

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 50/90

~~Tax No.~~

199

DATE OF DECISION 20.7.1990.

Shri Om Parkash

Petitioner

Shri N. Safaya

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri G.C. Lalwani

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGMENT

(the judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The short point involved in the present application filed under Section 19 of the Administrative Tribunals Act, 1985, is whether the appellate authority has any inherent power to enhance the punishment awarded to a member of the Delhi Police in the absence of any provision for suo motu review or revision in the Delhi Police(Punishment & Appeal) Rules, 1980.

2. The facts of the case in brief are that the applicant was appointed as Driver (Constable) in the Delhi Police in 1972. He was promoted as Head Constable in 1984 and as Assistant Sub-Inspector in 1986. On 31.10.1989, the Deputy Commissioner of Police issued a show cause notice to him wherein it was stated that the applicant

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was arrested under Sections 91, 92, 93 and 97 of the Delhi Police Act on 19.6.1989. He was also medically examined. The Medical Officer, AIIMS after examining him opined that he was "smelling of alcohol. Not under the influence of alcohol". He was later on released on bail. The Metropolitan Magistrate imposed on him a fine of Rs.100/-. The report received from the DCP, South, did not indicate that he has misbehaved with any public/Police Officer under the influence of liquor. However, he had created nuisance in the public place which amounted to misconduct on his part being a Police Officer. The applicant was, therefore, called upon to show cause as to why his conduct should not be censured for the aforesaid lapse on his part.

3. The applicant submitted a reply to the show cause notice wherein he stated that he never drank liquor as alleged and the reason for alcoholic smell was that he had taken a medicine called "Sanjivni Sura" at the instance of a 'Vaida'. The Deputy Commissioner thereafter vide his order dated 21.11.1989, confirmed the penalty of censure. The applicant did not prefer an appeal against the same.

4. On 2.1.1990, the Additional Commissioner of Police passed an order stating that the penalty of censure awarded to the applicant was not commensurate with the criminal misconduct committed by him. Consequently, in purported exercise of the power vested in him under PPR 16.28, he set aside the order dated 21.11.1989 regarding award of censure to the applicant and further ordered that a regular

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departmental enquiry be conducted against him under Section 21 of the Delhi Police Act. It is this order passed by the Additional Commissioner of Police, which has been called in question in the present application.

5. The applicant has contended that the Delhi Police (Punishment & Appeal) Rules, 1980, do^a not contain any provision for suo motu review by the appellate authority, that the Punjab Police Rules stand repealed by virtue of Section 149 of the Delhi Police Act, 1978 and^{Re a} Delhi Police (Punishment & Appeal) Rules, 1980, had been brought into force.

6. The contention of the respondents is that the powers^a of review and revision as contained in PPR 16.28 and 16.32 can be invoked even after the bringing into force of the Delhi Police(Punishment & Appeal) Rules, 1980. PPR 16.28 and 16.32 have not been expressly repealed or superseded by the provisions of the Delhi Police(Punishment & Appeal) Rules, 1980.

7. We have carefully gone through the records of the case and have heard the rival contentions. The power of the appellate authority in respect of the members of Delhi Police is dealt with/in Section 23 of the Delhi Police Act read with Rule 25 of the Delhi Police(Punishment & Appeal) Rules, 1980. Section 23 of the Act provides, inter alia, that an appeal against any order of punishment passed against a Police Officer, shall lie to the authorities mentioned therein. In view of this provision, in the instant case, the appeal lies to the Additional Commissioner of Police. Rule 25 of the

Delhi Police(Punishment & Appeal) Rules, 1980, deals with the orders that may be passed on appeal. This Rule reads as follows:-

"25. The Orders on Appeal

- (1) On appeal, the appellate authority may;
 - (a) confirmed^{ed} the impugned order; or
 - (b) accept the appeal and set aside the punishment order; or
 - (c) reduce the punishment; or
 - (d) disagree with the disciplinary authority and enhance the punishment after issue of a fresh show cause notice to the appellant and affording him a reasonable opportunity (including personal hearing if asked for) against the proposed enhancement
- (2) Every order passed on appeal shall contain the reasons therefor. A copy of every appellate order shall be given free of cost to the appellant".

8. It will be noticed that the aforesaid rules do not empower the appellate authority to review or revise the order of the disciplinary authority suo motu.

9. The aforesaid provision may be contrasted with the provisions of the CCS (CCA) Rules, 1965, which expressly provide for revision and review(vide Rules 29 and 29A).

