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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.2003/1991

New Delhi, this the 22nd day of August, 1994

HON'BLE SRI A.V. HARIDASAN, MEMBER (J)

HON'BLE SRI B.K. SINGH, MEMBER (A)

Sri Kuldip Singh
Ex. Constable No.659/SW
S/o Sri Rattan Singh
Village & PO Sohti
Sonapat Dist, Haryana

(By Sri J.P. Verghese, Advocate .. Applicant)

V/s

1. Delhi Administration through its
Chief Secretary, Old Secretariat,
Delhi.

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

(By Sri M.K. Giri, Advocate .. Respondents)

ORDER (GRAL)

HON'BLE SRI A.V. HARIDASAN, MEMBER (JUDICIAL)

This application is directed against the order dt.29-6-90 of the Addl. Dy. Commissioner of Police dismissing the applicant from service, The order dt.31-10-90 of the Appellate Authority i.e. Addl. Commissioner of Police rejecting his appeal and the order dt.15-5-91 of the Addl. Commissioner of Police refusing to interfere in the matter.

2. The applicant while working as Constable under the Delhi Police in R.K.Puram Police Station

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was proceeded against departmentally on the allegation that while posted as Police Constable in R.K.Puram Police Station on 7/8-8-89 he did not turn up for duty at 12.00 midnight as detailed, that he was marked absent, that at about 3.00 a.m. he turned up in a drunken state and started shouting and misbehaving abusing the duty officer, refusing to mark his entry in the daily diary and to proceed for night patrolling, that as his behaviour of shouting continued causing inconvenience to the residents nearby; as attempts by the S.I., Sri Dalel Singh, Constable Thankappan and Ct. Chander Kumar to pacify him failed he had to be arrested U/s 92/93/97 of Delhi Police Act by S.I., Sri Dalel Singh and that as on medical examination he was found to have consumed alcohol and was under the influence thereof, he was found to have committed grave misconduct, and carelessness in discharge of duties which rendered him liable for departmental action U/R 21 of the Delhi Police Act. An enquiry was held in which witnesses in support of the charge and also in defence were examined. The Enquiry Authority returned a finding of guilt. The Disciplinary Authority on an assessment of the evidence recorded at the enquiry reached the conclusion that the applicant was guilty of that charge and imposed on him the penalty of dismissal from service by the impugned order at Annexure-1. Aggrieved by this order the applicant submitted an appeal to the Additional Commissioner of Police who by impugned order (Annexure-2) rejected the appeal. The Review petition submitted by the applicant to the Additional Commissioner of Police met with the same

fate. It is under these circumstances assailed these orders that the applicant had filed this application. It is alleged by the applicant that ^{the} finding of the Disciplinary Authority that he is guilty is perverse and that provisions of Art. 311 of the Constitution has been violated as the principles of natural justice have not been complied with in holding the enquiry.

3. The respondents in their reply contended that the applicant has been awarded the punishment which he deserved only after finding him guilty in an enquiry conducted in accordance with the rules. In rejoinder, the applicant reiterated the contentions stated in the application.

4. We have perused the records and heard the arguments of the counsel for both the parties. Sri Verghese, the learned counsel for the applicant pressed only two points. One that in accordance with the provisions contained u/r 16 (xii)(c) of the Delhi Police (Punishment and Appeal) Rules, 1980, the Disciplinary Authority should have issued a show cause notice to the applicant before inflicting a major penalty on him. Two, the additional Dy. Commissioner of Police who passed the impugned order of punishment (Annexure-A1) being subordinate in rank to his appointing authority, the Commandant that the impugned order being violative of the provision contained in Art.311 of the Constitution is unsustainable.

5. Regarding the arguments based on Rule 16(xii)(c) of the Delhi Police (Punishment and Appeal) Rules, 1980, it has only to be mentioned and rejected because the rules have undergone a change by amendment in the year 1986 notified on 4-9-1986. The Sub-rule 16(xii)(c) has

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been substituted by a new provision which reads as follows:

" If the disciplinary authority, having regards to its findings on all or any of the charges and on the basis of the evidence adduced during the enquiry is of the opinion that any of the penalties specified in rule 5(i to vii) should be imposed on the police officer, it shall make an order imposing such penalty and it shall not be necessary to give the police officer any opportunity of making representation on the penalty proposed to be imposed."

The arguments of the learned counsel for the applicant that before imposing the penalty of dismissal from service the Disciplinary Authority was bound to issued a notice therefore is untenable. Coming to the next argument, first of all this question has not been raised in the O.A. Whether the authority who issued the impugned order of dismissal is subordinate to the appointing authority or not is as a matter of fact subordinate to the authority who appointed the applicant or not is a question of fact. Unless the question of fact is pleaded and established, it is not permissible to argue this point. The learned counsel for the applicant invited our attention to the ground (vii) at page 13 of the O.A. which reads as follows:

" Because the impugned order passed by the respondents is illegal, violative of Art.311, 14 and 16 of the Constitution of India as well as the principles of natural justice. "


and argued that it can be seen from the above ground that a ground has been taken by the applicant that the impugned order violates the provisions of Art.311


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of the Constitution which includes the incompetence of Disciplinary Authority to pass the impugned order of penalty. We are not able to ^{persuade} ourselves agree with this argument because scanning through the entire pleadings in this case we could not find an allegation that the applicant was appointed by an authority who is superior in rank to Addl. Dy. Commissioner of Police who passed the order of dismissal of the applicant from service. ^{Whether} the Disciplinary Authority is subordinate in rank to the authority who has appointed the applicant, ^{or not} being a question of fact, as observed by us ~~supra~~ without that being raised the question of law whether the order is violated or not does not really arise for our consideration. However, having raised this point at the time of argument, we have also considered the merits of the contention. The applicant has produced a copy of an order dt. 18-9-74 which would show that his appointment was certified by Commandant, Delhi Armed Police. We are not shown any rule, ^{-tion} instruction or schedule which would show that the Addl. Dy. Commissioner of Police is subordinate in rank to a Commandant of a Delhi Armed Police. The learned counsel for the applicant in this regard invited our attention to a copy of the judgement of the Principal Bench of the Tribunal in O.A.No. 1567/91. That was a case in which the applicant therein who joined Delhi Police as Constable on 6-7-66 as appointed by a Commandant was dismissed from service by Addl. Dy. Commissioner of Police. Adverting to the various contentions raised by the parties thereto the Bench held that the Addl. Dy. Commissioner of Police who issued the order of dismissal being subordinate in rank to the Commandant who appointed the applicant

therein the order was unsustainable in law. We do not have ^{the} details as to what was the position of a Commandant in 1966 and whether an Addl.D.C.P. is equal or superior in rank to a Commandant now. As it stands we have nothing reliable to hold that the Addl. Dy. Commissioner of Police is subordinate to a Commandant. A Commandant of Police is equated to a Superintendent of Police and an Addl.D.C.P. is equated to an Additional Superintendent of Police, ~~Additional~~ Superintendent of Police is not a subordinate to the Superintendent of Police. Therefore, we do not agree with the arguments that the Addl.D.C.P. who issued the order of the applicant's removal from service is inferior in rank to the Commandant who appointed the applicant and for that reason the impugned order is invalid.

6. In the light of what is discussed above, finding no merit in this application we dismiss the application leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)


(A.V. Haridasan)
Member (J)

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