

Central Administrative Tribunal
Principal Bench

O.A.No.1525/93

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 6th day of August, 1999

Sh. Babu Khan, H.C.No.36/C
s/o late Sh. Munshi Khan
r/o P-2/2, Police Colony
Andrews Ganj
New Delhi. Applicant

(By Shri A.K.Bhattacharya, Advocate)

Vs.

1. Delhi Administration through
Secretary
Old Secretariat Building
Delhi.
2. Commissioner of Police
Police Head Quarters
I.P.Estate
New Delhi.
3. Addl. Commissioner of Police
North Range, I.P.Estate
New Delhi.
4. Deputy Commissioner of Police
Central District,
DCP Office, Daryaganj
Delhi.
5. Addl. Deputy Commissioner of Police
Central District
DCP Office, Daryaganj
Delhi.
6. Sh. S.C.Sharma (EO)
Then S.H.O., Darya Ganj
P.S.Daryaganj, Delhi. Respondents

(By Shri Vijay Chaudhary, Advocate)

O R D E R (Oral)

By Reddy. J-

The applicant was working as Head Constable in Delhi Police. A charge was framed against him in 1991 on the following charge: While he was posted in the Police Station, DBG Road, working as Incharge process serving agency, one summon was received for service on the witness, namely, ASI Shyam Phool, in the Court of

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Shri J.P.Sharma, C.M.M. Tis Hazari, Delhi. Summons were however returned to the Court with the remarks that the summons of the Court could not be served. Again the applicant was directed to serve the same summons on the said witness but the summons were again returned unserved. The accused in the criminal case was acquitted on account of negligence of the applicant on the service of summons.

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2. A departmental enquiry was initiated under Section-21 of the Delhi Police of 1978. The Enquiry Officer was appointed and after an enquiry the Enquiry Officer found that the allegation against the applicant was fully established. Accepting the findings of the Enquiry Officer the disciplinary authority passed the impugned order dated 18.8.1992 imposing the following punishment:

"two years approved service of HC Babu Khan No.36/C (PIS No.28690335) is forfeited temporarily on the following lines:-

" The pay of HC Babu Khan No.36/C is reduced by two stages from Rs.1300/- PM to 1270/- PM and Rs.1270/- PM to Rs.1240/- PM in the time scale of pay for a period of two years with effect from the date of issue of the order. He will not earn increment of pay during the period of reduction and on the expiry of this period of reduction will have no effect on postponing his future increments of pay."

3. The appeal filed against the disciplinary authority's order was also rejected. Aggrieved by the above orders, the applicant filed the present OA.

4. It is first contended by the learned counsel for the applicant that he was not guilty of the charge framed against him as the prosecution witnesses did not support the case of the department. The enquiry was conducted in this case and relying

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upon the evidence of the prosecution witnesses, the Enquiry Officer found that the charge against the applicant was fully proved. In this OA we cannot go into the question as to the sufficiency of the evidence or as to the validity of the findings of the Enquiry Officer. This contention therefore cannot be accepted. The second contention raised by the learned counsel for the applicant is that as strictures were passed by the Court no departmental enquiry should be initiated against him unless it was directed by the Deputy Commissioner of Police. In this case, it was contended that the enquiry was ordered by SHO, in Annexure-B5. The learned counsel relied upon Section 13 of the Delhi Police (Punishment and Appeal) Rules, 1980 in support of his contention. In this case as seen from the judgment of the Criminal Court, finding the inaction of the process serving agency, certain strictures were passed by the Court against them for not serving the summons against the witnesses in resulting the acquittal of the accused. There upon the disciplinary authority, who is the DCP in the case, has ordered the enquiry against the applicant as contemplated under Rule 13 of the Delhi Police (Punishment and Appeal) Rules, 1978 (for short, Rules). The Deputy Commissioner has to decide whether investigation shall be taken against the concerned officer or not under Rule 16 of the Rules. The disciplinary authority, DCP in this case, himself ordered enquiry and after enquiry, the impugned order of punishment was passed by him against the applicant. It is contended that the enquiry was initiated against the applicant on the basis of the letter written by the SHO and not upon the direction given by the DCP.

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We do not agree. As stated above, the DCP who is the disciplinary authority in this case, upon considering the material including Annexure-B, directed an enquiry against the applicant and the SHO was examined in the enquiry as a witness. It cannot be said that on the basis of the letter of the SHO, the proceedings were initiated against him. There is no force in the contention of the learned counsel for the applicant in this regard.

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5. It is next contended that though the criminal court has passed strictures against the SHO, no action has been taken against him and the applicant was singled out for initiation of the action. We are not posted with all the facts and circumstances in which no action was taken against the SHO. On this ground alone, we are not prepared to set aside the impugned order. In this OA, we are concerned with the validity of the order of punishment passed by the disciplinary authority. This contention also fails. It is next contended that the impugned order is vitiated as it contains multiple punishments. It is contended that the applicant was awarded that with the penalty of forfeiture of service coupled with reduction of pay and also that of the punishment of deferment of increments for the period of two years. The learned counsel for the applicant relies upon the Rule 8(2)(d) of the Delhi Police (Punishment and Appeal) Rules, 1980 and submits that while imposing the punishment of forfeiture of service, the authority can only award the reduction in pay along with the penalty of forfeiture of service. The punishment of deferment of increments cannot be passed as it

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✓ constitutes a separate and distinct punishment as mentioned in Rule 5 of the above Rules. We are persuaded to agree with this contention. This question has come up for decision in a Full Bench in OA No.2225/93 (A.S.I. Chander Pal Vs. Delhi Administration & Others) in which one of us (Hon'ble Member, Shri R.K.Ahooja) was also a party. It was held that the order of deferment of increments is inherent in the punishment of forfeiture of service and that the same can be passed along with the reduction in pay under Rule 8(2)(d) of the above Rules.

6. In view of the aforesaid discussion, the OA fails and is accordingly dismissed. No costs.

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

/RAO/

~~V.Rajagopala Reddy~~
(V.RAJAGOPALA REDDY)
VICE-CHAIRMAN(J)