

(Hand Stamp)

**Central Administrative Tribunal
Principal Bench**

OA No. 1135/2004

New Delhi, this the 24th day of May, 2005

**HON'BLE MR. SHANKAR RAJU, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)**

SI Chander Prakash
R/o V&PO Mandola,
Distt. Ghaziabad (UP)

...Applicant

(By Advocate: Shri Arun Bhardwaj)

-versus-

1. Union of India through
Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
2. Addl. Commissioner of Police,
Security,
Police Headquarters,
I.P. Estate, New Delhi.
2. Addl. Deputy Commissioner of Police,
Security
New Delhi. ...Respondents

(By Advocate: Shri Ajesh Luthra)

ORDER (ORAL)

By Mr. Shankar Raju, Member (J):

Applicant impugns imposition of a major penalty of forfeiture of two years' approved service temporarily entailing reduction in pay for two years effective from 14.01.2002 as well as appellate order dated 14.11.2003 upholding the punishment.

2. On the allegation that applicant, while working as Sub Inspector (Ministerial), on 21.2.2000 in the wake of a cultural programme organized by the Delhi Police showed indiscipline and disobedience by creating raucous in an inebriated state. An enquiry culminated into a



major penalty by an order dated 14.01.2002, which was assailed in OA No. 2681/2002.

3. By an order dated 24.4.2003, in the light of the fact that applicant had since superannuated before 24.4.2003, the matter was remitted back to the disciplinary authority to pass a speaking order taking note of the defence witnesses. An order passed on 23.6.2003 in compliance of the directions of the Tribunal and affirmed by the appellate authority on 14.11.2003, gives rise to the present OA.

4. Learned counsel for the applicant raised several legal grounds to assail punishment including non-consideration of defence witnesses and disciplinary authority's order being a non-reasoned one.

5. It is also contended that whereas the charge has not been proved yet on suspicion and surmises, applicant had been held guilty of the charge. One of the contentions raised is that whereas the applicant retired in 2003, the punishment, which has been made effective from 14.01.2002, is unworkable. On the other hand, learned counsel for the respondents opposed the contentions and stated that the directions of the Tribunal have been complied with in true letter & spirit as the evidence has come establishing the charge against the applicant without any procedural defect, enquiry has been completed, which does not suffer from any legal infirmity.

6. Though we have doubts over imposition of punishment and its effect over the applicant as on retirement, pay of a person cannot be reduced and any penalty, which could be imposed, is by virtue of a prior approval of the President under Rule 9 of the CCS (Pension) Rules, 1972. However, having regard to the directions issued in OA No. 2681/2002, we will not dwell upon this issue but as regards currency of punishment and its effect, even assuming the punishment would be effective from

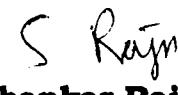
14.01.2002, reduction of pay for a period of two years i.e. from the retirement of the applicant cannot take effect legally.

7. As regards earlier directions of the Tribunal for consideration of the defence witnesses by the disciplinary authority, on perusal of the order passed on 23.6.20023 what has been transpired is that the brief summary of deposition of defence witnesses has been set out in the order but there is no consideration of the defence witnesses and their testimony. It is incumbent upon the enquiry officer and the disciplinary authority to record reasons as to why the prosecution evidence has outweighed the defence which is in consonance with the law laid down by the Apex Court in the matter of **Anil Kumar vs. Presiding Officer**, 1985 SCC (L&S) 813, this shows utter disregard to the orders passed by the Tribunal and non-application of mind by the disciplinary authority which is sufficient to vitiate the proceedings. Non-consideration of defence witnesses has certainly prejudiced the applicant, as his reasonable explanation to rebut the charge has not been paid any attention or consideration.

8. In the result, for the foregoing reasons, impugned orders are unsustainable in law and are accordingly set aside. Applicant shall be entitled to all consequential benefits including restoration of his reduced pay and treatment of suspension period as has been spent on duty for all purposes with arrears. This shall be complied with by the respondents within a period of two months from the date of receipt of a certified copy of this order. No costs. O.A is accordingly partly allowed.


(S.K. Malhotra)
Member (A)

/Na/


(Shankar Raju)
Member (J)