

12

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1676/2004

New Delhi, this the 11th day of July, 2005

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

Dilbagh Singh
Head Constable No.8071/DAP
S/o Late Shri Mauji Ram
R/o House No.16
Rattan Bagh
Veena Enclave
Nangloi, Delhi.

... Applicant

(By Advocate: Sh. Arun Bhardwaj, proxy of Sh. Oma Shankar Sharma)

Versus

1. Joint Commissioner of Police
Armed Police, PHQ, I.P.Estate
New Delhi.
2. Deputy Commissioner of Police
III Bn. DAP, Vikas Puri
Delhi.
3. Deputy Commissioner of Police
Hdqrs. (Estt.), PHQ, I.P.Estate
New Delhi.

... Respondents

(By Advocate: Mrs. Rashmi Chopra)

O R D E R (Oral)

By Mr. Justice V.S.Aggarwal:

Applicant had faced disciplinary proceedings along with Constable Surender Singh. It was alleged that on 8.8.2001 an Under Trial Prisoner (in short 'UTP') was admitted to Safdarjung Hospital in Ward No.11. The applicant and Constable Surender Singh were detailed for escort duty with the Under Trial Prisoner



15

-2-

from 3 PM to 9.20 PM. The applicant is alleged to have taken the Under Trial Prisoner to the bathroom and the UTP is stated to have bolted the bathroom and escaped. On this count, it was alleged that the applicant misconducted himself and was negligent and careless in his duty.

2. The inquiry officer has held that the applicant had derelicted in duty. The disciplinary authority recorded the following findings:

"As regards his first plea it is stated that the defaulter Head Const. should have allowed the Under Trial Prisoner to bolt the door of bathroom from inside. He lost the eye contact from the Under Trial Prisoner despite repeated instructions of senior officers and briefing done from time to time. Taking advantage of his negligence, the UTP escaped from the lawful custody. The doctor has also mentioned in his case history that the Under Trial Prisoner is alcoholic and not having about pain or vomiting and is symptomatically feeling better. Escaping of an Under Trial Prisoner is an act of grave misconduct and negligence. Moreover, re-arresting of the UTP does not lesser the gravity of misconduct. Const. Surrender, No.8372/DAP (now 2837/DAP) has submitted his written representation stating therein that when the UTP escaped from the toilet of the ward, the UTP was in the custody of HC Dilbagh Singh as he was permitted by the HC for taking drinking water. The defaulter Const. further pleaded that the UTP was apprehended on the next day. The first plea taken by the Const. seems to be after thought in case, he was permitted for taking drinking water, he should have made DD entry in Roznamacha but he did not make any DD entry. Moreover, the defaulter Const. who know to the UTP during his posting at PS Malviya Nagar when he was beat officer of the same area where the Under Trial Prisoner was residing and he was acquainted about the activities of the UTP, did not tell the HC about his previous conduct. In case he left his duty point, he should not left his duty point at the time of

18 Ag

serious condition of the UTP as alleged by the HC as the defaulter Const. knows the previous history of the UTP. Taking into consideration the all aspects of the case/findings of the enquiry officers the main plea taken by the defaulters HC and Const. seems to be after thought. They were also heard in OR on 15.1.03. During the OR they stated the same things as contained in their written replies. The pleas taken in defence by HC Dilbagh Singh, No.11175/DAP (now 8071/DAP) and Const. Surender, No.8372/DAP (now 2837/DAP) are not accepted. The accused had escaped from the police custody and the charge is proved. Therefore, I, HPS Virk, Dy. Commissioner of Police, III Bn. DAP, Delhi do hereby order that five years approved service of HC Dilbagh Singh, No.11175/DAP (now 8071/DAP) and Const. Surender, No.8372/DAP (now 2837/DAP) are forfeited permanently entailing reduction in the pay of HC Dilbagh Singh, No.11175/DAP (now 8071/DAP) from Rs.1560/- to Rs.1135/- in the pay scale of Rs.3200-85-4900 and Ct. Surender, No.8372/DAP (now 2837/DAP) from Rs.3875/- to Rs.3500/- in the pay scale of Rs.3050-75-3950-80-4590. Their suspension period from 8.8.2001 to 7.9.2001 is also decided as period not spent on duty for all intents and purposes."

3. Both the applicant and the other Constable had filed separate appeals. Constable Surender Singh was exonerated holding that he had gone to drink water with the permission of the applicant but so far as the applicant is concerned, his appeal was dismissed but the penalty was reduced, i.e., instead of forfeiture of five years approved service, he had been awarded penalty of stoppage of two increments temporarily.

4. The applicant preferred OA 2268/2003, which was disposed of on 9.3.2004 holding:

"6. The only other contention referred was that the appellate authority while imposing penalty has mentioned the period of stoppage of two increments though it has been mentioned

ls Ag

that it is done temporarily. Rule 8(1)(c) of Delhi Police (Punishment & Appeal) Rules, 1980 clearly provides that stoppage of increment can be permanent or temporary; in case of its being temporary, the period must be prescribed. Inadvertently, the appellate authority had failed to do so.

7. Resultantly, while dismissing the petition on merits of all pleas, we set aside the appellate order and direct that in accordance with what has been observed above, fresh order in accordance with law may be passed."

5. After the said decision, the appellate authority had passed a fresh order dated 15.4.2004 holding that two increments of the applicant be stopped temporarily for a period of two years. The operative part of the said order reads:

"In view of the directions of the Hon'ble CAT, I have carefully gone through the orders of the appellate authority dated 16.7.2003. Therefore, I, S.B.Deol, Joint Commissioner of Police, Delhi do hereby order that two increments of HC Dilbagh Singh be stopped temporarily for a period of two years."

6. By virtue of the present application, the said order is being assailed.

7. In the OA, large numbers of pleas pertaining to the merits of the matter are being raised. The objection, which is rightly taken, is that it is barred by the principles of constructive resjudicata. When the applicant had earlier filed OA No.2268/2003, the application was dismissed on merits considering only two pleas that were raised before this Tribunal. Only on technical grounds, the matter was remitted to the appellate authority to pass a fresh order.

ls Ag

-5-

13

8. When pleas were open and not pressed, they are deemed to have been waived and pleas which ought to have been taken and were not taken would be barred. We, therefore, do not permit the applicant to raise any other pleas in the present application.

9. In that event, it was urged that appellate authority has not reconsidered the appeal because the order of the appellate authority has been quashed. Even on this ground, the contention must fail. This is for the reason that the order of the appellate authority was set aside but it was directed that a fresh order should be passed in the light of what we had observed in the OA referred to above.

10. The said direction was to pass a fresh order pertaining to the penalty that was to be awarded. Thus it was not necessary to reconsider all the facts.

11. In that case, the learned counsel urged that under Rule 8 (c) of the Delhi Police (Punishment & Appeal) Rules, 1980, the increment of the police officer can be withheld as a punishment but the order must state definitely the period for which the increment is withheld.


12. In the present case before us, it has clearly been mentioned that two increments are to be withheld temporarily for a period of two years. Thus, the order is specific. So far as the date is concerned, it necessarily would be ~~from the date the order~~^{as} has been issued by the disciplinary authority and no further clarification would, therefore, be necessary.


13 Ag e

6- 9

13. Resultantly, the Original Application must fail and is

dismissed.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

/NSN/