CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. No. 1595/91 /19 Decided on: 5.12.96

Joginder Singh
..... APPLICANT(S)

(By Shri Shankar Raju Advocate)

VERSUS

Commissioner of Police
..... RESPONDENTS

(By Shri Vijay Pandita Advocate)

CORAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI/SMT.~~/DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes

2. Whether to be circulated to other Benches of the Tribunal ? No

(S.R. ADIGE)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 1595 of 1991

New Delhi, dated the 5th December 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Insp. Joginder Singh
No.D.I/539,
S/o Shri Har Nath Singh,
Qr. No.106, P.S. Tilak Nagar,
New Delhi-110018. ..... APPLICANT

(By Advocate: Shri Shankar Raju)

VERSUS

1. The Commissioner of Police,
Police Hqrs., MSO Building,
I.P. Estate,
New Delhi.

2. The Addl. Commissioner of Police,
(Armed Police),
Police Hqrs., MSO Building,
I.P. Estate,
New Delhi. ..... RESPONDENTS

(By Advocate: Shri Vijay Pandita)

JUDGMENT

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

In this application Shri Joginder Singh, Inspector, Delhi Police has impugned the penalty order dated 20.4.90 (Annexure A-5) forfeiting his approved service for one year, temporarily reducing his pay from Rs.2240/- p.m. to 2180/- p.m. w.e.f. the date of the order, during which period he would not earn any increment, and on the expiry of which, it would have the effect of postponing

his future increments. The appellate order dated 21.5.91 (Annexure A-7) has also been impugned.

2. Shortly stated on 11.7.88 at about 7.10 a.m. Shri Rupinder Kumar ACP/AFRRO (Shift 'C') made a surprise check at IGI Airport, Left Wing, arrival side. On checking the applicant's room, the ACP found 2 bags, one containing a bottle of foreign liquor (Cinzano Dry) and the second containing a packet of cigarettes (555 marking) with some personal papers/diaries of the applicant. Upon further inquiries, by the ACP it is alleged that S.I. Shri Avtar Singh while on duty in the left wing of the arrival side had given a bottle of foreign liquor (Cinzano Dry) in a bag obtained from S.I. Mohinder Singh to the applicant. The other bag containing a cigarette packet of 555 marking belonged to the applicant himself. As the above act on the part of the applicant and S.I. Avtar Singh made out a cognizable offence, and the respondents were of the view that the materials and evidence available for prosecuting them may not be sufficient to prove them guilty beyond all reasonable doubt as required in a court of law, but was sufficient to proceed against them departmentally, after obtaning the prior approval of the Addl. Commissioner of Police under Rule 15(2) Delhi Police (P&A) Rules, vide order dated 4.8.88 (Annexure A-1) it was decided to proceed against the applicant as well as S.I. Avtar Singh departmentally. A joint DE was conducted and the E.O. in his report dated 5.4.90 (Annexure A-4) held that the charges against both the officers had been

proved beyond doubt. Thereupon the Disciplinary Authority by the impugned penalty order dated 20.4.90 punished both the applicant as well as S.I. Avtar Singh, which was upheld in appeal vide impugned order dated 21.5.91 against which this OA.. has been filed.

3. We have heard Shri Shankar Raju for the applicant and Shri Vijay Pandita for the respondents.. We have also perused the materials on record and given the matter our careful consideration.

4. The first ground taken is that the impugned order is illegal becuase the applicant was not supplied with a copy of the Enquiry Report prior to the imposition of the impugned punishment, although a copy of the same was admittedly supplied with the penalty order and has been filed with the O.A. The respondents in para 5(11) of their reply admit that a copy of the inquiry report was not supplied to the applicant before imposing the punishment and merely state that the punishing authority did not find any justification to furnish a copy of the inquiry report before passing the impugned order. Under Rule 16(xii)(a) Delhi Police (P&A) Rules, 1980, if the Disciplinary Authority is of opinion that a major punishment is to be awarded, he is required to furnish a copy of the Enquiry Report to the delinquent free of charge and it is clear from Rules 5 and 6 Delh Police (P&A) Rules that forfeiture of approved service entailing reduction in pay and withholding of increments are major punishments.

