

Central Administrative Tribunal
Principal Bench.

O.A. 1702/91

New Delhi this the ⁸ th day of November, 1996.

(15)

Hon'ble Shri S.R. Adige, Member(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri Sahansar Pal Singh,
S/o Shri Ratan Pal Singh,
R/o C-91, Minto Road Complex,
New Delhi.

..Applicant.

By Advocate Shri J.P.S. Sirohi.

Versus

1. The Commissioner of Police, Delhi,
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.
2. The Additional Commissioner of Police,
Armed Police, Delhi,
Police Headquarters MSO Building,
I.P. Estate,
New Delhi.
3. The Deputy Commissioner of Police,
Vth Battalion,
DAP Lines, K.W. Camp,
Delhi.
4. The Lt. Governor of Delhi,
Delhi. ..Respondents.

By Advocate Shri Surat Singh.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order imposing on him the penalty of 'Censure' dated 12.3.1990 passed by the respondents. The appeal preferred by the applicant as well as the subsequent revision petition as also the Memorial were all rejected by the competent authorities. In his Confidential Report for the period from 5.9.1989 to 31.3.1990, adverse remarks were entered on the basis of the aforesaid proceedings and censure

order. Being aggrieved by these orders, he has filed this application to quash the penalty order of censure and the adverse remarks recorded in his Confidential Report. According to the applicant, the penalty order is arbitrary, illegal, mala fide and unconstitutional.

2. The respondents had nominated the applicant to attend the 45th Advance Intensive Course on Scientific Investigation to be held at Chandigarh from 29.12.1989 to 30.1.1990. The applicant has submitted that since he was undergoing medical treatment, he was not able to attend the course to which he was issued a show cause notice as to why the penalty of censure should not be imposed on him. He has submitted that the allegation levelled against him that he is disobedient is improper and illegal. He has also referred to the instructions that he has to be physically fit to undergo the course and to the medical certificate issued on 6.12.1989. In this certificate, it is mentioned that he is fit to join his duties on 7.12.1989 and that he may also be allowed to attend the R.M.L. Hospital on that date for certain investigations. In the medical certificate issued on 6.1.1990, the Doctor has stated that he has examined him on 5.1.1990 and also his records from R.M.L. Hospital. In this certificate, it is mentioned

that he has been advised by the Surgeon of RML Hospital to avoid strenuous exercise, but his general physical condition does not indicate that he is not fit to perform Government duty. The learned counsel for the applicant has submitted that because of the applicant's illness, he could not have attended the course at Chandigarh between 29.12.1989 and 30.1.1990.

3. The respondents have filed a reply and Shri Surat Singh, learned counsel for the respondents, has also been heard. The respondents have submitted that the competent authority has imposed the penalty of censure only after issuing a show cause notice and after hearing the applicant personally on 2.2.1990. The appellate authority had also carefully considered the submissions made by the applicant. They have denied that the penalty order is either arbitrary or illegal but the same has been imposed by the competent authority after complying with the principles of natural justice and rules.

4. We note from the records that the applicant had been nominated for undergoing the 45th Advance Intensive Course on Scientific Investigation which, *prima facie*, did not include any strenuous physical training or exercise, which fact has been recorded by the competent authority in the show cause notice and in the impugned order. Besides, from the perusal of the aforesaid medical opinions enclosed by the applicant himself, it is seen that he has been declared fit to join duties w.e.f. 7.12.1989 and further that the Doctor has also indicated that his general physical condition is such that he is fit to perform

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Government duties. In the circumstances, the competent authority has come to the conclusion that the applicant had on flimsy grounds and without approval of the competent authority declined to attend the 45th Advance Intensive Course. Before passing the penalty order of censure, the competent authority has also issued a show cause notice to which the applicant has filed a representation. In the show cause notice issued to the applicant dated 9.1.1990, the respondents had also indicated to the applicant as to why the above facts of his health, unwillingness to undergo the training course, disobedience of orders should not be mentioned in his C.R. for which he had represented to the competent authority. The competent authority, after considering all the facts and circumstances of the case, has ultimately rejected the applicant's representation. Here again, we find that on the facts, therefore, the competent authority has taken the decision in accordance with the rules and after fully complying with the principles of natural justice.

5. The Supreme Court in a catena of judgements (see for example **Union of India Vs. Parma Nanda** (AIR 1989 SC 1185) and **State of Tamil Nadu & Anr. Vs. S. Subramaniam** (JT 1996(2) SC 114)) have held that the Tribunal cannot interfere with the penalty if the conclusion of the competent authority is based on evidence or unless it is arbitrary or perverse. In **Union of India Vs. Parma Nanda (Supra)**, it was held that if there has been an enquiry

consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority.

In the other case, namely, **State of Tamil Nadu & Anr. Vs. S. Subramaniam (Supra)**, the Supreme Court held:

"...In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in view of the court or tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would come to its own conclusion on the proof of the charge..."

6. In the facts and circumstances of the case and having regard to the aforesaid judgements of the Supreme Court, we do not find any justifiable ground to interfere in the matter of the penalty imposed on the applicant or for expunging the adverse remarks. In the result, this application fails and it is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Adige
(S.R. Adige)
Member (A)