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CAT/7/11

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 1474/92
T.A. No.

199

DATE OF DECISION 14-10-97

Om Prakash Meena

Petitioner

Sh. Shankar Raju

Advocate for the Petitioner(s)

Versus

Commissioner of Police & Ors

Respondent

Sh. Vijay Pandita

Advocate for the Respondent(s)

CORAM

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

The Hon'ble Shri S.P. Biswas, Member (A)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1474/92

New Delhi this the 14 th day of October, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.P. Biswas, Member(A).

Om Prakash Meena,
S/o Shri Sugan Chand,
R/o Qr. No. F-3, Police Colony Mehram Nagar,
Palam Airport,
New Delhi. ... Applicant.

By Advocate Shri Shanker Raju.

Versus

1. Commissioner of Police, Delhi,
Delhi Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.
2. Additional Commissioner of Police (A.P.) Delhi,
Delhi Police Headquarters, MSO Building,
I.P. Estate,
New Delhi. ... Respondents.

By Advocate Shri Vijay Pandita.

O R D E R

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

The applicant is aggrieved by the order dated 28.9.1990 passed by Respondent 2 imposing on him a punishment of forfeiture of six years approved service permanently for a period of six years and the appellate authority's order dated 6.6.1991 dismissing his appeal.

2. The respondents have proceeded against the applicant in departmental proceedings u/s 21 of the Delhi Police Act, 1978 alleging that he had committed certain grave misconduct while heading an escort party consisting of 2 SIs, 3 HCs and 21 Constables on his way back to Delhi from Sangrur on the night of 28/29th March, 1989. Shri Shanker Raju, learned counsel for the applicant, has submitted that the order

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of the disciplinary authority dated 28.9.1990 has not been passed by the competent authority. He submits that the applicant was Inspector when the chargesheet was issued on 7.6.1989 and he was reverted as Sub-Inspector in another departmental inquiry on 11.12.1989. He states that at the time when the impugned punishment order dated 28.9.1990 was issued by the Additional Commissioner of Police, A.P. Delhi, the applicant had been transferred to the Delhi Police Control Room on 4.1.1990. Relying on Rule 14(4) of the Delhi Police (Disciplinary and Appeal) Rules, 1980 (hereinafter referred to as 'the 1980 Rules'), the learned counsel submits that the punishment order should have been passed by the Additional Commissioner of Police under whom he was then working and not by the Addl. Commissioner of Police, AP Delhi from whom he had already stood transferred. He also relies on the case of Commissioner of Police Vs. K.L. Dogra (ATC 1994(26) 319) and the amendment notification issued by the respondents dated 5.4.1988.

3. The second infirmity alleged by the learned counsel for the applicant in the departmental proceedings taken against the applicant is that the punishment order dated 28.9.1990 is in violation of the provisions of Rule 8(d)(i) and (ii) of the 1980 Rules. He submits that under Section 21 of the Delhi Police Act, the officers mentioned therein can impose any of the punishments mentioned therein, including forfeiture of approved service, reduction in pay and withholding of increments. He has also submitted that under Section 21 of the Delhi Police Act, 1978 for each of these

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different punishments the officer passing the order has to record reasons. In the present case, the relevant part of the order reads as follows:

"....The pay of SI Om Prakash Meena No. D-1261 is reduced by six stages entailing proportionate reduction in his pay in the time scale of pay for a period of 6 years with effect from the date of issue of this order. He will not earn increment of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing his future increments of pay."

The learned counsel for the applicant contends that the above punishment is not only forfeiture of 6 years approved service of the applicant entailing reduction in pay for a period of six years but also includes deferment of his increment during the period of reduction which will have the effect of postponing his future increments of pay. He, therefore, submits that the above punishment order is a combination of punishments of reduction in pay and deferment of increments which is contrary to the provisions of Rule 8(d) (i) and (ii) of the 1980 Rules.

4. The third main contention of the learned counsel for the applicant was that the Inquiry Officer had cross-examined a number of prosecution witnesses and defence witnesses which is contrary to the rules. For these reasons, he has submitted that the inquiry held against the applicant and the impugned punishment orders are vitiated and, therefore, should be quashed and set aside.

5. The respondents have filed their reply controverting the above facts and Shri Vijay Pandita, learned counsel, has submitted that the disciplinary proceedings and the punishment orders have been passed in accordance with the rules and are valid. On the first point raised by the

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applicant, Shri Vijay Pandita, learned counsel, has submitted that under Rule 14(3) of the 1980 Rules, the punishment of forfeiture of approved service as contained in Rule 5 can be given by the appointing authorities after holding a regular departmental inquiry. He has submitted that under Rule 4 of the Delhi Police (Appointment and Recruitment) Rules, 1980, the appointing authority in case of Inspector/Sub Inspector is the Addl. Commissioner of Police/DCP/Addl DCP and other officers mentioned in that rule. He has relied on Ram Kishan Vs. Police Commissioner (1995(6) SCC 157) and Kundan Lal Yadav & Anr. Vs. Lt. Governor & Ors. (O.A 1093/92), decided on 23.9.1997 (copy placed on record). He has contended that there is also no infirmity on the other grounds raised by the applicant's counsel.