5. In this connection during the course of hearing we had noted that the impugned penalty order was passed on 20.4.90 i.e. before 20.11.90 which was the date of decision in Ramzan Khan's case. In M.D. E.C.I.L, Hyderabad Vs. B. Karunakar JT 1993 (6) SC 1 the Hon'ble Supreme Court had held that the decision in Ramzan Khan's case would operate only prospectively and where a penalty order had been passed before 20.11.90, that order was not vitiated merely because a copy of the enquiry report had not been supplied to the delinquent. During hearing we had further noted that in the present case it was true that there had been a violation of the mandatory provision under Rule 16(xii)(a) Delhi Police (P&A) Rules but as laid down by the Hon'ble Supreme Court in Krishan Lal Vs. State of J&K 1994 (27) ATC 590 what had to be seen was whether the requirement of giving a copy of the inquiry report mandated under Rule 16(xii)(a) Supra was one which was for the benefit of the individual concerned or was for a public purpose. If it was for the individual concerned, it could be waived, while if it was for the latter, it could not be done. In the present case as in Krishan Lal's case (Supra) it was clear that the requirement was for the individual concerned, but the present applicant had nowhere expressly waived his right to a copy of the inquiry report. That being the position, and following the ratio in Krishan Lal's case (Supra), we had been compelled to hold that the impugned order was hit by non-compliance of statutory rules. However, we had noted that that by itself was not sufficient to set

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aside the penalty order, because following the ratio in Krishan Lal's case (Supra) we were further required to examine the matter in the light of paragraph 31 of the Hon'ble Supreme Court's judgment in M.D.ECIL,Hyderabad Vs. B. Karunakar (Supra). In other words after hearing the parties and application of judicial mind we were required to come to a reasoned conclusion whether the applicant was prejudiced by the non-supply of the E.report which would have made a difference to the ultimate findings and the punishment inflicted.

6. Accordingly we heard both parties further in this issue.

7. Applicant's counsel Shri Shankar Raju asserted that his client was prejudiced by the non-supply of the inquiry report before the penalty was imposed because if it had been supplied, he would have pointed out that while DWs Dharshan Singh and Charan Singh had been examined , they had not been allowed to be cross-examined and yet their evidence was used against the applicant. Secondly ; he would also have been able to point out that his defence statement had not been discussed by the E.O. in his report.

8. We notice that DWs Darshan Singh and Charan Singh were DWs of co-defaulter SI Avtar Singh and from the relevant D.E. file, it is clear that the statements of DWs Darshan Singh and Charan Singh were recorded on 25.7.89 on which date the

applicant was also present in the DE, and respondents have stated in their reply that copies of their statements were supplied to him, which has not been denied in any rejoinder. There is also no indication that he sought to cross examine DWs Darshan Singh and Charan Singh during the course of the DE and the prayer was refused. Neither in his defence statement dated 16.9.89 nor in his appeal filed against the Disciplinary Authority's order is there any mention that permission was not given to cross examine Charan Singh and Darshan Singh. What in fact has been contended was that Charan Singh was a biased witness and Darshan Singh was not an eye witness. Under the circumstance, this cannot be said to have prejudiced the applicant in any way. Incidentally this is also one of the grounds taken in the OA.

9. Similarly, the applicant's contention that the defence statement has not been discussed by the Enquiry Officer in his report, is also not correct because the gist of his defence statement has been recorded, namely that none of the PWs stated anything in support of the charge; and that the DE had been ordered against him without exploring the possibility of hiding the bottle in the Inspector's Room by SI Avtar Singh. His denial that the bottle was even given to him by

SI Avtar Singh and he had not asked him to put the bottle in the Inspector Room after placing it in the bag, has also been recorded.

10. Under the circumstance, it cannot be said that the non-supply of the enquiry report to the applicant before the penalty was imposed, prejudiced the applicant in such a way as to make a difference to the ultimate findings and the punishment inflicted.

11. The first ground taken is that the punishment violates Rule 8(d)(ii) Delhi Police (Punishment and Appeal) Rules, and more than one penalty has been imposed for the same lapse which is illegal. This Rule governs the principles for inflicting penalties including dismissal/ removal, reduction in rank , withholding of increment etc. Rule 8(d) reads as follows:

> (d) Forfeiture of approved service.- Approved service may be forfeited permanently or temporarily for a specified period as under:-
>
> (i) For purposes of promotion or seniority (permanent only).
>
> (ii) Entailing reduction in pay or deferment of an increment or increments (permanently or temporarily

In respect of the applicant, by the impugned penalty order dated 20.4.90 one year's approved service has been forfeited for one year temporarily entailing reduction in his pay from Rs.2240/- p.m. to 2180/- p.m. from the date of issue of the order during which he will not earn any increment and on the expiry of that period it will have the effect of postponing his future increments.

