

14

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 504/2004

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

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

Const. Mohan Majhi, No.950/T
(Now 4229 DAP)),
5th Battalion, DAP, Delhi
S/o Shri Ganesh Majhi
R/o E-69, Ranaji Enclave
Nangli Dairy, Najafgarh
New Delhi – 110 043.

...Applicant

(By Advocate Shri Sama Singh)

V E R S U S

1. Govt. of NCT
through its Chief Secretary
Delhi Secretariat, New Delhi – 2.
2. Commissioner of Police
Delhi Police Headquarters
MSO Building, IP Estate
New Delhi – 2.
3. Joint Commissioner of Police (Traffic)
Delhi Police Headquarters
MSO Building, IP Estate
New Delhi – 2.
4. Deputy Commissioner of Police (Traffic)
New Delhi.

...Respondents

(By Advocate Mrs. P.K. Gupta)

O R D E R (ORAL)

Mr. Justice V.S. Aggarwal,

Applicant, by virtue of the present application, seeks to assail the order passed by the disciplinary authority dated 8.2.2002 and of the appellate authority dated 17.1.2003. The relevant facts are that while the applicant was posted at Punjabi Bagh Circle at about 4 p.m., it was alleged that the applicant signaled a bus to stop and asked the conductor for an illegal gratification, i.e., entry fee of Rs.100/- from him. The applicant stated to have been caught red handed in this regard.



2. After the enquiry report, the disciplinary authority imposed the following penalty: -

"In fact the defaulter had fled away from the spot along with currency note of Rs.100/-, illegally taken from the bus conductor. The defence produced by the defaulter is concocted and is not reliable. Hence, considering the overall evidence on record and facts and circumstances of the case, I impose the punishment of forfeiture of two years approved service permanently for a period of two years upon Const. Mohan Majhi, No.950-T. It is, therefore, ordered that the pay of Constable Mohan Manjhi, No.950-T be reduced from Rs.3500/- to Rs.3350/- in his time scale of pay for period of two years with immediate effect. It is further directed that Const. Mohan Manjhi, No.950-T will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. His suspension period from 22.5.2001 to 22.8.2001 is also decided as period not spent on duty for all intents and purposes."

3. His appeal has been dismissed. Learned counsel for the applicant did not touch any other plea and contended that if need be, he will argue those matters separately but according to him, the penalty imposed runs contrary to rule 8 (d) (ii) of Delhi Police (Punishment & Appeal) Rules. He strongly relied upon the decision of the Delhi High Court in the case of **Shakti Singh v. Union of India & Ors.** in Civil Writ petition No. 2368/2000 decided on 17.9.2002. The similar penalty had been imposed like the present one and therein the Delhi High Court held: -

"Rule 8 (d) of the said Rules provides that approved service may be forfeited permanently or temporarily for a specified period as mentioned therein. Such a forfeiture of approved service may be (i) for purposes of promotion or seniority, which can only be permanent in nature; (ii) entailing reduction of pay; and/or (iii) deferment of an increment or increments permanently or temporarily.

4. It is not in dispute that by reason of the order impugned before the Tribunal, the services of the petitioner were forfeited as a result whereof reduction in his pay was directed. Thus, his pay was further reduced by five stages from Rs.2525/- to Rs.2100/- in the time scale of pay for a period of five years. Yet again, it was directed that he would not earn increments of pay during the period of reduction and on the expiry of the said period such reduction would have the effect of postponing his future increments of pay.

Rule 8 (d) (ii) of the said Rules is disjunctive in nature. It employ the word 'or' and not 'and'.



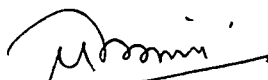
Pursuant to and/or in furtherance of the said Rules, either reduction in pay may be directed or increment or increments, which may again either permanent or temporary in nature be directed to be deferred. Both orders cannot be passed together.


Rule 8 (d) (ii) of the said Rules is a penal provision. It, therefore, must be strictly construed.

The words of the statute, as is well known, shall be understood in their ordinary or popular sense. Sentences are required to be construed according to their grammatical meaning. Rule of interpretation may be taken recourse to, unless the plain language used gives rise to an absurdity or unless there is something in the context or in the object of the statute to suggest the contrary.

Keeping in view the aforementioned basic principles in mind, the said rule is required to be interpreted."

4. Identical is the position herein. Resultantly, we allow the present application and quash the impugned orders. The disciplinary authority may take into consideration the totality of the facts and if deem appropriate pass a fresh order in accordance with law. We make it clear that nothing said herein should be taken as an expression of opinion on the merits of the case.


(M.K. Misra)
Member (A)


(V.S. Aggarwal)
Chairman

/vikas/