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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No. 2576/90

Date of Decision: 17.1.92

Shri Om Prakash

Applicant

Shri Shankar Raju

Counsel for the applicant

Vs.

Commissioner of Police & Ors.

Respondents

Shri Dinesh Kumar

Counsel for the respondent

CORAM

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, 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*

JUDGEMENT

(of the Bench delivered by Hon.Member Shri B.N. Dhoundiyal)

This OA has been filed by ASI Shri Om Prakash against the impugned order dated 19.7.90 passed by the Deputy Commissioner of Police imposing the punishment of forfeiture of one year's approved service permanently, reduction of his pay by one stage for a period of one year with cumulative effect and suspension period from 19.10.1989 to 19.07.1990 being treated as 'Not Spent On Duty', as also the impugned order dated 23.11.1990, issued by the Additional Commissioner of Police, New Delhi, rejecting his appeal.

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2. The applicant who was enrolled as a Constable in Delhi Police on 1.8.64 was promoted as Head Constable on 13.6.78 and as ASI on 1.9.83. It was alleged that while posted at Police Station Anand Vihar, he used abusive language against Inspector Balbir Singh, SHO. He was placed under suspension on 18.10.1989 and a departmental enquiry was ordered against him and Shri S.K. Malik, Assistant Commissioner of Police, Preet Vihar was appointed as the Inquiry Officer, who served on the applicant the following summary of allegations:-

"It is alleged that ASI Om Prakash No.72/E while posted at Police Station Anand Vihar on 18.10.89 at 5.30 P.M. used abusive language against Insp. Balbir Singh SHO/Anand Vihar in the presence of ASI Bhola Dutt, ASI Rajbir Singh and H.C. Satpal Singh MHC (R) P.S. Anand Vihar. Being a member of disciplined force he should have not abused the senior officers. His act is against the norms of a disciplined force.

The above act of his part amounts to grave misconduct and unbecoming of a police officer of a disciplined force which renders him liable to be dealt with departmentally u/s 21 of Delhi Police Act 1978."

3. The Inquiry Officer gave his findings on 30.3.90 and based on these, an order was issued by the D.C.P. on 19.7.90 imposing the following penalties:-

- (1) Forfeiture of one years' approved service permanently;
- (2) Reduction of pay by one stage for one year with cumulative effect; and
- (3) The suspension period of the applicant w.e.f. 19.10.89 to 19.7.90 has been treated as "Not Spent On Duty".

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3. The main contention of the applicant is that the above punishments are three different punishments, imposed on him for a single misconduct. He has also challenged the vires of Rule 8(d)(ii) of Delhi Police (Punishment and Appeal) Rules 1980, as being inconsistent with Section 21 of the Delhi Police Act, 1978. According to him, his past conduct has also been taken into account by the Inquiry Officer in arriving at the findings of the case which is not legal.

4. The respondents have stated that they have complied with all the mandatory provisions for conducting an enquiry and had given him full opportunity to defend himself. Though the charge was proved in the enquiry, a lenient view was taken and he was let off with light punishment. Only one punishment of forfeiture of one years' service was awarded to him and the reduction of pay was the consequential effect of forfeiture of service in accordance with the Rule 8(d)(ii) of Delhi Police (Punishment and Appeal) Rules, 1980. As regards treating of suspension period as 'Not Spent On Duty', this was not a prescribed punishment under the Police Act and was decided in accordance with FR.54.B. The past record of the applicant was only perused while awarding the punishment and not while conducting the enquiry.

5. We have gone through the records of the case and heard the learned counsel for both parties. On perusal of the enquiry report (Annex.2), it is clear that the applicant was given a reasonable opportunity to defend himself in the enquiry. A number of witnesses testified that vulgar and derogatory language was used by the applicant against SHO Shri Balbir Singh. One of the witnesses mentioned the event in the diary

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maintained by the Police Station on that date. The applicant was allowed to cross examine the witnesses. The applicant did not produce any witnesses in his defence and made some vague statements about his enmity with SHO. After the enquiry report was submitted, the applicant was issued a Show Cause notice and a detailed order examining all points raised by the applicant in his reply was issued by the Deputy Commissioner of Police. A reference to his having been censured twice has only been made incidentally in the impugned order of punishment.

6. In our opinion, there is no merit in the contention of the applicant that three punishments have been imposed on him for a single misconduct or that Rule 8(2)(d)(ii) of the Delhi Police (Punishment and Appeal) Rules, 1980 inconsistent with the provisions of Section 21 of the Delhi Police Act, 1978. Reduction of pay by one stage is a consequence of forfeiture of one years' approved service and cannot be termed as a double punishment for the same misconduct. The order passed by the appellate authority on 23.11.90 cannot also be said to be a non-speaking order.

7. There is, however, another aspect of the matter, which had been ignored by the disciplinary authority, while passing the impugned order dated 19.7.90. The disciplinary authority is not empowered to pass a composite order imposing a penalty on the charged officer as well as passing an order as to how the period of suspension should be treated. In case, the competent authority is of the opinion that the charged officer is not to be paid full pay and allowances and that the period of suspension is not to be treated as spent on duty, it is
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incumbent on ~~444~~ ^{it is} to give a show cause notice to him and pass appropriate orders after considering his reply. That was not done in the instant case and to that extent, there has been violation of the principles of natural justice. As the two parts of the impugned order are severable, only that part of it which deals with the manner in which the suspension period is to be treated is liable to be set aside and quashed.

8. In the light of the above discussion, we uphold the validity of the impugned orders dated 19.7.90 and 23.11.90 to the extent of imposition of the penalty of forfeiture of one years' approved service of the applicant and reduction of his pay for a period of one year with cummulative effect. We set aside and quash the following part of the impugned order dated 19.7.90:-

"His suspension period w.e.f. 19.10.89 to date be treated as not spent on duty and he will not be entitled to draw any emoluments other than that he had already drawn in the shape of subsistance allowance."

9. We, however, make it clear that it will be open to the competent authority to pass appropriate orders as to how the period of suspension would be treated after giving a show cause notice to the applicant and considering his representations.

10. The application is disposed of on the above lines. There will be no order as to costs.

B.N. DHOUNDIYAL
(B.N. DHOUNDIYAL)
MEMBER(A) 17/11/92


P.K. KARTHA
VICE CHAIRMAN(J)