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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1314/2003

Thursday, this 4th day of December, 2003

Hon'ble Shri Justice V.S. Aggarwai, Chairman
Hon'ble Shri S.A. Singh, Member (A)

SI Mahinder Singh Parasher
S/o Late Shri Perma Nand
R/o 1119, Timar Pur,
Delhi.Applicant

(By Advocate: Arun Bhardwaj)

Versus

1. Commissioner of Police,
Police Headquarters,
IP Estate, New Delhi.
2. Joint Commissioner of Police, (Vg.)
Police Headquarters,
IP Estate, New Delhi.
3. Deputy Commissioner of Police,
Special Branch, PHQ,
IP Estate, New Delhi.
4. Deputy Commissioner of Police,
Vigilance, PHQ,
Delhi.Respondents.

(By Advocate: Mrs. Sumedha Sharma)

ORDER (ORAL)

Shri Justice V.S. Aggarwai:

The applicant faced disciplinary proceedings in pursuance of a complaint which is alleged to have been made by one Ms. Kiran Yadav, woman ASI regarding sexual harassment at the work place. The matter was enquired into by Assistant Commissioner of Police, who submitted her report that the applicant used to pass objectionable remarks against the said woman ASI Kiran Yadav.

2. A regular departmental enquiry was ordered which was entrusted to Ms. Versha Sharma, Assistant Commissioner of Police. The disciplinary authority tentatively agreed with the findings of the enquiry officer and had recorded a disagreement note that the explanation of the applicant was

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called. Thereupon, the penalty had been imposed by the disciplinary authority, which was forfeiture of three years of approved service permanently. An appeal was preferred which also had been dismissed. OA 2483/2001 was filed. The matter was remanded and it was directed that a fresh order may be passed. It is in pursuance of the said decision of the Tribunal that the penalty order was passed awarding censure to the applicant. The relevant portion of the censure is as under:

I have carefully considered the findings submitted by the E.O. in the light of the facts and circumstances of the case, the evidence on record, the representation of the defaulter & also heard Si(Min.) Mahender Singh No.D/449 in person on 13.1.2003. Though there is no evidence/witness in support of allegations levelled against him, gender harassment met out to the complainant by the defaulter can not be completely ruled out. I am therefore, inclined to take a lenient view by awarding the punishment of Censure upon Si(Min.) Mahender Singh No.D/449. Accordingly, the conduct of the defaulter is hereby censured.

3. We are informed that the applicant has separately filed an original application assailing the order passed by the disciplinary authority on 17.1.2003 and the order dismissing his appeal, which is pending in this tribunal.

4. By virtue of the present application, the applicant seeks quashing of disciplinary authority's order dated 24.5.2001 and appellate authority's order dated 24.5.2001 whereby the name of the applicant is perpetuated to have been placed in the secret list.

5. Learned counsel for applicant contends that the name of the applicant could not have been kept in the secret list as it violates the provisions of the Standing Order No. 265 issued by the Commissioner of Police because the

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applicant has been awarded only a minor penalty of censure and no major penalty has been awarded.

6. The petition has been contested. According to the respondents, the said order has rightly been passed and the name of the applicant kept in the secret list keeping in view paragraph 6(iv) of the Standing Order.

7. To keep the records, we deem it necessary to mention that when the matter had been argued, learned counsel for applicant had drawn our attention to paragraph 4 of the Standing Order which provides that there shall be two lists of personnel suspected to be of doubtful integrity, i.e., (i) Agreed list and (ii) Secret list. Paragraph 5(i) of the Standing Order, which refers to Agreed List, reads:

5. Agreed List:

1) The agreed list of officials of doubtful integrity shall be prepared of police personnel against whose honesty or integrity there are complaints, doubts on suspicious after consultation between the concerned disciplinary authority and their counterpart in the Vigilance Branch in PHQ. The consultation shall be between DCP/Distt/Unit and DCP/Vigilance for police personnel of lower subordinates rank while it will be between Joint CP or Addl. CP/Range/Unit with the Joint CP/Vigilance in case of upper subordinates rank. This will include the following cases:-

(a) Official against whom proceedings for a major penalty or a Court trial are in progress for alleged acts involving specific charges of lack of integrity or moral turpitude.

(b) Those case where enquiries do not substantiate charges of dishonesty but raise strong suspicion of dishonest conduct.

(c) Officials who are prosecuted but acquitted on technical grounds leaving reasonable suspicion against their integrity.

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8. It was pointed that after the disciplinary proceedings had been initiated since the charges stood proved, a penalty of censure has been awarded. The name of the applicant could not be kept in the secret list. However, this fact need not deter us further. In this regard, paragraph 6(iv) clearly prescribes the persons who are awarded even minor penalty on charges involving specific charges of lack of integrity moral turpitude pursuant to major penalty proceedings, their name can be kept in the doubtful integrity which is called "Secret List". Be that as it may, learned counsel for the applicant contended that after the order that has now been passed imposing penalty of censure, the respondents must apply their mind to pass any order ~~and~~ ^{if} the name of the applicant is to be kept in the secret list, as being alleged on behalf of the respondents because the earlier order on the basis of which the name of the applicant was kept in the secret list has been set aside. To this extent on the procedural aspect the argument cannot be ignored. This is because, when the order has been set aside, i.e., on basis of which the said order was passed, it would be in the fitness of the things that the disciplinary authority applies its mind and pass a fresh order on the basis of present facts.

9. Accordingly, we dispose of the present application with the following directions:-

a) the impugned orders are quashed;

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b) nothing said herein would restrain the disciplinary authority from passing a fresh order, if deemed appropriate, keeping in view the penalty that has not been awarded.

(S.A. Singh)
Member(A)

/kdr/

(V.S. Aggarwal)
Chairman