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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.442 of 1990

NEW DELHI THIS THE 5/8 DAY OF AUGUST, 1994

MR.JUSTICE S.K.DHAON, ACTING CHAIRMAN
MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Chander Sain
S/o Shri Gahar Singh
R/o Village & P.O.Kapashera
P.S.Najafgarh, Delhi.

APPLICANT

BY ADVOCATE SHRI SHYAM BABU.

vs.

1. Delhi Administration, Delhi
through its Chief Secretary,
5, Shyam Nath Marg, Delhi.
2. Commissioner of Police
Police Headquarters
I.P.Estate, New Delhi.
3. Additional Commissioner of Police(Armed
Police)
Police Headquarters
I.P.Estate,
New Delhi.
4. Dy.Commissioner of Police,
8th Batallion, DAP, Delhi. RESPONDENTS

BY ADVOCATE SHRI B.R.PRASHAR

ORDER

JUSTICE S.K.DHAON:

The applicant, a Constable(Driver) in the Delhi Police, was subjected to disciplinary proceedings. The usual procedure was followed. The inquiry officer submitted his report to disciplinary authority with the recommendation that the charge levelled against the applicant stood proved. The disciplinary authority by its order dated 3.2.1989 imposed the penalty of removal from service upon the applicant. He also directed that a sum of Rs.3,000/-should be recovered from the applicant. The appellate authority by its order dated 25.9.1989 maintained the order of removal from service but set aside the order in so far as the recovery of Rs.3,000/-from the applicant was concerned. The Commissioner of Police acting as the revisional authority dismissed the revision application of the applicant by order dated 30.1.1990. The three orders are being impugned in the present original application.

2. On 18.6.1987, the Deputy Commissioner of Police passed an order that the applicant will be dealt with departmentally by Inspector Balbir Singh on the charge that while detailed on duty as a Driver of a vehicle, he carelessly and negligently drove the same as a result of which the fan belt of the vehicle had broken thereby the engine was overheated and stopped working. A sum of Rs.3,000/- was spent by the Government on the repair of the vehicle.

3. On 18.6.1987, the departmental enquiry commenced and on 2.9.1987 after the close of prosecution witnesses, the inquiry officer framed charges against the applicant. On 30.11.1987, the inquiry officer submitted his report to the disciplinary authority. No action was taken on the said report by the disciplinary authority between 30.11.1987 and 13.7.1988.

4. On 13.7.1988, the Deputy Commissioner of Police, passed an order in the purported exercise of power under sub-rule(1) of Rule 5 of the Central Civil Services(Temporary Services) Rules, 1965 terminating the services of the applicant. The crucial words in the order of the Deputy Commissioner of Police were these:

".....DE ordered against him vide this office order No.1563-1604/HAP-8th Bn.DAP dated 18.6.1987 is hereby dropped."

5. It appears that against the order dated 13.7.1988, the applicant made a representation to the Commissioner of Police and on 24.1.1989, an order was passed by the Deputy Commissioner of Police in the following words:-

" In pursuance of PHQ's memo No.1401/CR-III dated 18.1.1989 Ex-Const(Driver) Chander Nain No.9989/DAP terminated vide this office order No.1885-1933/HAP-8th Bn.DAP,dated 13.7.1988 is hereby reinstated in service."

6. The original file has been placed at our disposal for our perusal and we find therefrom that on 18.1.1989, the Deputy Commissioner of Police Headquarter I sent a communication to the Deputy Commissioner of Police 8th Bn.DAP, Delhi which related to the representation of the applicant against the termination of his services. In para 2 of the said communication, it is recited that the representation of the applicant has been considered by the Commissioner of Police, Delhi and accepted, and, therefore, the applicant may be reinstated in service under intimation to the headquarter. In para 3 of the said communication, it is recited that the Commissioner of Police has further desired that final orders may be passed on the findings of the D.E. against the applicant. Besides recovery on account of the damage caused to the Govt. vehicle by negligent driving should also be effected. In para 4, it is recited that the character roll, Fauzi Missal, D.E. file (2 parts) are being sent for record in the office of the Deputy Commissioner of Police, 8th Bn.DAP, Delhi.

7. In the back-drop of the aforequoted communication dated 18.1.1989 of the Deputy Commissioner of Police/HQ(I), Delhi, we may now read the order of the disciplinary authority dated 3.2.1989. In para 3 of this order, it is inter alia recited:

".....The previous order issued vide this office order No.1885-1933/HAP-8th Bn.DAP, dated 13.7.88 may be treated as cancelled in the light of PHQ's memo No.1401/CR-III, dated 18.1.1989."

8. It is thus evident that the Deputy Commissioner of Police passed the order of punishment against the applicant on the directions of the Commissioner of Police. He also cancelled the order dated 13.7.1988 whereby he dropped the disciplinary proceedings against the applicant in pursuance of the directions given by the Commissioner of Police.

9. In the revisional order, it is noted that one of the submissions made by the applicant before the revisional authority was that the disciplinary proceedings once dropped should not be revived. The answer given in the revisional order is that the disciplinary proceedings were revived under the orders of the Commissioner of Police. The question, therefore, to be examined is whether the Commissioner of Police had any jurisdiction to revive the disciplinary proceedings.

10. We have already seen that the inquiry officer's report was with the Deputy Commissioner of Police on 13.7.1988. Therefore, the order dated 18.6.1987 of the Deputy Commissioner of Police appointing an inquiry officer and directing him to proceed with the inquiry had exhausted itself in the sense that nothing further was required to be done by the inquiry officer.

