

8

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 253/90

New Delhi this 2nd day of ^{September} August, 1994.

Hon'ble Mr. S.R. Adige, Member(A)

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

Shri Prem Kishore

s/o Late Shri Nand Kishore Gupta,

r/o Q.No. 6, Police Station Narela, Delhi-40.

.....Applicant

By Advocate Shri Shanker Raju

Versus

Lieutenant Governor of Delhi through

1. Commissioner of Police, 2nd Floor, MSO Building,
(PHQ) ITO, New Delhi
2. Addl. Commissioner of Police, Special Branch,
(CID) 6th Floor, MSO Building, PHQ, New Delhi
3. Dy. Commissioner of Police, I, Special Branch
(CID) 7th Floor, MSO Building, PHQ, ITO, New Delhi

.....Respondents

By Advocate Ms. Maninder Kaur.

JUDGMENT

By Hon'ble Mr. S.R. Adige, Member(A)

In this application, Shri Prem Kishore, Head Constable (Dealing Assistant) Delhi Police has impugned the order dated 4.7.88 passed by the Deputy Commissioner of Police/SB, Delhi (Annexure-M) imposing a penalty of forfeiture of three years' approved service permanently entailing reduction in his pay from Rs. 1100/- to Rs. 1025/- p.m. which has been upheld in appeal vide Addl. Commissioner of Police order dated 4.10.88 (Annexure-T) and in revision by

the Commissioner of Police's order dated 31.3.1989 (Annexure-B).

2. The applicant was proceeded against departmentally on the charge that while posted in Accounts Branch/SB on the seat of Upper Subordinate (II), he failed to dispose of 62 cases (from January, 1987 to 31.10.1987) which were found lying pending on his seat and he also drew double festival advance, i.e., for Independence Day and for Diwali, in contravention of Rule 238 of GFRs according to which a Government servant can avail this facility only once in a year.

3. The enquiry officer appointed, after going through the evidence, in his finding dated 17.5.1988 (Ann.-PP) held that both the charges stood fully proved. Accepting the findings of the enquiry officer, the disciplinary authority imposed the impugned penalty which has been upheld in appeal as well as in revision.

4. In so far as the first charge is concerned, viz., failure to dispose of 62 cases from January, 1987 to 31.10.1987 which were allegedly found lying pending on his seat, the applicant has taken the plea that in as many as 18 cases, he was not given an opportunity to inspect the records of those cases, which has prejudiced him in his defence. No doubt, a list of the allegedly pending 62 cases was supplied to the applicant, but this is not the same thing as giving him an opportunity to inspect all the relevant records to permit him to prepare his defence. The impugned penalty order itself contains the admission that

the Commissioner of Police's order dated 31.3.1989 (Annexure-B).

2. The applicant was proceeded against departmentally on the charge that while posted in Accounts Branch/SB on the seat of Upper Subordinate (II), he failed to dispose of 62 cases (from January, 1987 to 31.10.1987) which were found lying pending on his seat and he also drew double festival advance, i.e., for Independence Day and for Diwali, in contravention of Rule 238 of GFRs according to which a Government servant can avail this facility only once in a year.

3. The enquiry officer appointed, after going through the evidence, in his finding dated 17.5.1988 (Ann.-PP) held that both the charges stood fully proved.

Accepting the findings of the enquiry officer, the disciplinary authority imposed the impugned penalty which has been upheld in appeal as well as in revision.

4. In so far as the first charge is concerned, viz., failure to dispose of 62 cases from January, 1987 to 31.10.1987 which were allegedly found lying pending on his seat, the applicant has taken the plea that in as many as 18 cases, he was not given an opportunity to inspect the records of those cases, which has prejudiced him in his defence. No doubt, a list of the allegedly pending 62 cases was supplied to the applicant, but this is not the same thing as giving him an opportunity to inspect all the relevant records to permit him to prepare his defence. The impugned penalty order itself contains the admission that

18 references were not made available to the applicant for examination during the course of the D.E.

5. We are unable to understand why, if the applicant was given the opportunity to inspect the remaining 44 case files, he was denied inspection of these 18 records.

6. Rule 16(1) Delhi Police (Punishment & Appeal) Rules, 1980, provides that the documents relied upon by the prosecution should be supplied to the charged official along with the summary of misconduct. While it would of course not be practicable to supply to the applicant copies of all the 62 files alleged to have been delayed by him, and indeed, the applicant did not ask that, the respondents should have given him the opportunity to inspect the 18 case files, as they had done in respect of the remaining 44 files. Shri Raju for the applicant has urged that the denial of opportunity to the applicant to inspect these 18 case records has fatally vitiated the proceedings and relied on the rulings in Trilok Nath vs. Union of India & Ors.: 1967 SIR 759; Attar Singh vs. Inspector, North District Lines : 1991 (2) ATJ 507; and Kewal Krishna Chopra vs. Union of India & Ors. : 1994 (1) ATJ 411. We are inclined to agree with him.

7. A view could be canvassed that even if the applicant was not given the opportunity to inspect these 18 case records, there is evidence to show that he delayed action in many of the remaining 44 case files, and the second charge of the irregular drawal of the second festival advance is held proved, and, therefore, no

interference in the impugned penalty order is warranted. We are not inclined to agree with this view, because the failure to give the applicant an opportunity to inspect these 18 case records involves substantial denial of the principles of natural justice to the applicant, which would also have a bearing on the quantum of punishment imposed upon him.

8. In the result, the impugned penalty order, appellate and revision orders are quashed and set aside without going into the merits of the charges, and the matter is remanded back to the respondents to conduct departmental proceedings afresh in accordance with law, from the stage of giving the applicant an opportunity to inspect all the records which he is alleged to have delayed, to enable him to prepare his defence.

9. This application is accordingly disposed of.
No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

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

/as/