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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2561/2004

New Delhi, this the 27th day of September, 2005

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

ASI Karan Singh, No.1459/2,
North West District
Operation Cell, Shakti Vihar,
New Delhi.

...Applicant.

(By Advocate Shri Yogesh Sharma)

VERSUS

1. N.C.T. of Delhi
The Chief Secretary,
New Sectt., New Delhi.
2. The Commission of Police,
Delhi Police Headquarters,
IP Estate, New Delhi.
3. The Joint Commissioner of Police,
North Range, Delhi, Delhi Police HQs,
IP Estate, New Delhi.
4. The Addl. Dy. Commissioner of Police,
North West, District, Delhi.

...Respondents.

(By Advocate Shri Ram Kwar)

ORDER (ORAL)

The show cause notice dated 04.04.2003 was issued to the applicant alleging that while working as I.O. of case FIR No.414/01 under Section 279/337 of IPC, Police Station, Moti Nagar, he committed serious lapse in as much as "No CD was submitted by him being the I.O.", in the above mentioned case, which is treated as very serious lapse on his part. The said show cause notice also proposed a penalty of censure. Applicant submitted a detailed reply dated 03.5.2003 in which he specifically pointed out that CD written upto certain date being number 1-16^{was} handed over to CD Reader, SHO when he had been transferred on 17.7.2002. It was further stated herein that the case was put up

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before the Competent Court on 13.12.2002, a copy of FIR had also been annexed therein. The Disciplinary Authority while passing an order dated 29.10.2003 imposed a penalty of censure stating that the proof of giving CD "in time is not convincing." (Emphasis supplied). It was further stated that in view of the unsatisfactory submission of the applicant, the Disciplinary Authority had no option but to confirm the proposed penalty.

2. Shri Yogesh Sharma, learned counsel appearing on behalf of applicant vehemently contended that the allegation against the applicant was that "no CD was submitted by the applicant", though while imposing the punishment, the factum of submitting the CD has been indeed accepted by the Disciplinary Authority, but allegation was changed to "that the CD was not submitted in time." (Emphasis supplied). It is contended that the applicant has been penalized for the allegation, which was not even communicated to him vide the aforesaid show cause notice. It is, therefore, contended that findings of the Disciplinary Authority is perverse, based on no evidence and liable to be quashed and set aside. Reliance is placed on **1992 (2) SCC 10 [Kuldip Singh vs. Commissioner of Police]**.

3. Shri Ram Kwar, learned counsel appearing on behalf of respondents, on the other hand, maintained that the order passed by the Disciplinary Authority dated 29.10.2003 imposing the said punishment, was justified and reasonable. It is contended that the applicant's reply, dated 03.5.2003 indeed had been considered and since the explanation submitted was not found convincing, the aforesaid penalty has been imposed upon the applicant. Not only this, an appeal filed by the applicant before the Joint Commissioner of Police, was also considered and rejected vide order dated 27.7.2004.

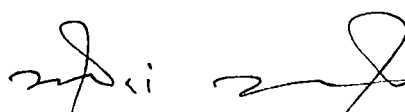
4. I have heard the learned counsel for parties and perused the pleadings carefully. On perusal of the aforesaid order particularly show cause notice dated



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04.04.2003 as well as the penalty order dated 29.10.2003, I am of the considered view that the applicant has been penalized for "not giving CD in time" which was not the allegation made against the applicant vide the aforesaid show cause. If the applicant was sought to be proceeded for not submitting the CD in time, then he ought to have been conveyed about such allegation, which is not the fact in the present case. As noticed hereinabove, at the cost of repetition, I may note once again that the allegation vide show cause notice was indeed specific and clear that "no CD was submitted" by the applicant being the I.O. in the FIR in question, though he had been penalized for not conducting investigation properly and he "did not write CD's in time."

5. In view of the facts noticed hereinabove, I have no hesitation to conclude that the penalty imposed is based upon perverse finding of the Disciplinary Authority and for an allegation, which was not the subject matter of show cause notice, which cannot be sustained in law particularly in view of the law noticed hereinabove. Accordingly, the Disciplinary Authority order dated 29.10.2003 as well as the Appellate Authority order dated 27.7.2004 are quashed and set aside. Accordingly, OA is allowed with all consequential benefits. No costs.


(Mukesh Kumar Gupta)
Member (J)

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