

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2480/92

(a)

New Delhi this the 17<sup>th</sup> day of April, 1998.

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Nihal Singh,  
S/o Shri Ganga Bishan,  
R/o Village Khera Kalan,  
Delhi.

...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

1. Union of India through  
the Chief Secretary ,  
Delhi Administration,  
5, Sham Nath Marg,  
Delhi-110054.
2. Addl. Commissioner of Police,  
Northern Range,  
M.S.O. Building,  
Police H.Q. ITO,  
New Delhi.
3. Deputy Commissioner of Police,  
North Distt.  
Civil Lines,  
Delhi.

...Respondents

(By Advocate Shri Arun Bhardwaj)

1. To be referred to the Reporter or not? Yes
2. To be circulated to other Benches of the Tribunal? No

(Dr. A. Vedavalli)  
Member (J)

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O R D E R

HON'BLE DR. A. VEDAVALI, MEMBER (J):

The applicant, Nihal Singh, is aggrieved by (i) the order of respondent No.3 (disciplinary authority) dated 15.5.92, inter alia, reducing him in rank from that of Sub Inspector in Delhi Police to that of Assistant Sub Inspector for a period of four years (Annexure P-13) and (ii) the appellate order dated 31.8.92 of respondent No.2 (Annexure P-16) rejecting his appeal against the order of the disciplinary authority and has impugned those two orders in this O.A.

2. The facts of this case, briefly stated, are as

under:

2.1 The applicant, while he was posted as Sub Inspector, Roop Nagar Police Station, Delhi was handed over a suspected scooter thief Surender Singh alias Kaka who was apprehended by the staff of a PCR van on 11.7.91. That suspect was sent for medical examination by the applicant through Constable Narender Singh. When the said suspect was produced before the applicant along with the MLC report by Constable Narender Singh and while his arrest papers were being prepared and a report was being lodged in the daily diary vide D.D. No.65-B regarding arrest of the suspect under Section 41 (i) of the Code of Criminal Procedure without actually locking up the suspect in the Police Lock-up, the said suspect escaped from the Police Station. Disciplinary proceedings were initiated and the applicant along with Constable Narender Singh were placed under suspension by an order of the Deputy Commissioner of Police (DCP) on 19.7.91 (Annexure P-8). According to the summary of allegations dated 7.10.91 served on the defaulter (Annexure P-9) the above act of the applicant and Constable Narender Singh amounts to grave misconduct, indiscipline and dereliction in discharge of their official duties which render them liable for departmental action under Section 21 of the Delhi Police Act, 1978. A joint departmental enquiry was conducted by the Enquiry Officer in which the defaulter applicant participated. The Enquiry Officer submitted his detailed report dated 6.4.92 with the conclusion that "charge is proved". A copy of the said report was given to the applicant and he was afforded an opportunity to submit his representation in his defence to the disciplinary authority. On consideration of the

representation submitted by the defaulter applicant the disciplinary authority by his order dated 15.5.92 (Annexure P-13) imposed on him, inter alia, the penalty of reduction in rank from the rank of Sub Inspector to that of Assistant Sub Inspector for a period of four years. The said order is the first impugned order in this O.A. The applicant defaulter filed an appeal against the said order to the appellate authority. The appellate authority by his order dated 31.8.92 (Annexure P-16) rejected the said appeal. The said order is the second impugned order in the present case.

3. The reliefs sought by the applicant in this OA are as under:

- "i) That this Hon'ble Court/Tribunal may please to allow this application of the applicant with costs.
- ii) That this Hon'ble Tribunal may also please to quash and set aside the order impugned bearing No.2147-48/P-Sec.(N.R.) dated 31.8.1992 passed by respondent No.2 alongwith punishment order bearing No.3090-3105/HAP-N dated 15.5.1992 and the enquiry proceedings.
- iii) that this Hon'ble Tribunal may further please to issue appropriate order or orders, direction or directions:
  - a) directing the respondents to restore and/or reinstated the applicant to the rank/post of Sub-Inspector of Police, correct place of seniority in the said rank/post and also to allow salary and all allowances alongwith other ancillary benefits attached with the said post of Sub Inspector of Police, as if the applicant was never reduced in rank and no punishment was imposed on him.
  - b) directing the respondents to treat the entire period of suspension w.e.f. 19.7.91 to 15.5.92 as period spent on duty. Further, respondents be also ordered to pay to applicant the difference of salary and all allowances including bonus and extra pay and the amount already paid to the applicant during the above period when he remained suspended.

c) To issue such other appropriate order or orders direction or directions as deemed fit and proper by this Hon'ble Tribunal to meet the ends of justice."

4. The O.A. is contested by the respondents who have filed their counter. The applicant has filed his rejoinder to the said counter.

5. We have heard the learned counsel for both the parties and have perused the pleadings and the material documents and papers placed on record. We have considered the matter carefully.

