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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2063/2004
Miscellaneous Application No.1082/2005

New Delhi, this the 29th day of June, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)

Sh. R.S.Tomar
S/o Shri Mohar Singh Tomar
R/o F-2, Chankapuri Fire Station
New Delhi.
Presently working as Sub Officer
Narela Fire Station
Delhi Fire Service
Narela, Delhi.

... Applicant

(By Advocate: Sh. S.K.Gupta)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary
Delhi Secretariat
Players Building, I.P. Estate
New Delhi - 110 002.
2. Principal Secretary (Home)
Govt. of NCT of Delhi
Delhi Secretariat
Players Building, I.P. Estate
New Delhi - 110 002.
3. Chief Fire Officer
Delhi Fire Service Headquarters
Connaught Circus
New Delhi - 110 001.
4. Shri M.N. Mathur
Inquiry Officer
Through Chief Fire Officer

5. Shri Kanwar Singh
Station Officer
M.S. Cell
Delhi Fire Service Headquarters
Connaught Circus
New Delhi.

.. Respondents

**(By Advocate: Sh. Om Prakash for Respondent Nos.1 to 4 and
Sh. Arun Bhardwaj for Respondent No.5)**

ORDER

By Mr. Justice V.S. Aggarwal:

Applicant (R.S. Tomar), by virtue of the present application, seeks setting aside of Memorandum of 17.10.2001, inquiry report of 10.9.2003 and order of 3.12.2003 with consequential benefits. It is also prayed that Respondents No.1 and 2 should be directed to reconsider the matter for initiating the suitable disciplinary action against Respondent No.5 who had tried to hush up the crime.

2. The relevant facts alleged by the applicant are that when he was posted as Sub Officer at Shankar Road Fire Station, one subordinate of the applicant, i.e., Suresh Chand, Leading Fireman consumed the alcohol while on duty. He started abusing and threatening the applicant in the night at 10.30 P.M. Immediately, the applicant informed Respondent No.5, who was his immediate superior, i.e., Station Officer of Shankar Road Fire Station. The applicant informed him that Suresh Chand has consumed the alcohol.

3. Respondent No.5 told the applicant to wait till morning and in this process tried to hush up the crime as by that time the



misconduct of consumption of alcohol would not be proved. Thereupon the applicant contacted Sh. A.S.Bhatia, ADO, who directed the applicant to contact Respondent No.5. At that time, it is claimed that Suresh Chand was abusing the applicant and was bent upon in man-handling him. The applicant, in these circumstances, had no option but to call the police.

4. ASI Sansar Singh is alleged to have come to the spot. He arrested the Suresh Chand under Section 93/97 of Delhi Police Act and later on released him on bail. A preliminary inquiry was conducted by the ADO. A memorandum of charge sheet was issued to the applicant. The applicant had denied the charges and thereupon inquiry was conducted. The applicant had submitted the representation. It is claimed that due procedure was not followed and the inquiry officer in his report mentioned that the applicant had informed Respondent No.5 and further that medical authorities of Lady Harding Medical College, after examining of Sh. Suresh Chand, were of the opinion that he has consumed the alcohol. Provisions of Section 15 of CCS (CCA) Rules were ignored while conducting the inquiry. On 05.01.2004, the applicant had submitted the appeal against the penalty of stoppage of one increment without cumulative effect. It is contended that the appeal has not been decided within six months. Hence, the present OA, with the reliefs referred to above, was filed.

5. The operative part of the order dated 03.12.2003 reads:

"The matter was inquired by inquiry officer who has submitted his report. I have perused inquiry report, statement of witnesses, medical

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report and other relevant documents pertaining to the matter. Keeping in view the circumstances of the case, I am of the considered view that both the officials are guilty. I, therefore, in exercise of powers conferred under Rule 15 read with Rule 12 of CCS (CCA) Rules 1965 imposed penalty of stoppage of one increment without future effect upon Shri R.S. Tomar and Stoppage of Three increments with future effect upon LF-663, Shri Suresh Chand."

6. The application is being contested.

7. Respondent No.3 in its reply pointed that inquiry had been conducted and appeal filed by the applicant was decided on 13.1.2004. The matter was remanded to the Delhi Fire Service to adopt proper procedure. Further more, Respondent No.3 had pointed that the order imposing penalty had since been withdrawn. The applicant preferred an MA No.1082/2005 requesting that Respondent No.3 should remain present in person during the hearing. This has been done to frustrate the Original Application and to over reach this Tribunal, particularly when the OA was pending.

8. We have heard the parties' counsel and have seen the relevant record.

9. So far as MA 1082/2005 is concerned, it reveals that after withdrawing the order, a fresh notice to show cause has been issued on 21.10.2004.

10. It was argued that once the order had been withdrawn unconditionally, the said notice to show cause could not be served.

11. At this stage, we do not intend to express any opinion in this regard. The show cause notice of 21.10.2004 is not the



subject matter of controversy in the OA. The Original Application has not been amended. Therefore, we deem it unnecessary to express any further opinion in this regard which may be embarrassing for either party.

12. In the OA, as already pointed above, the applicant seeks quashing of the order of 3.12.2003. Admittedly, the same has been withdrawn. Therefore, no further discussion on that count is called for.

13. As regards quashing of the memorandum of 17.10.2001 and the inquiry report is concerned, since the same had not been challenged at the appropriate time, it would only be appropriate to take the same into consideration after the subsequent developments, to which we have referred to in the preceding paragraphs, are decided.

14. As regards taking disciplinary proceedings against Respondent No.5 also, since it is not public interest litigation, and relief has been granted, at this stage propriety demands that this Tribunal should not express any further opinion in this regard.

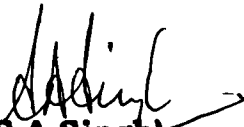
15. In all fairness, it must be stated that during the course of submissions, certain aspects of the matter were pointed. It included, certain mistakes that had appeared in the orders that have been passed. It was alleged that no due care and caution has been taken. But keeping in view the totality of the facts and circumstances that original order has since been withdrawn, we do not intend to say anything further in this regard.

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16. Nothing said herein should be taken as any expression of opinion on the merits of the proceedings.

17. With these findings, the Original Application is disposed of.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/