12 , The contention that this order imposes more than one penalty for the same lapse has no merit, because the penalty is indeed only one and what follows are its natural consequences. Forfeiture of one year's approved service means that if he had put in 20 years' service, he will be treated as having put in 19 years. Thus instead of drawing Rs.2240/- p.m. for 20 years' service, if annual increments are of Rs.60/-, he will draw Rs.2180/- p.m. as if he had put in only 19 years' service. This punishment will operate for 1 year during which he will not earn any increment if it falls due, and at the end of that period he will earn increments on pay of Rs.2180/- and not on Rs.2240/-. This is fully in accordance with Rule 8(d)(ii) and it cannot be said that the penalty order violates that Rule. Reliance has been placed by the applicant on the judgment dated 22.7.93 in OA No.1809/91 Shri Mange Ram Vs. UOI & Ors. We have perused that judgment, but we notice that it lays down no law and was applicable to the facts and circumstances of that particular case. In the instant case, we notice that the punishment inflicte is fully in consonance with Rule 8(d) (ii) Delhi Police (P & A) Rules and it cannot be said that more than one penalty have been inflicted for the same lapse. This view is also in consonance with the Tribunal's judgment dated 23.12.94 in OA No.2084/90 Avtar Singh Vs. Delhi Admn. & Ors. which is subsequent to Mange Ram's case

(Supra). Hence this ground fails.

13. The next ground taken is that holding of a joint enquiry is illegal. No rule of the Delhi Police (P & A) Rules have been cited which debars holding of a joint inquiry. Reference has has been made to Rule 18 CCS (CCA) Rules but that specifically permits the competent authority directing that disciplinary action may be taken against more than one Govt. servant in a common inquiry precisely. It is true that in GOI's instructions contained in MHA's letter dated 13.6.63 at the bottom of Rule 18 CCS (CCA) Rules relating to the procedure to be followed where two Govt. servants accuse each other, refers to a case where two Govt. servants who made complaints against each other were proceeded against in a comm on proceeding, and that letter while specifically stating that the Cr.PC is silent on the matter, observed that the general principles as laid down by courts is that accused in cross cases should be tried separately or in quick succession to avoid conflicting findings and different appraisal of the same evidence, and on that analogy it has been stated that a joint proceeding against accuser and accused should be avoided. The present case is not of an accuser and an accused, or of two two officials making complaints against each other, but instead of two officials disclaiming their own responsibility and putting the blame on the other. In the absence of any Rule specifically prohibiting

holding of a j-oint inquiry under the Delhi Police (P & A) Rules, this ground also fails.

14. The next ground taken is that there is no evidence of the applic ant taking both the bottle of foreign liquor and the packet of cigarettes. We have seen the relevant DE file maintained by the respondents and in the statement of PW1 Shri Rupendre Kumar, it is recorded that " on questioning Inspector Joginder Singh admitted that packet of foreign cigarettes marked 555 was given to him by a passenger," which also finds mention in order drawing up departmental proceedings against him. The Disciplinary Authority in his penalty order has observed that police officers are supposed to facilitate arrival of incoming passengers and taking gifts from them amounts to misuse of official position Under the circumstance, even if it is assumed (but not admitted) that the applic ant had not taken the bottle of foreign liquor, the charge of accepting the gift of a packet of cigarettes from an incoming passengers would amount to misconduct under sec.21 of the D.P. Act. Hence this ground also fails.

15. The next ground taken is that there was no signature of the applic ant on the seizure memo, but in view of paragraph 14 above this argument also fails.

16. The next ground taken is that statement of Co-defaulter Avtar Singh was used against the applic ant. Even if we disregard Codefaulter Avtar Singh's statement, the available evidence is suffic ient

to establish the misconduct of the applicant, and as stated above, he himself has admitted receiving atleast the cigarette packet, if not the bottle of foreign liquor. Hence this ground also fails.

17. The next ground taken is that the Enquiry Officer's report was not a reasoned one, but a perusal of the detailed evidence recorded itself brings home the charge against the applicant. This ground is also therefore without merit.

18. It has next been urged that differential treatment was meted out to the co-defaulter. In AIR 1989 SC 1185UOI Vs. Parmananda , it has been held that if the penalty can lawfully be imposed and is imposed by the Competent Authority on the proved misconduct, its quantum is not something in which the Tribunal has jurisdiction to go into. The Disciplinary Authority has imposed the penalty he thought fit, having regard to the culpability of the coddefaulters in the incident, and in the absence of any malafides which have been established, this is a matter exclusively within the jurisdiction of the competent authority.

19. Lastly, it has been contended that the appellate authority did not take into account the applicant's submissions, but the appellate order dated 21.5.91 makes it clear that all the

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submissions taken by him were considered and he was also given a personal hearing by the appellate authority. Hence this ground also fails.

20. Under the circumstance, none of the grounds urged by the applicant warrant our judicial interference in this matter. The OA fails and is dismissed. No costs.

(DR.A.VEDAVALLI)
MEMBER(J)

(S.R.ADIGE)
MEMBER(A)

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