

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

Q. A. NO. 2747/91

New Delhi this the 14th day of July, 1994

CORAM :

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)  
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Zile Ram, Ex. Constable No. 1086/N  
7709/DAP S/O Shri Sukh Ram,  
R/O Village & P.O. Tehtara,  
P.S. Rajgarh, Alwar,  
Rajasthan.

... Applicant

By Advocate Shri J. P. Verghese

Versus

1. Delhi Administration through  
its Chief Secretary,  
Old Secretariat, Delhi.
2. The Commissioner of Police,  
Delhi Police, PHQ,  
I.P. Estate,  
New Delhi - 110002.
3. Shri Didar Singh, SHO,  
Sadar Bazar Police Station,  
New Delhi.

... Respondents

None for the Respondents

O R D E R (CRAL)

Shri J. P. Sharma, Member (J) :-

The applicant was a Constable in the Delhi Police who has faced a departmental inquiry under Section 21 of the Delhi Police Act, 1978 read with Delhi Police (Punishment & Appeal) Rules, 1980, along with one SI Kamal Prasad. Ultimately, the disciplinary authority agreeing with the findings of the inquiry officer by the impugned order dated 12.4.1990 imposed the punishment of dismissal from service with immediate effect on the applicant. The applicant preferred an

11

- 2 -

appeal against the aforesaid order of punishment with the Additional Commissioner and by the order dated 30.8.1990, the appeal was dismissed upholding the order of the disciplinary authority of dismissal from service. The applicant has filed this application in November, 1991 praying for quashing of the aforesaid orders and also that Rules 15 and 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 are violative of Article 311 of the Constitution and be declared as such. He has also claimed reinstatement in service with all consequential benefits. The respondents contested this application and filed a reply through their counsel Shri T. S. Kapoor. However, from the side of the respondents none appears and Ms. Veena Kalra appears and stated that Ms. Geeta Luthra, Advocate, who appeared on some earlier occasion for the respondents is no more representing the respondents being no more on the panel prepared by the Delhi Administration. In any case, since the matter is an old one and further there is already a decision in O.A. 1891/90 filed by SI Kamal Prasad against Delhi Administration & Ors. aggrieved by the same order of dismissal from service of the same date in the joint departmental inquiry held along with the present applicant, decided by this Tribunal on 5.3.1993, quashing the aforesaid order of punishment against Shri Kamal Prasad. The order passed by the appellate authority on the appeal of Shri Kamal Prasad though of different date, i.e., 7.8.1990, has also been quashed. The Bench quashed the orders of

Je

punishment and remanded the matter again to the disciplinary authority and with a specific direction that after reinstating the applicant Shri Kamal Prasad, the disciplinary proceedings be continued afresh in the light of the observations made in the body of the judgment. In view of this fact, the learned counsel for the applicant prays that the present case is on all ~~points~~ covered by the judgment of the case of Kamal Prasad (supra) and he, therefore, would like that in the interest of justice and that justice should not only be done but should seem to be done, the same order be passed in the present case also. We also feel that when a decision has been arrived at judicially regarding an order which also affected another non-applicant of a case and subsequently if the other person aggrieved comes as an applicant in another proceedings, then a different view cannot be taken than so taken in the case of the earlier applicant. It is also on the basis of the fact that if any person has been exonerated who was jointly tried, then second such person cannot be held to be guilty as otherwise the matter will be against judicial propriety. Since the judgment in the case of Kamal Prasad (supra) is by a coordinate Bench and in the circumstances of the case on the conclusions arrived at and the reasons given therein, we are not differing and nor adding anything further. So in the interest of justice and equity, we are following the ratio laid down in the decision of SI Kamal Prasad (supra).

↓

2. The learned counsel for the applicant has given statement at the Bar that he wants the case of the present applicant to be disposed of also on the same pattern and on the same basis as the case of the co-delinquent, SI Kamal Prasad who was jointly tried with the applicant in a departmental inquiry and that since the case of Kamal Prasad was remanded to the disciplinary authority, the case of the present applicant be also remanded to the disciplinary authority. In the case of Kamal Prasad (supra) the vires of Rules 15 and 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 had not been pressed and the same is also not being pressed in the present case. So the relief claimed in this regard in the present application is disallowed to that extent.

3. The application, therefore, is disposed of in the conspectus of the facts and circumstances with the following directions :-

(a) The order of punishment imposed on the applicant by the impugned order dated 12.4.1990 and the appellate order dated 30.8.1990 are quashed and set aside. As a consequence the applicant shall be reinstated in service but without any backwages, within a period of one month from the date of this order or receipt of a copy of the same by the respondents.

(b) The respondents shall re-commence the disciplinary proceedings against the applicant either jointly with Kamal Prasad or separately

↓  
ce

in consonance with the observations made in the judgment in OA-1891/90 of Kamal Prasad.

- (c) The respondents after completing the disciplinary proceedings against the applicant as said above in para (b) will pass a final order and if the applicant is still aggrieved he shall be at liberty to assail the same according to law.
- (d) The respondents shall pass an order regarding the wages for the period the applicant had been dismissed from service till the period the applicant is reinstated by virtue of this order after the enquiry proceedings are finally disposed of by an order.

4. While the judgment was being dictated in the open court on the date of hearing, i.e., 7th July, 1994, one of us made the observation whether the respondents should be summoned to be heard or not before the case was finally disposed of, and we reserved the case for judgment. After consultation we agree that it is not necessary to procure the attendance of the respondents or their counsel as they had intimation of the date fixed of today and absented themselves from hearing.

5. In the circumstances, parties are directed to bear their own costs.

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

*J. P. Sharma*  
( J. P. Sharma )  
Member (J)

/as/