6. Under Rule 14(3) of the 1980 Rules, it is provided that punishments mentioned at Sl. No. (i) to (vii) in Rule 5 shall be awarded by appointing authorities after holding a regular inquiry. Further, this rule provides as follows:

"...All Deputy Commissioners of Police, Additional Commissioners of Police shall exercise this authority over all officers of the subordinate ranks civilian irrespective of the fact whether such an officer had actually appointed the concerned subordinate police officer and whether or not he was actually working under him."

(emphasis added)

The learned counsel for the applicant has relied on Rule 14(4) of these Rules which deals with the initiation of the disciplinary action by the competent authority under whose disciplinary control the police officer concerned is working at the time it was decided to initiate disciplinary action. Shri Shanker Raju, learned counsel relying on the departmental notification dated 5.4.1988 has submitted that at the time

when the impugned punishment order was issued on 28.9.1990, the applicant had been transferred to the Police Control Room and, therefore, the punishment order has not been passed by the competent authority. In this notification, it has been provided:

".....In short, it is the competent authority under whose disciplinary control the employee has been transferred alone who would be entitled to take action and the authority from whose disciplinary control he has gone away will have nothing to do with him any longer in future. So the amendments as sought by the PHQ are not warranted. On account of this position the draft notification added by the Police Department has not been vetted".

7. In this case admittedly the chargesheet against the applicant was initiated on 7.6.1989 when he was an Inspector. He had been reverted as Sub-Inspector in another departmental inquiry by order dated 11.12.1989. The contention of Shri Shanker Raju, learned counsel that the Addl. Commissioner of Police (AP) is not the competent authority cannot be accepted having regard to the provisions of Rule 14(3) of the 1980 Rules read with Rule 4 of the Delhi Police (Appointment and Recruitment) Rules, 1980. The Additional Commissioner of Police is the competent authority, both for Inspectors and Sub-Inspectors and we, therefore, find no infirmity in the impugned order dated 28.9.1990 and the argument to the contrary advanced by the learned counsel based on the Notification dated 5.4.1988 is rejected, as the respondents cannot modify the statutory rules by executive instructions and we are also not aware what was the Draft notification, referred to in the Notification, which was finally not vetted.

8. We, however, find some merit in the second contention raised by the learned counsel for the applicant on punishment imposed against the applicant under Rule 8(d)(i) and (ii) of the 1980 Rules. This Rule provides as under:

"8, Principles of inflicting penalties.

(d) Forfeiture of approved service. - Approved service may be forfeited permanently or temporarily for a specified period as under:

(i) For purposes of promotion or seniority (Permanent only).

(ii) Entailing reduction in pay or deferment of an increment or increments (Permanently or temporarily)."

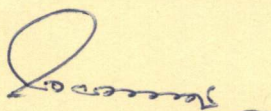
The impugned punishment order reduces the pay of the applicant by six stages entailing proportionate reduction in his pay for six years with effect from the date of issue of the order, i.e. 28.9.1990. It is also stated that he will not earn increments of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. In a similar case **Mange Ram Vs. Union of India & Ors.** (O.A. 1809/91), decided on 22.7.1993 (copy placed on record), the Tribunal has held that the order inflicting the punishment on the applicant clearly contemplates forfeiture of service rendered as ASI permanently reducing his pay to Rs.1320/- p.m. in the time scale for three years and deferment of increments of pay during the period of reduction which has the effect of postponing future increments on the expiry of reduction period which is not in conformity with the provisions made in Rule 8(d) of the 1980 Rules. In Kundan Lal Yadav's case (supra), the Tribunal (in which one of us, Shri S.P. Biswas, Member(A) was a Member), a similar punishment order was clarified in accordance with the provisions of Rule 8(c). The learned

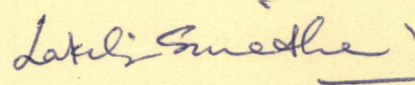
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counsel had also submitted that the punishment order in the present case may also be similarly clarified. We are in respectful agreement with these judgements of the Tribunal with regard to the consequences of the penalty order. The appellate authority in his order dated 6.6.1991 has also upheld the disciplinary authority's order dated 28.9.1990 imposing the penalty on the applicant. Therefore, the impugned orders dated 28.9.1990 and 6.6.1991 are clarified to the extent that the punishment imposed on the applicant is not in terms of Rule 8(d) (i) and (ii) of the 1980 Rules, ^{and} to mean that while the applicant may not get any increments during the period of six years when his pay has been reduced, thereafter he will get them in accordance with the rules.

9. We have carefully considered the last contention of the learned counsel for the applicant but find no substance in the same taking into account the provisions of Rule 16 of the 1980 Rules, records and the facts and circumstances of the case.

10. Therefore, in the result, the O.A. fails subject to the clarification of the penalty order mentioned in para 8 above. No order as to costs.


(S.P. Biswas)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

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