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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 140/91

New Delhi this the 24th day of April, 1995.

Hon'ble Shri N.V. Krishnan, Vice Chairman.

Hon'ble Dr. A. Vedavalli, Member(J).

Rajbir Singh, Ex. Constable,
son of Shri Surat Singh,
R/o Village & Post Office Bhutani,
Distt. Jind (Haryana). . .Applicant.

By Advocate Shri Shanker Raju.

Versus

1. The Commissioner of Police,
Delhi, M.S.O. Building,
Police Headquarters,
New Delhi.
2. The Addl. Commissioner of Police,
(S&T) Delhi,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
3. The Deputy Commissioner of Police,
6th Battalion, D.A.P.,
Model Town,
New Delhi.
4. The Addl. Commissioner of Police,
(Security), M.S.O. Building,
Police Headquarters,
New Delhi. . . Respondents.

By Advocate Shri Surat Singh.

ORDER (ORAL)

Hon'ble Shri N.V. Krishnan, Vice Chairman(A).

The applicant was dismissed from service in disciplinary proceedings initiated against him for unauthorised absence for the period from 9.11.1987 to 8.2.1988. After inquiry, the disciplinary authority by Annexure A-1 order found that the applicant was an irresponsible and incorrigible type of police officer

(b)

and hence he was dismissed.

2. An appeal was preferred to the Additional Commissioner of Police (S&T), Delhi, the second respondent, (Annexure A-6). One of the grounds raised therein related to penalty. The appellate authority dismissed the appeal and confirmed the order passed by the disciplinary authority. The applicant has filed this O.A. to quash the impugned Annexures A-1 and A-2 orders.

2. The respondents have filed a reply denying the relief to the applicant and contending that the proceedings have been held properly.

3. When the matter came for hearing today, learned counsel for the applicant pressed only one ground for our consideration, namely, that the appellate authority has passed an order without considering the appeal made by the applicant in respect of the penalty and that, therefore, the matter should be remanded to that authority for reconsidering the quantum of penalty imposed on the applicant. He pointed out that, in the appeal at Annexure A-6, the applicant had contended that the penalty of dismissal from service could be awarded only for the gravest acts of misconduct and not for mere absence on sickness. The appeal further pointed out that the punishment awarded was contrary to Rules 8(a) and 10 of the Delhi Police (Punishment and Appeal) Rules, 1980. In the appeal, he also mentioned the case of Constable Harinder Singh and several others who were awarded lesser punishment for being absent for considerable long periods. The learned counsel draws our attention to the Annexure A-2 order of the appellate authority in which that authority too has made a reference to the plea of the applicant about the harshness of the punishment. Yet, in the entire order,

the appellate authority has not devoted even one sentence to the consideration of the grounds ~~given~~ relating to penalty. It is pointed out that it is only for the disciplinary authority or for the appellate authority to determine the quantum of penalty and as this Tribunal cannot interfere on the quantum of penalty even in the above circumstances, the matter has to be remitted to the appellate authority for reconsideration. 1994(27) ATC SC 149, State Bank of India and Anr. Vs. Samarendra Kishore Endow and Anr. is referred to in this connection.

4. The learned counsel for the respondents, however, contends that for the misconduct alleged against the applicant, he has been awarded a proper penalty. He, however, is unable to point out as to how the appellate authority has considered the specific ground raised by the applicant in his appeal relating to harshness of the penalty..

5. We are of the view that the learned counsel for the applicant is on strong grounds in his contention that the appellate authority has not considered the question of quantum of punishment in the light of grounds urged in the appeal, though he makes a reference to that plea of the applicant in his order.

6. In the circumstance, the impugned Annexure A-2 order of the appellate authority is quashed to the extent of its agreement with the punishment imposed by the disciplinary authority. The case is remanded back to the appellate authority to reconsider only the question of penalty in the light of the grounds given by the applicant in paras (d) and (f) (sic. e) of the Annexure A-6 appeal memo and observations made hereinabove and pass an appropriate speaking order in accordance with law, within a period of two months from

the date of receipt of this order.

7. O.A. is allowed to the extent indicated above.

No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
MEMBER(J)

N. V. Krishnan
24.6.95

(N. V. KRISHNAN)
VICE CHAIRMAN(A)

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