

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI



OA No.421/91

New Delhi this the 20th day of November 1995.

Hon'ble Shri N.V.Krishnan, Acting Chairman
Hon'ble Shri D.C.Verma, Member (J)

Constable Vijay Singh
No.2321/S.D., R/o C-26, U.K.High Commission
Chanakyapuri
New Delhi.

...Applicant

(By Advocate: Shri Shankar Raju)

Vs.

1. Delhi Administration through
its Chief Secretary
Old Secretariat
Rajpura Road
Delhi.

2. The Commissioner of Police
Police Headquarters, Delhi
Police, I.P.Estate
New Delhi-110 002.

...Respondents.

(By Advocate: Shri Vijay Pandita)

O R D E R (Oral)

Hon'ble Shri N.V.Krishnan, Acting Chairman

The applicant was a constable under the Delhi Police. A disciplinary proceeding was initiated against him on the basis of a summary of allegations, namely, that the applicant had married a second time while his first wife was alive. There are also allegations of ill-treatment of his first wife etc. An enquiry officer was appointed who found the charges against the applicant true. Accordingly, the Disciplinary Authority passed Annexure A-1 order dated 19.12.89. The Disciplinary Authority found that the charge of re-marriage with the girl Kailashi against the applicant remains unshaken while he already had married Shakuntala before joining the Delhi Police. He intentionally concealed this fact from the Department. In the circumstances, the following orders were passed by the Disciplinary Authority:

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"The defaulter constable has violated rules 21(2) of CCS (Conduct) Rules - 1994 and had remarried while his first wife was alive and not divorced. For this gross misconduct, Ct. Vijay Singh 2161/SD/(926/SD) is hereby dismissed from service from the date of issue of this order."

2. An appeal was filed to The Additional Commissioner of Police. That appeal was also dismissed.

3. These orders have been impugned by the applicant. He, therefore, seeks the following directions:

(i) Set aside the impugned order of dismissal dated 19th Dec. 1989 and the order in appeal dated 16.3.90.

(ii) Declare Rule 15 & 16 as illegal, void and ultra vires to Section 20 of the Delhi Police Act and also violative of Article 14 & 16 of the Constitution of India;

(iii) Direct the respondents to reinstate the petitioner with immediate effect and grant him all the consequential benefits.

4. The respondents have filed their reply denying reliefs to the applicant on the contention that he has rightly been dismissed from service.

5. When the matter came up for final hearing today, learned counsel of the applicant submitted that an important legal issue is involved and that without going

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into the merits of the other grounds raised by him, it is possible to dispose of this OA on this ground. He points out that Rule 8 of the Delhi Police (Punishment & Appeal) Rules 1980 outlines the principles for inflicting penalties. Clause (a) refers to dismissal and removal and states that this penalty shall be awarded for an act of grave misconduct rendering a police official unfit for police service. Hence the disciplinary authority should give a specific finding to this effect. The learned counsel draws our attention to an order of a Bench of this Tribunal dated 23 Sept. 1994 in OA 802/90 Dalip Singh Vs. Lt. Governor of Delhi, to which one of us (Shri N.V.Krishnan) was a party, wherein such a contention was upheld.

6. We have seen that judgement. It is pointed out therein that Section 21(1) of the Delhi Police Act states that the penalties mentioned therein, including dismissal/removal from service, should be awarded subject to the provision of Article 311 of the Constitution as also the rules framed thereunder. Accordingly, when Rule 8 (a) states that dismissal/removal as a penalty can be imposed for an act of grave misconduct, that would be binding on the Disciplinary Authority and the Disciplinary Authority has to give specific finding in this regard. It is not that the very words "act of grave misconduct" has to be used but there should be indication in the order that there has been application of mind to the quantum of penalty to be imposed. There should also be a finding that the act of misconduct made the delinquent unfit for retention in service. In that view of the matter, a direction had been given therein to

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reinstate the applicant and the Disciplinary Authority was directed to pass a fresh order of penalty other than removal or dismissal.

7. He points out that subsequently the matter was taken in an SLP before the Hon'ble Supreme Court by the respondents and on the basis of directions given by the Supreme Court, a fresh order dated 19.9.95 was passed. A copy of the order has been placed for our perusal. It is stated therein as follows:

"Against the punishment awarded to HC Dalip Singh, No.11056/DAP he filed an OA No.802/90 in the Hon'ble CAT, Principal Bench, Delhi and the same has been announced on 23.9.94 with the directions that the order of dismissal may be quashed and the HC may be reinstated in service and passed fresh order of penalty other than dismissal/removal in accordance with law.

Against the order of Hon'ble CAT passed on 23.9.94 an SLP has been filed in the Hon'ble Supreme Court on 15.2.95 and the same has been disposed of on 12.5.95 with the directions to implement the judgement dated 23.9.94 of Hon'ble CAT and pass fresh orders. "

8. He, therefore, requests that in the present case also, same order may be passed.

9. Learned counsel of the respondents states that in view of the orders passed by the Hon'ble Supreme Court in the SLP, the present OA may also be considered for disposal on the same lines.

10. In the case of Dalip Singh, the charge against him was prolonged absence from duty. The Bench felt that in the circumstances of that case, it would be appropriate to direct the respondents to pass an order of penalty other than dismissal/removal. In the present case, the charge relates to contracting a second marriage while the first marriage was still subsisting. The issue involved here is contracting a second marriage. It is

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not for us to make up our mind as to what appropriate penalty should be imposed. We find that it would be more appropriate to issue a suitable direction to the Disciplinary Authority. In the circumstances, without going into the merit of any of the other grounds that have been raised to challenge the impugned orders, we dispose of this application as follows:

(i) We quash the order of the Disciplinary Authority in so far as it imposes the penalty of dismissal and direct that authority to reconsider the quantum of penalty that should be imposed keeping in view the provisions of law and the observations made by us as above. In the circumstances, the Appellate Authority's orders will necessarily have to be quashed.

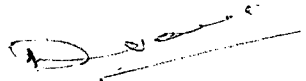
(ii) The Disciplinary Authority is not before us as he is not a party. We, therefore, direct the second respondent i.e. the Commissioner of Police - to issue suitable directions to the Disciplinary Authority to pass a final order in the case within 3 months from the date of receipt by him of a copy of this order from the second respondent. We make it clear that in case the applicant is aggrieved by the penalty imposed afresh on him by the Disciplinary Authority, it is open to him to seek remedy

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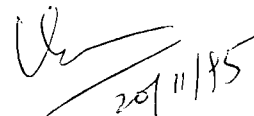
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according to law. Consequently the applicant is directed to be reinstated within one month from the date of receipt of this order. The Disciplinary Authority shall pass an order as to how the period from the date of dismissal to reinstatement shall be treated in accordance with law.


(D.C.Verma)

Member (J)


(N.V.Krishnan)

Acting Chairman