

Central Administrative Tribunal  
Principal Bench

O.A. 978/93

25

New Delhi this the 19th day of July, 1999

Hon'ble Shri V. Ramakrishnan, Vice Chairman (A).  
Hon'ble Smt. Lakshmi Swaminathan, Member (J).

Ct. Subhash Chand,  
S/o Shri Alam Chand,  
No. 2338/D.A.P. III Bn., DAP Delhi,  
R/o RZ 308, Raj Nagar,  
Palam Colony,  
New Delhi.

... Applicant.

By Advocate Shri V.P. Sharma with Shri Yogesh Sharma.

Versus

1. Delhi Administration through,  
The Secretary, Old Secretariat,  
Delhi.
2. The Commissioner of Police,  
HQs, Delhi Police, I.P. Estate,  
New Delhi.
3. The Addl. Commissioner of Police (AP),  
HQs, Delhi Police,  
I.P. Estate,  
New Delhi.
4. The Deputy Commissioner of Police,  
III Bn. DAP Delhi Police,  
Delhi.

... Respondents.

By Advocate Shri Amresh Mathur.

O R D E R (Oral)

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

The applicant has challenged a number of orders passed by the respondents, including the orders <sup>for</sup> ~~for~~ holding the departmental proceedings against him which ultimately resulted in the disciplinary authority dismissing him from service by order dated 19.7.1991 which on appeal had been modified by the appellate authority's order dated 7.3.1992. The appellate authority held that he is inclined to give the applicant one more chance to show improvement and ordered that in place of the extreme penalty of dismissal from

8/



service, the penalty of reduction in pay of the appellant to the minimum of the scale of pay of Constable for a period of three years be imposed. In terms of <sup>the 2</sup> <sub>the</sub> appellate authority's order, the applicant was reinstated in service and the period during which he remained out of service was treated as period not spent on duty.

He has also confirmed the order passed with regard to the suspension period treating the same as period not spent on duty.

2. The charge levelled against the applicant reads as follows:

"I Satpal Singh Inspector III Bn. DAP charge you Ct. Subhash Chand No. 2338 DAP in that on 20.4.90 while posted in III Bn. DAP you were detailed for duty at N.D. lock up you manhandled and misbehaved with H.C. Prahlad Singh No. 2091/DAP in the presence of the staff outside the lock up towards Tilak Marg.

The above act on your part amounts to gross misconduct and indiscipline and render you liable for departmental action u/s 21 of the D.P. Act, 1978".

3. Learned counsel for the applicant has contended that the charge is vague with which we cannot agree in the facts and circumstances of the case. The charge has clearly stated that while the applicant was posted in III Bn. DAP on 20.4.1990, he was detailed for duty at N.D. lock up and he is alleged to have manhandled and misbehaved with H.C. Prahlad Singh in the presence of the staff outside the lock up towards Tilak Marg. He has submitted that in the summary of allegations, <sup>the</sup> only one charge that the applicant has manhandled H.C. Prahlad Singh was mentioned which was held as not proved by the appellate authority.

4. On perusal of the charge, we are unable to agree with the learned counsel's contention that the same is vague and this ground is, therefore, rejected. In this connection, it is relevant to note what the appellate authority <sup>himself</sup> <sub>has</sub> stated with regard to the charge in his order <sup>is</sup> that the fact that the prime witness H.C. Prahlad Singh has not made any mention of manhandling or beating in his statement is a material fact which cannot be completely

(27)

ignored. From this it can be inferred that the appellate authority had passed his order of punishment only on the second component of the charge, namely, misbehaviour of the applicant towards his senior, i.e. the Head Constable.

5. Learned counsel for the applicant has also submitted that the respondents have failed to give a list of documents as well as a list of witnesses by which the charge was sought to be proved. He has also stated that the applicant had not been allowed to cross-examine the witnesses before the I.O.

6. Shri Amresh Mathur, learned counsel for the respondents, has stoutly defended the action of the respondents and controverted the averments made by the applicant. He relies on the records placed in the file. He has also submitted that the original departmental file was not readily traceable and he has, therefore, been unable to produce the same. However, learned counsel has submitted that neither in the reply to the show cause notice/supply of the Inquiry Officer's report to the applicant, or in the subsequent appeal filed by the applicant against the disciplinary authority's order the applicant had raised any of the grounds mentioned above. *He has submitted that* These grounds, therefore, taken in the O.A. are an after thought.

7. We have carefully considered the documents on record and submissions made by the learned counsel for the parties.

8. As mentioned above, the first ground taken by the applicant that the charge is vague is not tenable having regard to the charge-sheet itself which is self explanatory, copy of which is placed on record. In this connection, we may state that the charge of manhandling HC Prahilad Singh is not under issue as this has not been held proved by the appellate authority himself who has imposed the reduced punishment of reduction in pay of the applicant to the minimum of the scale of pay for a period of three years only on the second ground of misbehaviour. In this connection, it

is also relevant to note that he has himself stated that while the conduct of the appellant is definitely reprehensible in indulging in misbehaviour and abusive language towards his superior, the Head Constable should also have exercised some restraint and should not have allowed the matter to precipitate to that extent. However, we cannot at the same time state that conclusion of the appellate authority in his order based on the facts and material on record is either perverse or unwarranted which justifies any interference in the matter. He has stated that there was an exchange of hot words and abuses between IC Prahlad Singh and the appellant over the fact that while the Head Constable wanted the appellant to reply to his query about the loading of weapons and particularly SAF Carbine, the appellant did not want to answer his queries as he was not directly working under him at that particular time. It appears from the nature of the charges and the list of witnesses given in the summary of allegations that the charges were not to be proved by any document, as also contended by Shri Amresh Mathur, learned counsel. In the circumstances, we are of the view that the non-supply of documents called for by the applicant has not in any way prejudiced his case or the inquiry vitiated in any manner to justify setting aside the same.

9. With regard to the plea taken by the learned counsel for the applicant that the applicant had not been allowed to cross-examine the witnesses, on perusal of pages 34 and 35 of the paper book, for example, we note that the applicant had either cross-examined certain witnesses or he had chosen not to cross-examine others in spite of the opportunity having been given to him. In the circumstances, this plea also fails and is rejected.

29

10. Learned counsel for the applicant has also submitted that the applicant had made a representation on 16.1.1991, again asking the Inquiry Officer that he may be allowed to cross-examine the witnesses. The Inquiry Officer submitted his report on 12.2.1991 and the charge-sheet had been issued to the applicant as early as on 22.10.1990 and the departmental inquiry had started on 16.7.1990. We find that the ground taken by the learned counsel for the applicant based on the representation dated 16.1.1991 is not tenable as it appears to have been taken at a very late stage. This is particularly so when the applicant has also been given an opportunity to cross-examine the witnesses earlier. No material has also been shown to rebut the stand taken by the respondents that the departmental inquiry has been held in accordance with law and Rules.

11. Learned counsel for the applicant has submitted that the aforesaid three grounds taken in the O.A. have not been taken in the appeal filed against the disciplinary authority's order. He has contended that these being legal grounds, he could ~~have~~ taken the same at any time. We are also not satisfied with this contention ~~and it is accordingly rejected~~.

12. For the reasons given above, we find no merit in this application. The O.A. fails and is dismissed. No order as to costs.

  
(Smt. Lakshmi Swaminathan)  
Member(J)

  
(V. Ramakrishnan)  
Vice Chairman(A)

'SRD'

\*