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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No. 1779/91

New Delhi: this the 18th April, 1996.

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

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

Rohtash Kanwar s/o Shri Mangali Ram,
R/o C/o Sh.Hukam Chand r/o Village
Mungashpur, Delhi-39Applicant.
Applicant in person.

Versus

1. Commissioner of Police Delhi,
Delhi Police Headquarters,
MSO Building, IP Estate,
New Delhi.
2. Addl. Commissioner of Police,
Northern Range, New Delhi.
Delhi Police.
3. Addl. Deputy Commissioner of Police,
Central District, near P.S.Darya Ganj,
Delhi.Respondents.

By Advocate Shri S.K.Gupta proxy for Shri B.S.
Gupta for the respondents.

JUDGMENT

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

In this application, Shri Rohtash Kanwar, Constable Delhi Police has impugned the order dated 1.7.85 placing him under suspension (Annexure-A); the order dated 19.11.85 initiating a D.E. against him (Annexure-B); the orders dated 3.9.86 and corrigendum dated 6.2.89 (Annexures E and F) forfeiting 3 years approved service permanently and treating the suspension period as not spent on duty; the order dated 3.11.89 cancelling the increments already granted without affording the applicant an opportunity (Annexure-G); the order dated 3.7.90 rejecting his appeal (Annexure-J); and the order dated 27.11.90 rejecting his revision petition (Annexure-K).

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2. Shortly stated, the applicant was proceeded against departmentally on the charge (Annexure-D) that he and Constable Avtar Singh while posted at P.S. Rajinder Nagar on 30.6.85^{were} escorting 2 accused persons Munshi Ram and Kalu from P.S. Rajinder Nagar to Tis Hazari Courts Delhi as the two were involved in criminal cases. As soon as they reached the Courts and were standing outside the Court of the Duty Magistrate, accused Munshi Ram managed to escape from the lawful custody of the applicant and Constable Avtar Singh allegedly through their negligence.

3. The applicant was suspended w.e.f. 1.7.85 (Annexure-A) and a D.E. was ordered. The Enquiry Officer in his report dated 30.6.86 held the charge against the applicant proved. Tentatively accepting those findings the Disciplinary Authority issued notice to the applicant to show cause why he should not be dismissed from service. The applicant's reply was thereafter considered upon which the Disciplinary Authority by impugned order dated 3.9.86 (Annexure-E) inflicted the lighter penalty of forfeiture of 3 years approved service permanently entailing reduction in the applicant's pay for Rs.255/- p.m. to Rs.240/- p.m. with effect from the date of issue of the order and while vacating the suspension, further directed that the suspension period be treated as not spent on duty. His appeal was rejected as being time barred by impugned orders dated 31.5.90 (Annexure-H) and also orders dated 31.7.90 (Annexure-J), and

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his revision petition was also rejected as being time barred vide impugned order dated 27.11.90 (Annexure-K), against which the applicant has filed this OA.

4. We have heard the applicant who argued his case in person, and Shri S.K.Gupta for the respondents. We have also perused the materials on record.

5. The main ground taken by the applicant is that sufficient number of staff were not provided to the escort party. We note that it has come out in the Enquiry Officer's report that as per Standing Order No.52, three Constables were required to be sent for escort duty with two persons, but in the instant case, the two accused persons were accompanied by only two constables, including the applicant. It appears that on that day there was heavy rush outside the court-room and while Constable Avtar Singh had gone inside the court-room to hand over the papers (Missal) to the Naib Court, accused Munshi Ram, who had already a history of escaping twice from police custody, managed to escape from the applicant's custody. It has also come out in the findings that on hearing that accused Munshi Ram had escaped, Constable Avtar Singh immediately came out of the court-room and ran hither and thither in search of the accused.

6. The Enquiry Officer in his report has dismissed the applicant's plea that the escape of accused Munshi Ram was due to lesser number of escort party, as an afterthought and has stated that the constable should have pointed out this omission

at the time of accepting the accused from the Duty Officer for escorting them to Tis Hazari Court on 30.6.85. He has also stated that it is for this reason that the two accused persons were properly handcuffed before being despatched to Tis Hazari Courts.

7. While the applicant should no doubt have brought the violation of Standing Order No. 52 to the notice of the concerned Duty Officer at the time of accepting custody of the accused persons, there is no doubt that the escort party was undermanned and Standing Order 52 had been violated. There is also no material to indicate that the applicant had advance knowledge that there could be heavy rush outside the court-room that day which was taken advantage of by the accused Munshi Ram to escape.

8. In this connection, during hearing the applicant brought to our notice the case of Constable Siri Kishan No. 1610/C who was proceeded against departmentally, because of the escape of accused Babu Rao from his custody on 16.12.87. The Disciplinary Authority in his order dated 12.9.88, which was shown to us accepted the plea of defaulter Constable Siri Kishan that as sufficient staff was not provided to the escort party, the provisions of Standing Order 52 had not been complied with, and it would be unjust to inflict any punishment on Constable Siri Kishan. Accordingly the show cause notice to him against award of punishment of forfeiture of 2 years service permanent

and treating his suspension period as not spent on duty was vacated and he was let off with only a verbal warning to be more careful in future.

9. It is not known whether the revisionary authority was aware of this case.

10. We also note that the applicant's appeal and revision petitions challenging the punishment dated 3.9.86 have been rejected not on merits, but on grounds of being time barred.

11. We are well aware that the Hon'ble Supreme Court in UOI Vs. Parmananda AIR 1959 SC 1185 has unequivocally stated that the jurisdiction of the Tribunal to interfere with disciplinary matters or punishment cannot be equated with an appellate's jurisdiction, and 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. Under the circumstance, having regard to the Hon'ble Supreme Court's ruling in Parmananda's case (Supra), without ourselves interfering with the penalty order in any manner, we hold that the applicant is entitled to have his revision petition considered and disposed of on merits and not dismissed merely on the grounds of being time barred.

12. Under the circumstances, we dispose of this OA by remanding the case to the revisionary authority (Commissioner of Police, Delhi) with a direction to condone the delay in the filing of the revision petition by the applicant, and consider and dispose

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of that revision petition on merits in accordance with law by a detailed, speaking and reasoned order, within 4 months from the date of receipt of a copy of this judgment, after giving the applicant a reasonable opportunity of being heard in person. No costs.

A. Veda Valli

(DR.A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S.R. ADIGE)
MEMBER (A).

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