly the impugned order reduces the applicant by three stages in his time scale, lowering his monthly pay from Rs.1760 to Rs.1640. This is a natural consequence of loss of three years of approved service. Thirdly the forfeiture is to operate for three years from its date of issue. In other words the applicant is to continue to remain at Rs.1640/- p.m. for 3 years from its date of issue. Fourthly the order has cumulative effect which means that these three years will not count towards future increments, and when at the end of the three year period the applicant's next increment falls due, it will be calculated on Rs.1640/-, which in turn implies a permanent reduction in pay. This is in accordance with Rule 8(d)(ii). Thus although the impugned order could possibly have been worded ^{more} artificially, its meaning is unambiguous and it cannot be said to conflict with Rule 8(d).

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Molated 22.7.93 ¹ ^{VS UOI} ¹
For these reasons, the ruling in Mange Ram ~~vs. UOI~~ (AI 89)
relied upon by Shri Shyam Babu does not help the present applicant. Moreover, FR 29(1) itself provides that the competent authority who reduces an employee in the time scale by way of penalty, is fully entitled to determine the time period from which this reduction would operate and further to determine whether at the end of that period, it will count towards the applicant's future increments or not. This ratio has also been confirmed by the Tribunal Full Bench decision dated 22.1.93 in the case Y.D. Parwana Vs. UOI & another (Full Bench Decisions-Volume III Bahri Brothers, Delhi). Hence this ground is not sustained either.

12. The next ground taken is that the period of suspension cannot be treated as period not spent on duty. In this connection, Shri Shyam Babu has drawn attention to Rule 27 Delhi Police (Punishment & Appeal) Rules. According to him, none of the ingredients of that rule are made out to have warranted the applicant's suspension, and hence the period of suspension has to be treated as period spent on duty. This ground has no merit because Rule 27 is by no means an exhaustive and all inclusive list of situations where a police officer may be placed under suspension which is clear from its first line itself which reads " a Police Officer shall ordinarily (emphasis added) be placed under suspension only...." It has already been pointed out in paragraph 10 above that treating the period of suspension as period not spent on duty was perfectly in order, in view of the fact that the applicant was not completely

exonerated in the departmental proceedings. This ground therefore fails.

13. The last ground taken by Shri Shyam Babu is that the departmental enquiry is vitiated on the ground of denial of the principle of natural justice because a copy of the preliminary enquiry report and the statement of witnesses in the preliminary enquiry were not supplied despite being asked for from the Enquiry Officer.

14. Rule 15 Delhi Police (Punishment & Appeal) Rules governs preliminary inquiries. Sub-Rule (3) of Rule 15 expressly states that the file of the preliminary inquiry shall not form part of the formal departmental record, but statements therefore may be brought on record of the departmental proceedings when the witnesses are no longer available (emphasis supplied). It is not the applicant's case that any witnesses in the preliminary enquiry were no longer available and hence the statements made in the preliminary inquiry should have been furnished to him in the departmental enquiry. Further more Rule 16(1) Delhi Police (Punishment & Appeal) Rules governing the procedure for departmental inquiries, requires only copies of those documents to be supplied to the applicant which are relied upon by the prosecution to prove the charge. During hearing respondents' counsel denied that any materials in the preliminary enquiry were relied upon by the prosecution in the departmental proceedings, and the applicant has also not succeeded in establishing that any materials in the preliminary enquiry were relied upon by the prosecution in the departmental enquiry, ^{in the denial of which operated} to his prejudice.

15. Shri Shyam Babu has however urged that non-

supply of the copy of the preliminary report has prejudiced the applicant and has resulted in denial of natural justice, thereby vitiating the departmental proceedings. In this connection, he has relied upon the Delhi High Court's ruling in Jug Raj Singh Vs. Delhi Administration, Delhi -1970 SIR 400 ; Hon'ble Supreme Court's Ruling in Kashinath Dikshita Vs. UOI & others-AIR 1986 SC 2118; and State of Punjab Vs. Bhagat Ram AIR 1974 SC 2335.

16. We have perused these rulings carefully.

17. The Delhi High Court's ruling in Jug Raj Singh's case (Supra) relates to the Punjab Police Rules and not to the Delhi Police (Punishment & Appeal) Rules under which the present proceedings have been conducted, Rule 16(1) of which specifically provides that copies of those documents only, are to be supplied to the applicant, which are relied upon by the prosecution to prove the charge. In the face of this express provision, the ruling in Jug Raj Singh's case (Supra) does not help the applicant.

18. In so far as Kashinath Dikshita's case (Supra) the Hon'ble Supreme Court have observed thus:

"It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant."

This is in consonance with the provision of Rule 16(1) Delhi Police (Punishment & Appeal) Rules, referred to above, requiring the copies of those documents to be supplied to the Government servant, which are relied upon by the prosecution to prove the charge. In the present case, as the applicant has not succeeded that in establishing/the materials in the preliminary enquiry

were relied upon by the prosecution in the departmental enquiry, Kashinath Dikshita's case (Supra) does not help the applicant either.

19. In so far as Bhagat Ram's case (Supra) is concerned, the Hon'ble Supreme Court have held that

"It is unjust and unfair to deny the Govt. servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant."

As the applicant has not established that the materials in the preliminary enquiry were relied upon by the prosecution in the departmental enquiry, this ruling does not help the applicant either. Hence this last ground also fails.

20. In the result, we see no reason to interfere in this matter. This O.A. fails and is dismissed. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
Member (J)

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

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