11. Section 21 of the Delhi Police Act, 1978(the Act), inter-alia, provides that subject to the provisions of the Constitution and the rules, the Commissioner of Police, Deputy Commissioner of Police, may award to any police officer of subordinate rank any of the punishments enumerated therein from (a) to (g). "Rules" are defined in Section 2(q) to mean rules made under the Act. Section 147 of the Act confers the rule making power upon the Administrator. Accordingly, the Delhi Police(Punishment & Appeal) Rules, 1980 (the Rules) have been framed. Rule 14(4) provides that the disciplinary action shall be initiated by the competent authority under whose disciplinary control the police officer concerned is working at the time it is decided to initiate disciplinary action. Rule 16 relates to procedure in departmental enquiries.

Rule 16(ix), *inter alia*, states that after recording the depositions of the prosecution and defence witnesses, the inquiry officer shall proceed to record the findings. He shall pass order of acquittal or punishment if himself empowered to do so, on the basis of evaluation of evidence. If not so empowered, he shall forward the case with his findings on each of the charges together with the reasons therefor to the officer having the necessary powers. Rule 16(x), *inter alia*, provides that on receipt of the inquiry officer's report, the disciplinary authority shall consider the record of the inquiry and pass his orders on the inquiry on each charge. It is implicit in Rules 16(ix) and 16(x) that the inquiry officer, if he is empowered to pass an order of punishment, and the disciplinary authority while passing an order of acquittal or punishment are acting in a quasi judicial capacity. The crucial words in Rule 16(x) are: "shall consider the record of the inquiry and pass his orders on the inquiry on each charge". Consideration enjoined in the rules is not subjective but is objective. In such a process, due application of mind is implicit.

12. In this background, we may consider again the order passed on 13.7.1988 by the Deputy Commissioner of Police. On that day, admittedly the report of the inquiry officer was before him. It has to be presumed that he considered the report of the inquiry officer and came to the conclusion that a case for punishing the applicant had not been made out. He also came to the conclusion that the applicant should ^{not} be retained in service, and, therefore, instead of inflicting any of the punishments enumerated in Section 21 of the Act, he thought it proper to take resort to the proviso to Rule 5 of the CCS(Temporary Services)

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Rules as admittedly on 13.7.1988, the applicant was a temporary servant. It has, therefore, to be presumed that the disciplinary authority consciously and deliberately dropped the disciplinary proceedings. It has further to be presumed that he did so with due application of mind. There can be no getting away from the fact that he had the jurisdiction and to drop the disciplinary proceedings/ by necessary implication he exonerated the applicant of the charges levelled against him in the departmental proceedings. We have gone through the provisions of the Act and the Rules. Neither we have been able to lay our fingers on any provision conferring power on the disciplinary authority to review its order or decision exonerating a delinquent Government servant nor has the counsel for the respondents was able to bring to our notice any such provision. It is not necessary for us to examine the further question as to whether the order dated 3.2.1989 passed by the disciplinary authority punishing the applicant without first rescinding the order dated 13.7.1988, whereby he dropped the disciplinary proceedings, is valid or invalid. For the purpose of this case, we may assume that the disciplinary authority first rescinded its order dated 13.7.1988 and thereafter passed an order of punishment. We are convinced that, in the absence of any statutory power of review either express or implied, the Deputy Commissioner of Police(the disciplinary authority) had no jurisdiction to cancel his order dated 13.7.1988 by which he dropped the disciplinary proceedings against the applicant. Such an order of cancellation would be nothing short of an order of review and the power of review was non-existent.

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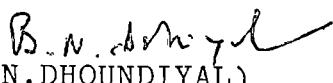
13. We have already emphasised that the disciplinary proceedings went ahead and reached the stage of the submission of the report of the inquiry officer. The stage, therefore, was beyond the initiation of the disciplinary proceedings by the competent authority as envisaged in Rule 14(4) of the Rules. Section 21 of the General Clauses Act, 1897 could be available to the competent authority if the inquiry officer had not completed the inquiry proceedings in the sense that he had not submitted his report. So far as the initiation of the disciplinary action by the competent authority under Rule 14(4) is concerned that may be an administrative act. Therefore, an order initiating proceedings passed under Rule 14(4) can be varied or rescinded and again reviewed and, therefore, a fresh order again passed initiating the proceedings by taking resort to Section 21 of the General Clauses Act. It is a settled law that the provisions of Section 21 of the said Act merely contain a rule of construction. Those provisions have no general application. They have to be applied in the context, scheme and setting of the provisions under consideration. We have already referred to the scheme as contained in Rules 16(ix) and 16(x) of the Rules. The punishing authority is empowered to give his decision either acquitting a delinquent servant or punishing him, after the receipt of the report of the inquiry officer by it. The inquiry officer or the disciplinary authority, as the case may be, has no option but to either exonerate a delinquent servant or to punish him once the inquiry proceedings are completed. At that stage, Section 21 of the General Clauses Act is inapplicable.

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14. We have already shown that the disciplinary authority passed its order dated 3.2.1989 at the behest or under the directions of the Commissioner of Police in so far as it related to the cancellation of the order dated 13.7.1988 dropping the departmental proceedings against the applicant. Assuming that the Deputy Commissioner of Police had the power and jurisdiction to vary or rescind his order dated 13.7.1988, he did not do so in the present case, as he acted mechanically and without applying his mind. The order, therefore, is not sustainable even on this ground.

15. In view of the foregoing discussion, we come to the conclusion that the order passed by the disciplinary authority was without jurisdiction and deserves to be quashed. The orders passed by the appellate authority and the revisional authority upholding the order of the disciplinary authority are also liable to be quashed. We accordingly quash the three orders.

16. There shall be no order as to costs.


(B.N.DHOUNDIYAL)
MEMBER(A)

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(S.K.DHAON)
ACTING CHAIRMAN