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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2964/2004

New Delhi, this the 20th day of **April, 2005**

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

HC Anwar Khan
(PIS No.28760500)
r/o Vill.: Mohd. Pur Kaddin
PS: Modinagar
Distt: Gaziabad, UP. ... Applicant

(By Advocate: Sh. Anil Singal)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police
PHQ, IP Estate, New Delhi.

2. Joint Commissioner of Police
Southern Range, PHQ,
IP Estate, New Delhi.

3. Addl. DCP (South Distt.)
PS Hauz Khas, New Delhi. ... Respondents

(By Advocate: Sh. Ajesh Luthra)

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant (Anwar Khan), by virtue of the present application, seeks setting aside of the order passed by the Joint Commissioner of Police (Southern Range) dated 13.1.2004. By virtue of the impugned order, the said authority held that punishment of censure does not appear commensurate with the misconduct and it was set aside without

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prejudice to a regular departmental inquiry that might be contemplated against the applicant.

2. The applicant is a Head Constable in Delhi Police. It is alleged that on 23.12.1999, when the police party of Police Station Modi Nagar reached his house at Village Mohd. Pur Kadim, Ghaziabad for arresting his brother, the appellant scuffled with the police party and helped his brother in absconding from the spot. A case under Sections 332/353/225 of Indian Penal Code was registered against him at Police Station Modi Nagar.

3. The learned Special Judicial Magistrate, CBI, Ghaziabad acquitted the appellant with respect to the offences punishable under Sections 332/353 IPC but convicted him for the offence punishable under Section 225 IPC. The applicant was released after execution of personal bond of Rs.10,000/- with directions to maintain good behaviour in future. We are informed that there is little interference in the appeal filed by him.

4. The disciplinary authority had dealt with the matter and awarded the penalty of censure on the conduct of the applicant. The applicant preferred an appeal against the said order of the disciplinary authority. The appellate authority vide the impugned order recorded:

> "... The punishment of censure does not appear commensurate with the misconduct and it is therefore set aside without prejudice to a regular departmental enquiry that might be contemplated against head Constable Anwar Khan, No.479/SD.

5. It is the said order, which is being assailed by the applicant. The learned counsel for the applicant had argued (a) the order of the appellate authority is without jurisdiction; (b) this is within the domain of the disciplinary authority as to what proceedings (major or minor) have to be started; (c) the procedure could not be changed by the appellate authority and (d) no show cause notice had been served while setting aside the order passed by the disciplinary authority.

6. The application is being contested.

7. The learned counsel for the respondents vehemently defended the order on all counts. According to him, under Rule 25(1) (f) of the Delhi Police (Punishment & Appeal) Rules, 1980, the appellate authority can pass such order as it may deem fit. In other words, on all counts, as alleged by the applicant, there is no merit in the argument. It was further contended on behalf of the respondents that no order prejudicial to the applicant has been passed.

8. So far as the argument that no order prejudicial to the applicant has been passed is concerned, the same has to be stated to be rejected. We have already reproduced above the operative part of the order passed by the learned appellate authority. It clearly shows that it had set aside the order passed by the disciplinary authority. After setting aside the order, no benefit had been given to the applicant nor appeal has been dismissed and thus the apprehension that an order prejudicial to the applicant has been passed, which

contemplates to what we have recorded above. Resultantly, the said plea of the learned counsel for the respondents must fail.

9. As regards the fact that the appellate authority could pass the order as it may deem fit, it goes without saying that under Rule 25, the appellate authority has the following powers:

> **"25. Orders on appeal.-** (1) On appeal, the appellate authority may,
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> (a) confirm the impugned order, or
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> (b) accept the appeal and set aside punishment order, or
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> (c) reduce the punishment, or
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> (d) disagree with the disciplinary authority and enhance the punishment after issue of a fresh show cause notice to the appellant and affording him a reasonable opportunity (including personal hearing if asked for) against the proposed enhancement.
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> (e) remit the case to the authority which made the order to any other authority to make such further enquiry as it may consider proper in the circumstances of the case; or
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> (f) pass such other orders as it may deem fit.
>
> (2) Every order passed on appeal shall contain the reasons therefore. A copy of every appellate order shall be given free of cost to the appellant."

As Agree

10. The general powers under Rule 25(1)(f), in our considered opinion, would draw its colour and strength from the earlier provisions and the **rule of ejusdem generis** would apply. We are conscious of the decision of the Supreme Court in the case of **TRIBHUBAN PARKASH NAYYAR** v. **THE UNION OF INDIA,** AIR 1970 SC 540. But therein, the said rule of ejusdem generis was not made applicable because of the specific words that occurred in the Displaced Persons (Claims) Supplementary Act of 1954. The Supreme Court held:

> "13.....This rule of interpretation generally known as ejusdem generis rule has been pressed into service on behalf of the appellant. This rule reflects an attempt to reconcile incompatibility between the specific and general words, in view of the other rules of interpretation, that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. Ejusdem Generis rule being one of the rules of interpretation, only serves, like all such rules, as an aid to discover the legislative intent; it is neither final nor conclusive and is attracted only when the specific words enumerated, constitute a class, which is not exhausted and are followed by general terms and when there is no manifestation of intent to give broader meaning to the general words."

Since it was confined to the peculiar facts of that particular case, it has little application in the present case.

11. The Supreme Court in the case of **M/S SIDDESHWARI COTTON MILLS (P) LTD.** v. **UNION OF INDIA AND ANOTHER**, AIR 1989 SC 1019 had considered the said controversy and held:

> "7. The expression ejusdem generis – 'of the same kind or nature' – signifies a principle of construction whereby words in a statute which are otherwise wide

but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words.

In 'Statutory Interpretation' Rupert Cross says:

> "....The draftsman must be taken to have inserted the general words in case something which ought have been included among the specifically enumerated items had been omitted....."

The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, ejusdem generis rule is not attracted and such broad construction as the subsequent words may admit will be favoured. As a learned author puts it :

> "....if a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary.""

This would be applicable in the peculiar facts of the present case.

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12. Identical was the view expressed in the decision of the Supreme Court in the case of **ASSISTANT COLLECTOR OF CENTRAL EXCISE, GUNTUR** v. **RAMDEV TOBACCO COMPANY,** AIR 1991 SC 506.

13. Keeping in view the ratio deci dendi of the aforesaid, we hold that the provisions of Rule 25(1)(f) would be confined to similar orders contemplated in the earlier Rule to which we have already referred to above.

14. Reverting back to the other contention, as we have referred to above, that the appellate authority set aside the order passed by the disciplinary authority and directed that regular inquiry that may be contemplated could be held. No notice while issuing the said order had been issued to the applicant. When his civil rights were affected, necessarily a notice to show cause should have been given which inadvertently escaped the notice of the appellate authority. On this short ground and without dwelling into the other arguments, we quash the impugned order and direct that the appellate authority may consider the relevant contentions and pass any fresh order in accordance with law as may be deemed appropriate.

(S.K.Naik)
Member (A)

(V.S.Aggarwal)
Chairman

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