

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 4188/2012
MA 3512/2012

Reserved on: 27.09.2017
Pronounced on: 10.10.2017

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Constable Bhupender Singh,
No.1279/C (PIS No. 28990624)
S/o Late Shri Partap Singh, Age 35 years
R/o H.No.1173, Sector – 23
Sonapat, Haryana

... Applicant

(Through Shri Sachin Chauhan, Advocate)

Versus

1. Govt. of NCTD through
The Commissioner of Police
PHQ, I.P. Estate
New Delhi
2. The Joint Commissioner of Police
Central Range: through
The Commissioner of Police
PHQ, I.P. Estate
New Delhi
3. The Dy. Commissioner of Police
Central District through
The Commissioner of Police
PHQ, I.P. Estate
New Delhi

... Respondents

(Through Ms. Sumedha Sharma, Advocate)

ORDER

Mrs. Jasmine Ahmed, Member (J)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act 1985, seeking the following reliefs:

- (i) To quash and set aside order dated 27.09.05 whereby the punishment of withholding of next service increment of pay for a period of one year without cumulative is imposed upon the applicant and further suspension period from 15.2.05 to 25.4.05 is decided as period not spent on duty for all intents and purposes, order dated 30.7.2012 whereby the appeal of the applicant against the punishment of withholding of next service increment of pay for a period of one year without cumulative effect is rejected by the Appellate Authority and to further direct the respondent to reduce the punishment to Censure in light of circular dated 14.5.10 and letter dated 20.10.11 after restoring the forfeited increment of pay with all consequential benefit including seniority and promotion and pay and allowance.
- (ii) To set aside the findings of the Enquiry Officer.
- (iii) To direct the respondent that suspension period of applicant from 15.2.05 to 25.4.05 be treated as spent on duty for all intents and purposes.

2. The applicant herein was appointed as a Constable in Delhi Police in the year 1999. He was dealt with departmentally vide order dated 25.05.2005 on the allegation of loss of Wireless Set issued to him. It is the contention of the learned counsel for the applicant that the allegation against the applicant of gross carelessness, negligence and dereliction in discharge of official duties is completely unwarranted and without any basis.

3. The background of facts, as stated, is that while the applicant was on duty, he had kept the Wireless Set with the clip

at the back side of his belt but somehow misplaced the same. He noticed that the clip by which the Wireless Set was attached, was broken which resulted in loss of Wireless Set. Learned counsel for the applicant stated that the broken clip was very much attached with the belt when the applicant noticed the loss of Wireless Set, which can well be corroborated by the depositions of PWs. In this regard, he drew our attention to page 20 of the paper book where PW-2, HC Ravinder Kumar has deposed that "Ct. Bhupinder Singh No.1279/C had missed/ lost the hand set, which he entered with the red ink in his issue register. The original issue register was produced and the copy of the same was marked as Ex PW-2/A. On cross examination by defaulter he replied that the wireless set could be dropped due to fault in clip." The applicant's counsel also stated that the statement of PW-3, Inspector Ajeet Singh also supports the contention of the applicant. He drew our attention to page 21 of the paper book where it is seen that PW-3 has deposed as under:

"Ct. Bhupinder Singh No.1279/C had kept the wireless set with the clip at the back side of his belt, which while patrolling on 29/30-1-2005 night fell down somewhere and lost."

Learned counsel for the applicant also referred to statement of PW-4, SI Mange Ram where it is seen from his deposition that "Ct. Bhupinder Singh, 1279/C while he was on night patrolling duty and thus misplaced and the clip of the hand set remained stuck with Constable's belt. He immediately informed the Addl.

DCP/C and DCP/C through Telephone and also to SOD. The I/C CDCR and senior officers also apprised of.”

4. The learned counsel for the applicant further placed reliance on deposition of PW-6, who also deposed in the same terms that the Wireless Set with him which was stuck with the belt, had fallen down somewhere but the clip was hanging with the belt. On cross examination, it was stated that the applicant was not negligent towards his duties and in up-keep of arms. Through these depositions of PWs, the learned counsel for the applicant tried to establish the fact that the applicant was not at all careless in taking proper care of the Wireless Set issued to him rather it was on account of some defect in the clip that the Wireless Set was lost. The learned counsel stated that on conclusion of disciplinary proceedings, the charge leveled against the applicant was found to be proved and he was imposed with the punishment of withholding his next service increment for a period of one year without cumulative effect. His suspension period from 15.02.2005 to 25.04.2005 was decided as period not spent on duty for all intents and purposes vide order dated 27.09.2005. The applicant was directed to file an appeal to the Joint Commissioner of Police, Northern Range, Delhi within 30 days from the date of receipt of the order, if he so desired.

5. It is admitted by the learned counsel for the applicant that the applicant did not prefer an appeal against the order dated 27.09.2005 for a period more than six years. He submitted his appeal on 19.01.2012, which has been rejected vide order dated

30.07.2012 as the respondents found no cogent reasons for condoning delay in submission of the said belated appeal.

6. With regard to delay in filing the appeal, learned counsel for the applicant drew our attention to Circular No.15881-980/A-1/PHQ dated 14.05.2010 issued by the respondents which describes the course of action to be taken in case of lost/ theft/ damage of the Wireless Set issued to police personnel, as follows:

- "1. A wireless T.P. message shall be addressed to all SSP in India and all SHOs of Delhi as soon as a theft or loss of Wireless set is reported indicating its make, model and serial no. etc. DCP/ Communication will get the lost wireless disabled or change the frequency as required.
2. An FIR be got registered and properly investigated.
3. Explanation of the police personnel responsible for the loss/ theft/ damage of the wireless set be called. Normally if negligence is established, the cost of the set could be recovered and at the most a censure be awarded. Suspension of an individual or award of major punishment may be resorted to only if there are aggravating factors."

