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In the Central Administrative Tribunal
Principal Bench: New Delhi

Regn. No. UA-790/90

Date of decision: 24.4.1993

Shri Naresh Chand Applicant

Versus

Addl. Commissioner of Respondents
Police & Others

For the Applicant Shri B.S. Charya, Advocate

For the Respondents Smt. Avnish AhlaQat, Advocate

CORAM:-

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE-CHAIRMAN
THE HON'BLE MR. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

1. To be referred to the Reporter or not?

JUDGEMENT
(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman)

The petitioner, a Head Constable, challenges the
legality of the order dated 28.3.1990 passed by Shri P.R.S.
Brar, Additional Commissioner of Police, in his capacity
as the appellate authority.

2. Disciplinary proceedings were initiated against the
petitioner on the basis of a charge memo. An Enquiry
Officer was appointed. He submitted a report. The
punishing authority accepted the recommendation of the
Enquiry Officer and found the petitioner guilty. He
directed that one year's approved service of the petitioner
should be forfeited permanently.

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3. The impugned order is headed as " Show Cause Notice". In paragraph 3 of the order/show-cause notice, it was observed ".....The charge was fully proved after regular departmental enquiry and I find that the disciplinary authority has taken an erroneous view in awarding him only forfeiture of one year approved service permanently..... I propose to enhance punishment to that of dismissal from service".

4. In paragraph 4, the Additional Commissioner of Police called upon the petitioner to show-cause as to why he should not be dismissed from service. Instead ^{of} showing cause against the proposed enhancement of punishment, the petitioner came to this Tribunal by means of this original application.

5. Learned counsel for the petitioner has urged the following:-

- (i) By the impugned show-cause notice/order, the appeal preferred by the petitioner, stood disposed of finally;
- (ii) the appellate authority did not consider at all the submissions made by the petitioner in his memorandum of appeal;
- (iii) it failed to pass a speaking order;
- (iv) it has not considered the matter at all after due application of mind;

- (v) its order suffers from administrative bias insofar as the petitioner had been earlier subjected to disciplinary proceedings which were ultimately quashed by this Tribunal;
- (vi) no charge, in fact, was brought home to the petitioner and the finding of the disciplinary authority was perverse; and
- (vii) the charge related to a very old transaction and, therefore, on account of undue delay, the proceedings should have been quashed on that ground alone.

6. We have read and re-read the impugned order/show-cause notice. We are satisfied that the appellate authority did not purport to pass a final order in the appeal preferred by the petitioner. He, in fact, expressed a tentative view while issuing the show-cause notice. It, therefore, follows that the appeal preferred by the petitioner against the punishment awarded to him by the punishing authority is still pending. The same has yet to be disposed of on merits and in accordance with law along with the decision on the show-cause notice after considering the reply of the petitioner, if any. In this view of the matter, we do not consider it appropriate to record any opinion on the various submissions advanced by the learned counsel for the petitioner.

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7. The appellate authority shall consider the appeal of the petitioner along with the show-cause notice and the reply thereto on a clean slate. It shall give an opportunity of an oral hearing to the petitioner. It shall pass a speaking order.

8. Without casting any aspersions upon the conduct and fair mindedness of Shri Brar, we consider it expedient in the interest of justice and fairplay that the appeal of the petitioner, together with the show-cause notice and the decision thereon, should be disposed of by any competent officer or authority other than Shri P.R.S. Brar. We are giving this direction, keeping in view the well-known legal principle that justice should not merely be done but it should seem to be done.

9. It appears that, on account of the interim order passed by this Tribunal, final orders could not be passed by the appellate authority as far. We are not quite sure as to whether the petitioner gave any reply to the show-cause notice. If he has not done so as far, he shall give his reply to the show-cause notice within a period of one month from the date of the receipt of a certified copy of this order. Thereafter, the appellate authority shall dispose of the matter on merits and in accordance with law and in

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the light of the observations made above.

10. With these directions, this petition is disposed of finally but without any orders of costs.

Subhash
(I.K. Rasgotra)
Administrative Member

S.K.
(S.K. Dhaun)
Vice-Chairman(Judl.)