

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

RA No. 238/2014 in
OA No. 3464/2011

Order Reserved on: 27.01.2016
Pronounced on: 10.03.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

Harender Singh
PIS No.28900839
Aged about 46 years
S/o Sh. O.P.Chaudhary,
R/o House No.29/149,
Vill.& PO – Kewal Park,
P.S. Adarsh Nagar,
North-West Dist.
Delhi-33.

- Applicant

(By Advocate: Sh. Nilansh Gaur)

Vs.

1. Govt. of NCT of Delhi through
Commissioner of Police
Police Head Quarters,
IP Estate, New Delhi.
2. Joint Commissioner of Police
Northern Range,
Delhi Police,
Delhi.
3. Dy. Commissioner of Police,
North West District,
Ashok Vihar,
Delhi.

- Respondents

(By Advocate: Ms. Rashmi Chopra)

ORDER**Hon'ble Shri V.N.Gaur, Member (A)**

The applicant in OA No.3464/2011 has filed this Review Application for the review of the order dated 20.11.2014 dismissing that OA.

2. It has been submitted that in the OA applicant had taken legal grounds to challenge the penalty including non-consideration of proportionality of the penalty. The review applicant has also in the meantime got hold of some important documents that were not available at the time of the filing the main OA. One of these documents is second medical opinion by the hospital and DD No.15 dated 20.12.2006 alleged by the Duty Officer at the instance of the applicant whereby the applicant joined his duties as special staff and was assigned duties. The documents also contain proof of official duties performed by the applicant where the FIR was lodged under Antiques Act and that the applicant was instrumental in un-earthing spurious liquor factory and was also a drug peddler.

3. The learned counsel for the review applicant stated that his main ground for filing the review was the fact that the point relating to proportionality of the penalty of dismissal imposed on the applicant has not been dealt with in the Tribunal's order dated 20.11.2014. It was his contention that the Tribunal inadvertently

failed to take note of Rule 8 (a) and 10 of the Delhi Police (Punishment & Appeal) Rules, 1980 which provides that the extreme penalty of dismissal which could only be imposed upon a Police Officer if the continued misconduct indicates incorrigibility. He also referred to **Bhagwan Lal Arya vs. Commissioner of Police**, 2004 (4) SCC 560 wherein the Hon'ble Supreme Court has interpreted the aforementioned rule. The applicant has served the department for more than 18 years and his service record does not show any past misconduct or punishment. He has absolutely clear record. The department failed to appreciate this fact while deciding the quantum of penalty to be imposed on the applicant.

4. We have considered the submissions made by the learned counsel for the applicant. The new documents that have been annexed to the review application do not add to the defence already taken by the applicant before the enquiry officer or in OA No.3464/2011. The fact of his second medical examination conducted at Aruna Asaf Ali Hospital on 10.11.2006 has been discussed in para 12 of the order. Similarly, the fact that the applicant assisted the department in connection with FIR no.988 of P.S. Shalimar Bagh even when he was officially not on duty, has been noted in para 13 of that order.

5. With regard to the proportionality of quantum of penalty it is found that contrary to the submission made in para 3 of the review

application, we do not find any such ground taken in the OA. However, we find that Rule 8 (a) & 10 of the Police Rules, 1980 provides that extreme penalty of dismissal could be imposed upon a Police Officer if the continued misconduct indicates incorrigibility. From the record it appears that the respondents in the OA have not dealt with this point either during the inquiry or in orders passed by the disciplinary authority or appellate authority. Rule 10 of Delhi Police (Punishment & Appeal) Rules, 1980 is reproduced below:

“10. Maintenance of discipline – The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank.”

6. This issue becomes important considering the fact that there is no averment in the counter in the OA that the applicant is a habitual absentee or has a record of misconduct in the past. In

Shri Bhagwan Lal Arya vs. Commissioner of Police (supra), the Apex Court has observed thus:

“11. We are of the view that the punishment of dismissal/removal from service can be awarded only for the acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility of complete unfitness for police service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the disciplinary authority inflicting a penalty of removal from service is ultra vires of Rules 8 (a) and 10 of the Delhi Police (Punishment & Appeals Rules, 1980) and is liable to be set aside. The appellant also does not have any other source of income and will not get any other job at this age and the stigma attached to him on account of the impugned punishment. As a result of

not only he but his entire family totally dependant on him will be forced to starve. These are the mitigating circumstances which warrant that the punishment/order of the disciplinary authority is to be set aside.”

7. Thus, though the review applicant has neither been able to show that he has raised this ground in the OA and the same has not been dealt with in the final order of the Tribunal, nor there is any error apparent in the order passed in the OA, we find that the above mentioned issue is a sufficient ground to have a re-look at order passed in the OA.

8. The power of review of its own order by this Tribunal emanates from Section 22(3)(f) of the Administrative Tribunals Act. In **Ajit Kumar Rath v. State of Orissa and Others**, (1999) 9 SCC 596 the Hon’ble Apex Court held that “power of review available to the Tribunal under Section 22 (3)(f) is not absolute and is the same as given to a Court under Section 114 read with Order 47 Rule 1 of CPC.”

9. Order XLVII, Rule (1) of Code of Civil Procedure reads is reproduced below:-

“(1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of

the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

10. The law provides renew of a decree in a situation of mistake, error apparent on the face of the record or any other sufficient reason. In the present case, we are of the view that the applicant has been able to adduce sufficient reason to warrant recall of an order in the OA.

11. In the light of the aforementioned, finding that there is sufficient reason for the order in the OA to be re-visited, we allow the RA. Let the OA be listed at its original position for rehearing on 07.04.2016.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

March 10, 2016

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