7. Learned counsel for the applicant argued that in the above quoted circular, it has been categorically mentioned that as soon as a theft or loss of Wireless Set is reported, a wireless message shall be addressed to all SSPs in India and all SHOs of Delhi and thereafter an FIR be got registered, which was done by the applicant when he came to know about the loss of Wireless Set. Learned counsel specifically drew our attention to para 3 quoted above, which categorically states that in case of loss/ theft/ damage of the wireless set, if negligence is established of the

person who was issued the wireless set, the cost of the set could be recovered and at the most a 'censure' can be awarded. Suspension or award of major punishment can be resorted only if there are aggravating factors. Our attention was also drawn to letter no.1143-47/P.Sec. Spl.C.P./Ops. dated 21.10.2011, where also in a similar matter with regard to missing of Wireless Set, it has categorically been recorded as follows:

"I don't feel that there should be any reason to either suspend an individual or to award him major punishment unless there are aggravating factors. Normally, if negligence is established, the cost of the set could be recovered and at the most a censure be awarded. Instructions to this effect need also be issued to concerned disciplinary authorities."

8. Learned counsel for the applicant stated that when the applicant came to know about the above quoted circular dated 21.10.2011, he filed the appeal with regard to proportionality of punishment imposed on him vide order dated 27.09.2005. Learned counsel for the applicant further stated that while rejecting the applicant's appeal, the respondents have only stated that he has filed the appeal after more than six years from the date of issuance of punishment i.e. order dated 27.09.2005 instead of 30 days as per Rule 24.3 of Delhi Police (Punishment and Appeal) Rules and they found no cogent reasons for condoning the delay. It is stated that while rejecting the appeal of the applicant, the respondents have not applied their mind nor have they gone into the issues raised by him in his detailed appeal dated 19.01.2012. Learned counsel stated that as the respondents have not dealt with the points raised by

the applicant in his appeal, it is for the Tribunal to decide about limitation. He vehemently argued that a conscious decision has already been taken by the respondents themselves that in case of theft, loss or damage of Wireless Set, the maximum punishment can be only twofold i.e. one of recovery of the cost of the Set and second of award of 'censure'. Only in very aggravating circumstances, suspension or award of major punishment should be resorted. It is stated that the steps taken by the applicant immediately after coming to know about the loss of Wireless Set prove beyond doubt that there was no negligence on his part. It all happened only because the clip was broken and he could not notice the same. He further stated that a sum of Rs.14,000/- has already been recovered from the applicant and the punishment imposed on him is not in accordance with the conscious decision taken by the respondents. Therefore, proportionality of punishment could be looked into by the Tribunal. It is submitted that quantum of punishment always comes within the scope of judicial review and hence this Court can very well review the punishment imposed on the applicant.

9. Per contra, the learned counsel for the respondents stated that the OA may be dismissed not only on the ground of limitation as also for not following statutory provisions, which ought to have been followed by the applicant. She also stated that the applicant could very well have filed an appeal against the punishment imposed by the disciplinary authority but on his own whims and fancies, he chose not to file an appeal within the

provisions of Rule 24.3 of Delhi Police (Punishment and Appeal) Rules. Learned counsel stated that the applicant has fraudulently mentioned in the limitation column that the OA has been filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, which is wrong. Learned counsel for the respondents also stated that the behavior of the applicant shows that as if he was waiting for the circular to be issued by the respondents and only after that, he could file the appeal. This act on the part of the applicant clearly shows that he was not only careless towards his duties but was also not vigilant about his right to file an appeal within time. Accordingly, when the appeal was filed with a delay of more than six years, the respondents rightly rejected the same being barred by time and there was nothing wrong in it.

10. We have heard the learned counsel for the parties and perused the record.

11. From the statement of PWs and cross examination, it is noticed that it may happen that because the clip was broken which resulted in loss of Wireless Set and the applicant had nothing intentional on his part as the clip was intact in his belt where the Wireless Set was supposed to be fixed. It is also established that the applicant, after coming to know about the loss of Wireless Set, had informed the authorities and took steps which he needed to take but it is not understandable why the applicant has not preferred an appeal within 30 days as prescribed under Rule 24.3 of Delhi Police (Punishment and

Appeal) Rules. Learned counsel for the applicant has repeatedly taken the plea that the respondents themselves have issued the circular taking conscious decision that in case of theft/ loss/ damage of Wireless Set, cost of the same could be recovered from the person concerned or punishment of 'censure' could be imposed and only in case of aggravating circumstances, the punishment of suspension or a major punishment could be imposed. It is true that of late the respondents have come up with this type of circular and in the case of loss of Wireless Set of Circle Inspector, Maya Puri, it was noted that punishment of suspension or a major punishment could be imposed only in case of aggravating factors but the issue is whether the applicant can take advantage of a circular which has been issued long after imposition of punishment and whether he can take retrospective benefit of the circular at a belated stage.

12. We feel that the applicant was legally entitled to prefer an appeal within 30 days, which he did not do and thus now at a belated stage, he cannot seek benefit of a circular which has come in existence after more than six years from the date of imposition of penalty. Learned counsel for the applicant, though argued that this Tribunal could go for a judicial review, we feel that if a person has been sleeping over his rights, he is not entitled to any relief at a belated stage. Thus, we hold that the arguments advanced on behalf of the applicant are not justified and the applicant is not entitled to seek judicial review of the punishment at such a belated stage.

13. In view of above, the OA is found to be devoid of merit and is, therefore, dismissed. No costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

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