6. Though the applicant has raised several grounds while seeking the reliefs mentioned (supra) in his OA as to the incompetence of the disciplinary and appellate authorities, mala fides, non-appreciation of the evidence, arbitrariness in the proceedings etc., only two grounds were pressed by the learned counsel for the applicant during the hearing, which will be dealt with presently.

7. The first main ground stressed by the learned counsel for the applicant is that there is a violation of Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 since prior approval of the Additional Commissioner of Police as to whether a criminal case should be registered or investigated or a departmental enquiry should be held, which is required under the said rules was not taken before holding a departmental enquiry and hence the impugned orders are bad in law. He relied on an order of the Tribunal dated 7.8.97 in OA No. 757/95 - Ex-Head Constable (Ministerial) Suresh Chand

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vs. Lt. Governor & Anr. in OA No.757/95 wherein, inter alia, the ratio laid down by a coordinate Bench of this Tribunal in OA-402/92 (Prakash Chand vs. Union of India) was followed.

8. In reply, learned counsel for the respondents submitted that no criminal case was registered in the present case against the defaulter applicant. He contended that the aforesaid rule is not applicable at all in the present case and the impugned orders are, therefore, perfectly valid and tenable in law. He also argued that the decisions of this Tribunal relied upon by the learned counsel for the applicant are not applicable to the facts and circumstances of the present case.

9. We have considered the rival contentions of the parties and the aforesaid ground carefully. Rule 15 (2) of the Delhi Police (Punishment and Appeal) Rules, 1980 runs thus:

"(2) In cases in which a preliminary enquiry discloses the commission of cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

While so, in the present case no criminal case was registered against the defaulter applicant for the alleged grave misconduct, indiscipline and dereliction in the discharge of his duties for his gross negligence in allowing the suspect under his custody to escape from the police station. The reason given for the said non registration of a criminal case against the applicant and the decision to proceed against him departmentally under the aforesaid rules as stated in the impugned appellate authority's order dated

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31.8.92 (Annexure P-16) is that "well high impossible standards of evidence" are normally insisted upon by the Courts. Moreover, the grievance of the applicant as urged in the aforesaid first ground as noted supra is against the alleged non obtaining of the prior approval of the concerned Additional Commissioner of Police as to whether a criminal case should be registered and investigated or a departmental enquiry should be held but it is obvious on a plain reading of the said rule that such prior approval requires the fulfilment of certain conditions specified therein, viz. (i) a cognizable offence (ii) as disclosed in a preliminary enquiry (iii) committed by a police officer of subordinate rank (iv) in his official relation with the public.

The question of prior approval *prima facie* presupposes the fulfilment of the aforesaid conditions. By insisting on the obtaining of the such prior approval of the Additional Commissioner of Police before holding the departmental enquiry the applicant apparently admits the fulfilment of the conditions stipulated in the aforesaid Rule 15 (2) (supra). He cannot, therefore, turn round and say that a departmental enquiry for a cognizable offence alleged to have been committed by him cannot be held at all only on the sole ground that the prior approval of the Additional Commissioner of Police was not obtained under the aforesaid rules. Interpretation of the said rule in isolation as alleged by him would nullify and defeat the very purpose and objective underlying the relevant provisions, *inter alia*, of the Delhi Police Act, 1978 and the Delhi Police (Punishment and Appeal) Rules, 1980 and is not permissible in law. Moreover, two decisions of the Tribunal (supra) relied upon by the learned counsel for the applicant also do not help since

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we find on consideration that they are not applicable to the facts of the present case. In view of the above position the aforesaid ground, in our opinion, is neither valid nor tenable in law and is, therefore, rejected.

10. The second ground pressed by the learned counsel for the applicant is that the impugned orders are void since they failed to take cognizance of the fact that the defaulter applicant would be retiring on 31.12.95, i.e., before the expiry of the period of punishment. He contended that the said order runs even beyond the period of his retirement and, therefore, deserves to be quashed and set aside.

11. In reply to the above ground the learned counsel for the respondents argued that this ground was taken by the applicant in his grounds of appeal before the appellate authority and any how the impugned order cannot operate beyond his retirement and hence the said ground is not tenable and ought to be rejected.

12. We have considered this ground also carefully. We note that neither party has bothered to file a copy of the grounds of appeal before the appellate authority. Be that as it may, since the impugned punishment order cannot by its very nature be operative beyond the date of retirement of the applicant any adjudication on its validity to the extent it runs after the said date would only be academic and hypothetical and we do not think it is necessary for us to go into that question.

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13. In the facts and circumstances of this case and in view of the foregoing discussion, we are of the considered opinion that the applicant has failed to establish his case on any valid and tenable grounds. Hence, the impugned orders do not warrant any judicial interference.

14. In the result, the O.A. is dismissed. No costs.

A. Vedavalli  
7/4/98  
(DR. A. VEDAVALLI)  
MEMBER (J)

  
(K. MUTHUKUMAR)  
MEMBER (A)

'Sanju'