

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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MP 985/92 in OA 247/90

07.04.1992

SHRI KIRAN SINGH

...APPLICANT

VS.

COMMISSIONER OF POLICE

...RESPONDENTS

CORAM :

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

...SH.J.S. SIROHI

FOR THE RESPONDENTS

...SH.M.C. GARG

1. Whether Reporters of local papers may
be allowed to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI J.P.SHARMA, MEMBER (J)

The Original Application was dismissed
in default of the applicant on 25.2.92 both in
default and for non-prosecution. MP has been
filed to set aside this order of dismissal dated
25.2.92.

I have heard the learned counsel for
the applicant on merits of the MP as well as on
the merits of the OA. After the arguments have
been concluded, the learned counsel insisted that

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he has not prepared and wants to still argue the case. I do not find any substance in this contention because he has been heard at length on every aspect of the matter. MP is allowed and the OA 247/90 is restored to its original number after setting aside the order dt. 25.2.1992.

The applicant Kiran Singh assailed the order of 8.12.88 which was passed by the Deputy Commissioner of Police Headquarters on the representation of the applicant who was working as ASI in 1983. Said Shri Kiran Singh was given adverse report for the period April 1983 to December, 1983. This was assailed by the applicant in OA 1425/87 and the original application was allowed with the remarks "that the representation of the applicant should be reconsidered by the Commissioner of Police who should take in view the fact whether the applicant has been given reasonable opportunities to explain his conduct or to improve himself before the entries were made and also consider the performance of the applicant. There is no doubt that a person cannot maintain the same degree of performance throughout the career but on the facts

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it appears to be single instance of the year 1983 which resulted in the adverse comments being made in the CR in 1983. The Appellate Authority will consider if some extenuous consideration has been taken into account by the Reporting Officer before making these entries or they really deserves to be thrown there. The representation may be disposed of after reconsideration within a period of one month from the date of issue of this order."

The Commissioner of Police passed the following order:

"In pursuance of Judgement dt.21.10.1988 passed by the Central Administrative Tribunal in case OA No.1425/87, the Commissioner of Police, Delhi has reconsidered the appeal, dated 9.1.1985 submitted by ASI Kiran Ssingh No.624/SB (Now 451/D) against the adverse remarks recorded in his ACR for the period from 1.4.83 to 28.12.83 and observed that the adverse entries in his ACR dossier pertained to the integrity of the ASI and these were substantiated by reference to an enquiry against him. In this enquiry, the charges against him were also proved and he was dismissed from service. However, on appeal, made by the ASI against the dismissal, the punishment was modified to forfeiture of five years approved service, only to give him one more chance. As such, the adverse remarks were rightly recorded in his ACR and there is no merit in his appeal. Hence rejected. The ASI may be informed accordingly."

The main contention of the learned counsel for the applicant is that the adverse remarks was given to the applicant not on the basis of his long standing good performance but out of whim and that the instance reported in the ACR does not pertain to the period under review. The applicant has shown in the application in para 5.1 at page-7 of the paper book, which is reproduced below:

"That the Commissioner of Police has not examined the case in accordance with law and the directions given by the Hon'ble Tribunal after examining the case in detail in his order dated 21.10.88 as is evident from the impugned order dated 8.12.88. The Commissioner of Police has taken the ground of an enquiry, which was not formalloy and legally initiated during the period of report and in respectof which the applicant had to defend himself after a long period of the period under report. The summary of allegation was supplied to the applicant vide Order dated 23.8.84 that is beyond a long period of the reporting period and the enquiry was finally concluded on 16.12.85. Thus the respondent ignored the fact that on the pending allegations no adverse report should be made as stated by the Hon'ble Tribunal in para 5 of its order dated 21.10.1988."

The contention of the applicant is that the punishment which was awarded to the applicant does not pertain to the misconduct for a period dated April, 1983 to December, 1983 but by understanding the language and averments made in para 5.1, conclusion drawn is obviously wrong.

J

The learned counsel for both the parties again on 7.4.1992 argued the matter. It is not disputed that in another OA 1337/87, the applicant has challenged the punishment awarded to him for a misconduct during the period under review, i.e., from 1.4.1983 to 31.12.1983. The Commissioner of Police in the impugned order dt.8.12.1988 (Annexure A7) on the direction issued by the Tribunal in OA 1425/87 substantiated the remark of the reporting officer because of the punishment awarded to the applicant and upheld in the appeal dt.9.1.1985.

Since that matter is subjudice, so it cannot be said at this stage whether the reporting officer has committed any error in reporting about the performance of the applicant during the period under review. However, the learned counsel for the applicant apprehends that in the event OA No.1337/87 is allowed, then he will be prejudiced as this ACR will remain on his service record which may eventually come in the way of his subsequent promotion and may rightly be overlooked by the DPC for next promotions.

In view of this without expressing any opinion, the ACR of the year ending December, 1983 would be subject to the final outcome of the OA 1337/87.

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In view of the above facts, the learned counsel for the respondents also did not go in greater detail about the impugned order dt.8.12.1988. He rightly pointed out that he is not the counsel in OA 1337/87 and also had no notice of the case.

In view of the above facts, the Original Application is disposed of as follows :-

The remark given to the applicant for the year ending December, 1983 so far as it relates to adverse nature of the remark, shall be governed by the final outcome of the decision in OA 1337/87.

In the circumstances, the parties shall bear their own costs.

J. P. Sharma
7.4.92
(J. P. SHARMA)
MEMBER (J)
07.04.1992