

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 1853/92

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New Delhi this the 1st day of September, 1997.

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Hon'ble Shri R.K. Ahooja, Member (A)

S.I. Kham Singh No. 362/D
Distt. Line South/West,
R.K. Puram, New Delhi.

(By Advocate Dr. S.P. Sharma)

... Applicant

Vs.

1. Commissioner of Police,
Police Head Quarter,
I.T.O. New Delhi.

2. Additional Commissioner of Police,
South Range, New Delhi.

(None for the respondents)

.. Respondents

O R D E R (ORAL)

(Hon'ble Shri R.K. Ahooja, Member (A))

Dr. S.P. Sharma, learned counsel for the applicant,
is present
None for the respondents, even on the second call. We note
that on the last occasion, Shri Jai Bhagwan, Head Constable,
Departmental representative on behalf of the respondents was
present. As this is a 1992 case, we, therefore, ^{have} decided to
dispose it off after hearing the learned counsel for the
and
applicant/perusing the pleadings on records.

2. There were three charges against the applicant,
namely, (i) that he had detained the complainant along with
two of his relatives in the Police Station, Vasant Vihar, lock
^{where}
up, they were harrassed unnecessarily and demanded illegal
gratification of Rs 5000/- for their release ; (ii) the

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applicant failed to observe any formality, flouted all the rules/ regulations and took their Jama Talashi and detained them for extorting illegal gratification ; and finally that (iii) he had failed to verify the facts regarding the kid-napping of the wife and children of the complainant. The Enquiry Officer concluded that the charges of demanding gratification ~~and~~ illegal ~~and~~ detention of the complainant and his relatives in Police Station lock up had not been proved whereas the charge that the applicant did not verify the facts of kid-napping/missing of the wife of complainant had been proved. The disciplinary authority on receipt of the same and after going through the written statement of the defaulter as well as other records and agreeing with the findings of Enquiry Officer's report decided to impose^a penalty of forfeiture of 2 years approved service temporarily entailing proportionate reduction in his pay from the date of issue of this order. The applicant has now sought the quashing of the order of the disciplinary authority and the appellate authority and the order passed by the revisional authority.

3. The above orders have been challenged on the ground that the conclusion of the Enquiry Officer was based on surmises, conjecture and presumptions. Further the applicant states that the two punishments have been awarded for a single offence inasmuch as the period of suspension has been treated as period not spent on duty for all intents^{and} purposes. This ground, however, ^{is} not pressed by the learned counsel for the applicant. It is alleged that no proper charge-sheet has been served on

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the applicant thereby denying him a reasonable opportunity to defend his case. When he had filed ^{an} appeal against the order of the disciplinary authority, the appellate authority had remitted the case back to the disciplinary authority with a direction that the disciplinary authority should issue a proper show cause notice to the defaulter and also supply a copy of the ^{finding of} I.O.'s to him and the proceedings should be initiated afresh from that stage. The applicant states that under Rule 25 of Delhi Police (Punishment and Appeal) Rules, 1980 the order of the disciplinary authority once quashed cannot be remanded back for re-trial or consideration.

4. Having heard the learned counsel for the applicant we find that none of the above mentioned grounds can be accepted as it is settled law that the Tribunal while exercising the power of judicial review has no power to act as a court of appeal or to reappreciate the evidence to arrive at its own conclusion and substitute its decision for that of the competent authority, unless for example that decision is arbitrary or perverse. We also find no force in the ground taken in respect of double jeopardy as the ^{order or} punishment ^{imposed} made by the disciplinary authority in regard to the treatment ^{of} the period of suspension is not a separate punishment. Once the disciplinary authority comes to the conclusion that the charges against the delinquent officers stand proved, it is open to it to order that the period of suspension may not be treated as period spent on duty. We also find that under Rule 25 of the Delhi Police (Punishment and Appeal) Rules, 1980, the sub-para(e) reads as follows:-

" remit the case to the authority which made the order or to any other authority to make

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such further inquiry as it may consider proper in the circumstances of the case.¶

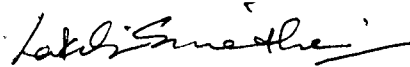
Therefore, we find that the order of the appellate authority is not wrong for remitting the case back to the disciplinary authority with a direction to give a reasonable opportunity to the applicant before passing the final order. Finally we also find that the enquiry officer has framed the charges after examining the prosecution ^{witness} and the applicant was given ample opportunity to produce his evidence and in fact defence witnesses were also produced before the enquiry officer.

5. In the light of the above discussions, we find no merit in the application which is accordingly dismissed.

No order as to costs.


(R.K. Ahuja)

Member (A)


(Smt. Lakshmi Swaminathan)

Member (J)

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