

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(21)

O.A. NO. 1668 of 1991

New Delhi this the 21st day of November, 1995.

HON'BLE SHRI N. V. KRISHNAN, ACTING CHAIRMAN
HON'BLE SHRI D. C. VERMA, MEMBER (J)

Constable Raghbir Singh,
No.552/SD Delhi Police,
C/O Mrs. Meera Chhibber,
243, Lawyers' Chambers,
Delhi High Court,
New Delhi.

... Applicant

(By Mrs. Avnish Ahlawat, Advocate)

-Versus-

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

2. The Addl. Commissioner of Police
(Southern Range), Delhi Police,
Police Hqrs., I.P.Estate,
New Delhi.

3. The Dy. Commissioner of Police
(South), Delhi Police,
Police Headquarters, I.P.Estate,
New Delhi. ... Respondents

(By Shri Anoop Bagai with Shri B. S. Oberoi, Advocates)

ORDER (ORAL)

Shri N. V. Krishnan, Acting Chairman :-

The applicant, a constable in the Delhi Police, is aggrieved by the penalty imposed upon him in disciplinary proceedings by the Annexure-L order dated 15.6.1990. The Deputy Commissioner of Police, South District, the 3rd respondent, imposed a penalty of withholding of future increments for next six years on the applicant as well as on SI Ram Dhari. A further order Annexure-P was passed on 13.8.1990 by the same authority regulating the period of suspension as period not spent on duty. The appeal filed in both cases has been dismissed by the

Annexure-S order dated 3.1.1991. The O.A. has been filed seeking to quash the impugned orders and to give the applicant all consequential benefits.

2. The respondents have filed a reply denying these claims.

3. When the matter came up for final hearing, the learned counsel for the applicant pointed out that the summary of allegations against the applicant at Annexure-G is to the effect that the applicant was given the summons issued by the Court to be served on three material prosecution witnesses, namely, Kamaljeet Singh, Bakshish Singh and Paramjeet Singh. They were witnesses in a case on the basis of which FIR No. 293 of 5.11.1984 under Sections 436, 326 and 34 I.P.C. was registered at the Police Station Badarpur. The case ended in an acquittal because these three prosecution witnesses were not produced in the court. It is in that connection a common summary of allegations was made against SI Ram Dhari who was the investigating officer of the above case and the applicant who was a constable. It is stated that though several opportunities were given by the court, these witnesses could not be produced. As a matter of fact, these witnesses were running their hotel in Badarpur at the same place under the name Swagat Restaurant. They were also running a Dhaba adjacent to it under the name Sher-e-Punjab. Both are located on the main G.T. Road near the Checkpost of the P.S. Badarpur. It is stated that they were residing at House No. C-18, Duggal Estate, Devli Road, Khanpur, Delhi, since June, 1985 and prior to that they were residing at House No. D-105, Fateh Nagar, Delhi. It is alleged that their present

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addresses could have been obtained by the constable. Hence, a serious view was taken of the acquittal due to non-service of summons resulting in non-production of witnesses and accordingly, for this act which is alleged to be an act of misconduct and remissness in the discharge of official duties, summary of allegations has been filed against both the persons including the applicant.

4. The learned counsel for the applicant submitted that prior to his posting in the P.S. Badarpur, the applicant was in 2nd Bn. DAP. According to her, the admitted facts are that in respect of these three witnesses, summons at the address D-105, Fateh Nagar, Delhi were issued by the court and these summons were sought to be served on the witnesses twice by the applicant's predecessor in office who also reported that the witnesses were not found at that address. Thereafter, again when the court issued summons to the three witnesses on the same address, those summons were handed over to the applicant to serve on the witnesses. He also went to that address. He was told by the landlord that the persons had changed their residence and hence, he returned the summons unserved. It is this act of non-service that has been held to be an act of gross misconduct and remissness in the discharge of duties.

5. As these are admitted facts, we wanted to know from the learned counsel whether either the summary of allegations at Annexure-G or the subsequent Annexure-I statement of charges, has brought home to the applicant the guilt of which he is charged. In particular, we wanted to know whether there is any

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allegation or imputation in these proceedings that if the applicant did not find the persons on whom the summons were to be served at the address indicated in the summons, he was duty bound, in terms of either standing instructions or in terms of provisions in the Police Manual, that he should have made further inquiries as to where those witnesses reside at present and after ascertaining this information, he was bound to serve the summons on such witnesses. In other words, the question posed to him was whether the applicant did not fully discharge his duty when he came back and reported that the witnesses were not found at the address given in the summons. The learned counsel sought time on the last occasion and today he submitted that he has not been able to locate any provision which imposes such an additional duty on a constable who is merely entrusted with the service of summons. That duty appears to be cast on the investigating officer in charge of the case. Indeed, that would be the reasonable arrangement in a Police Station because of hundreds of summons have to be issued from the Police Stations on the orders of the court. It would not be possible for service to be effected if the constables entrusted with service of the summons are also required to investigate the whereabouts of the persons on whom the summons have to be served if they are not found at the address given in the summons. Therefore, when such summons are returned and entered in the register which is normally maintained in the Police Station, it is for the investigating officer to see what further action should be taken.

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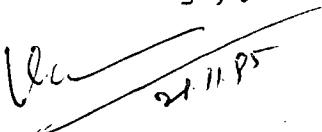
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6. In this view of the matter, we find that the imputation made against the applicant in the summary of allegations does not amount to an act of misconduct and, therefore, he was not liable to be proceeded against in the disciplinary proceedings. In the circumstances, the impugned orders of the disciplinary authority imposing the penalty and the orders of the appellate authority upholding the penalty are both quashed.

7. So far as the period of suspension is concerned, a new situation is created in terms of this order and, therefore, we quash the impugned annexure-P dated 13.8.1990 order of the disciplinary authority by which he has passed certain orders regulating the period of suspension. Consequently, the appellate order in this regard also stands quashed. The question as to how the period of suspension is to be regulated, in this view of the matter, is remitted to the disciplinary authority who shall render a decision within two months from the date of receipt of this order. The applicant shall be entitled to all the consequential benefits flowing from this order.

8. The O.A. is disposed of accordingly. No costs.


(D. C. Verma)
Member (J)


(N. V. Krishnan)
Acting Chairman

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