

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.3165/92

Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Sh. R.K. Ahooja, Member (A)

New Delhi, this the 24th day of February, 1998

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Shri Netra Pal Singh
s/o Sh. Badan Singh
r/o Qr. No.6, Type 'B'
P.S. Vivek Vihar
Delhi - 95. Applicant

(By Shri Sankar Raju, Advocate)

Vs.

1. Commissioner of Police Delhi
Delhi Police Headquarters
M.S.O. Building
I.P. Estate
New Delhi.
2. Additional Commissioner of Police
New Delhi Range
New Delhi.
Delhi Police Headquarters
M.S.O. Building
I.P. Estate
New Delhi.
3. Deputy Commissioner of Police
East District Vishwas Nagar
Delhi. Respondents

(By Shri S.K.Gupta, Advocate)

O R D E R

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

The applicant, who was appointed in the Delhi Police as Constable, was proceeded against in a regular departmental enquiry vide order dated 24.12.1990, Annexure-A2. Earlier he was placed under suspension w.e.f. 26.7.1990. The allegation against the applicant was that he along with a person visited the residence of Shri Braham Singh, ACP, Headquarters(E) in a drunken state on the night intervening 20/21.7.1990 and told him to release two accused persons on bail who had been arrested under section 107/151 of Cr.P.C. by the Krishan Nagar Police. Shri Braham Singh, ACP kept him waiting at the door and went to ascertain from SHO/Krishan Nagar on telephone about the facts of

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the arrest. The applicant however allegedly followed the ACP almost to his bed room and thereby disturbed other family members and relatives. After ascertaining the facts from SHO/Krishan Nagar, the ACP refused to accept the bail and advised him to go back. On this, he took out some money from his pocket and attempted to offer bribe to the ACP. He was reprimanded by the ACP for coming at his residence in the night in a drunken state. When the ACP went inside the room to call local police to get the applicant medically examined, and to take legal action against him, he ran away from there to avoid his arrest.

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2. The enquiry officer found that the charges of drunkenness and offering bribe were not established but concluded that the charge of causing disturbance to the family members and guests at late night and intruding the privacy by reaching upto the bed room of Shri Braham Singh, ACP was proved beyond doubt. Accepting the report of the enquiry officer, the disciplinary authority, i.e., DCP imposed the penalty of forfeiture of two years approved service with cumulative effect for a period of two years and also ordered to treat his period of suspension as period not spent on duty. The applicant's appeal against the said penalty was also rejected. This lead to the present OA.

3. The grounds on which the order of penalty is assailed are that firstly the enquiry was not conducted properly inasmuch as the statement of witnesses were not made available to the applicant and the necessary witnesses, whose sleep was disturbed, were not cited as PWs. Secondly, the applicant submits that testimony of defence witnesses was not taken into account. The applicant also submits that the penalty imposed is disproportionate to the facts of the case, more so, as the

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enquiry officer held the charge of drunkenness and offering bribe to be unproved. The applicant also submits that the punishment awarded to him is contrary to the Rule 8(d) of Delhi Police (Punishment and Appeal) Rules, 1980 inasmuch as the punishing authority has not stated that the punishment of forfeiture of two years approved service was a permanent one or a temporary one. The applicant also states that the respondents being annoyed with him have become vindictive and issued a show-cause notice as to why his name may not be deleted from the promotion list, in which list his name had been included earlier.

4. The respondents have filed their reply and have denied the allegations. They also say that Rule-7(ii) of the Delhi Police (Promotion and Confirmation) Rules, (Amendment-1987) contemplates the removal of name of a delinquent incumbent from the promotion list. They have also asserted that copies of statements made by the prosecution witnesses were duly supplied to the applicant.

5. We have heard Shri Sankar Raju, for the applicant and Shri S.K.Gupta, for the respondents. It is not disputed by the applicant that he went to the house of the ACP, Shri Brahm Singh in connection with the arrest of two persons by the Kishan Nagar Police. It is also not disputed that the ACP rang up the SHO, Kishan Nagar to find out the facts of the case and on ascertaining the same declined to accede to the request of the applicant. The question is whether the applicant followed ACP to his bed room and created disturbance to the family members of the ACP. The learned counsel for the applicant has invited us to go through the statement of the defence witnesses. Considering the admitted position that applicant had gone to the house of the ACP to plead the case of the arrested persons, we do not consider that this is a case of 'No Evidence'. There

is therefore no question of reappreciating the evidence and substituting our conclusions in place of those of the enquiry officer.

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6. We also do not consider that the penalty imposed on the applicant is such as would be considered illegal. As held in Union of India & Others Vs. Parma Nanda, AIR 1989 SC 1185, the Tribunal cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence.

7. The learned counsel for the applicant has made a detailed submission before us that the order of enquiry was ab-initio unlawful as it contravened Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980. This Rule requires that the sanction of the Additional Commissioner of Police is necessary to undertake a departmental proceedings where the misconduct discloses the commission of a cognizable offence. This point was taken by the applicant before the appellate authority also which concluded that since the charge of drunkenness and offer of bribe were not proved, Rule 15(2) was not attracted. The learned counsel for the applicant has sought to rely on the judgment of this Tribunal in OA No.402/92, Parkash Chand Vs. Secretary, Ministry of Home Affairs and Others. In that case it was concluded that the summary of allegations clearly went to show the commission of a cognizable offence ^{and} on the basis of the allegations contended therein such a ^{as} sanction was essential. We consider that the question whether the allegations of summary disclosed the commission of a cognizable offence is to be decided on the facts and circumstances of each case. In the present case, we see no

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reason to interfere with the conclusion of the appellate authority that no cognizable offence was made out. Hence there was no contravention of Rule 15(2).

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8. We now come to the submission of the applicant that the penalty order is contrary to Rule 8(d) of Delhi Police (Punishment and Appeal) Rules, 1980 inasmuch as the punishing authority has not indicated whether the forfeiture of approved service is a permanent one or temporary. In this respect he has also relied on the order of Tribunal in OA No.1406/97, ASI Lakmi Chand Vs. Union of India & Others.

9. The penalty imposed in the instant case is as under:

"Accordingly two years approved service of constable Netar Pal No.1319/E is forfeited. His pay is reduced by 2 stages from Rs.1050/- to Rs.1010/- P.M. for a period of two years from the date of issue of this order. He will not earn increment during the period of reduction and on the expiry of postponing of his future increments. His suspension period w.e.f.21.7.1990 to & 5.8.1991 be treated as not spent on duty."

10. The above order means that during the period of rejection for two years the applicant would receive only Rs.1010/- per month without any increments. However as the period of postponement of future increments has not been specified, it may lead to confusion. The same point was examined in Lakmi Chand (Supra) and it was ordered that the respondents should treat the applicant to be entitled to increment, after the period of effect of the penalty, on the reduced pay. Accordingly, herein also we direct that after the expiry of two years from the date of issue of the order i.e. 30.10.1991 the applicant will be eligible to future increments on the reduced pay of Rs.1010/-.

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11. In the light of the above discussion, the OA is
dismissed subject to the observation in Para-10 above. There
shall be no order as to costs.

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(K.M. AGARWAL)
CHAIRMAN

R.K. Ahooja
(R.K. AHOOJA)
MEMBER (A)

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