10. The question arises whether the appellate authority ^{can} be said to have any inherent power in this regard. In our opinion, the theory of inherent power does not apply to quasi-judicial bodies, such as, the appellate authority under the conduct rules.

11. We may now consider the contention of the respondents that in the absence of an express repeal of the provisions of PPR 16.28 and 16.32 of the Punjab Police Rules by the

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Delhi Police(Punishment & Appeal) Rules, 1980, the appellate authority can invoke the powers under the said rules.

12. Section 149 of the Delhi Police Act, 1978, provides, inter alia, as follows:-

"Cesser of operation of certain enactments and savings. (1) On the commencement of this Act the enactments specified in Shcedule II shall cease to be in force in Delhi;

Provided that -

(1) all rules and standing orders made (including the Punjab Police Rules, as in force in Delhi), appointments made, powers conferred, orders made or passed, directions and certificates issued, consent.

"permit, permission or licence given, summons or warrants issued or served, persons arrested or detained or discharged on bail or bound search warrants issued, bonds forfeited and penalties incurred under any such enactment shall, in so far as they are consistent with this Act, be deemed to have been respectively made, conferred, passed, given issued, served, arrested, detained, discharged, forfeited or incurred under this Act".

13. Section 147 of the Delhi Police Act, 1978, empowers the Administrator to make the rules for carrying out the purposes of the Act including awarding of any of the punishments referred to sub-section(1) or sub-section(2) of Section 21 to any Police Officer of subordinate rank and the procedure for awarding punishment under Section 22. The Delhi Police(Punishment & Appeal) Rules, 1980 have been made in exercise of the aforesaid powers conferred by Section 147 of the Delhi Police Act, 1978.

14. The Delhi Police(Punishment & Appeal) Rules, 1980 are self-contained and comprehensive. The said rules do not contain any^f repeal and savings^f clause as in the case of

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the Delhi Police(Promotion & Confirmation) Rules, 1980, which have also been made in exercise of the powers conferred by Section 147 of the Delhi Police Act. Rule 22 of the Delhi Police(Promotion & Confirmation) Rules, 1980 which deals with 'repeal and savings' stipulates that "all provisions contained in the Punjab Police Rules is applicable to the Union Territory of Delhi relating to Promotion and Confirmation of employees are hereby repealed subject to the provisions contained in the proviso to sub-sections(1) & (2) of Section 149 of the Delhi Police Act, 1978". A corresponding provision has not been included in the Delhi Police(Punishment & Appeal) Rules, 1980.

15. Neither the Delhi Police Act, 1978 nor the Delhi Police(Punishment & Appeal) Rules, 1980 contain^a provision for suo motu revision and review. To our mind, the contention of the respondents that the provisions of PPR 16.28 and 16.32 of the Punjab Police Rules dealing with the powers of review and revision can be invoked by the appellate authority after coming into force of the Delhi Police(Punishment & Appeal) Rules, 1980 is not legally sustainable. As has been observed by the Supreme Court in Yogender Pal Singh Vs. Union of India, AIR 1987 SC 1015, "it is well settled that when a competent authority makes a new law which is totally inconsistent with the earlier law, and that too cannot stand together any longer it must be construed that the earlier law had been repealed by

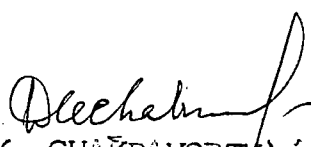
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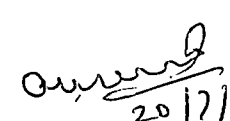
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necessary implication by the later law." Accordingly, the Supreme Court rejected the contention that Rules 12.14 and 12.15 of the Punjab Police Rules could ^a ~~not~~ be invoked by the respondents in view of the provisions of Delhi Police(Punishment & Recruitment) Rules, 1980.

16. In the light of the aforesaid legal position, we are of the opinion that the applicant is entitled to the reliefs sought in the present application. We, therefore, set aside and quash the impugned order dated 2.1.1990 issued by the Additional Commissioner of Police for conducting a regular departmental enquiry against the applicant and any action taken pursuant thereto. We, however, make it clear that the penalty of censure imposed on the applicant by the disciplinary authority will stand. The application is disposed of with the above directions.

There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER (A)
26/7/1990


20/7/90
(P.K. KARTHA)
VICE CHAIRMAN (J)