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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1585/2003

New Delhi, this the 12th day of February, 2004

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Asstt. Sub-Inspector (Driver) Avdesh Kumar
No.2886/D, 1266, Viveka Nand Nagar
Ghaziabad, Uttar Pradesh .. Applicant

(Shri Sachin Chauhan, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Joint Commissioner of Police
Operations, Police Hqrs.
IP Estate, New Delhi
3. Dy. Commissioner of Police
FRRO, New Delhi .. Respondents

(Shri Ram Kavar, Advocate)

ORDER(oral)

Shri S.K. Naik

A Departmental Enquiry (DE) was initiated against the applicant vide order dated 19.12.2001 on the following allegations:

On 4.12.2001, the staff of the bus driven by the applicant reached at Madhuban Chowk at 6 PM where Inspr. Ashok Talwar, Dharampal, ACIO-I and Ashok Kumar, ACIO-II were standing for boarding the bus. When the bus reached and stopped at that point, Dharampal, ACIO-I boarded the bus and when Ashok Kumar was about to board the bus, applicant started moving the bus without taking Ashok Kumar and A.K.Talwar. They shouted for stopping the bus, Applicant stopped the bus but passed a very undesirable remarks.

When the bus reached at PP Shakti Vihar point, Inspr. Om Parkash was standing there and gave signal for stopping the bus but the applicant did not stop at the said point. He took the bus about 50 mtrs. ahead of the point and again passed some comments in a very indisciplined manner.

On 5.12.2001 while going after night duty from IGI Airport, the staff requested the applicant to take the official route via Dwarka/Palam which was circulated on 16.11.2001 but he refused to take the

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bus on the newly approved route. Only after great persuasion applicant agreed for the new route but he started the bus in a very rash and negligent manner and applied brakes intermittently to give a jerk to the staff sitting in the bus. When the bus reached Shahabad Mohd. Pur Railway crossing, applicant applied the brake in such a way that it appeared that the bus would overturn. By then everybody was frightened by the negligent unprovoked aggressive/dangerous driving of the bus driver.

2. For the said misconduct, the applicant was placed under suspension vide order dated 6.12.2001 but reinstated vide order dated 24.1.2002. The Enquiry Officer conducted the enquiry on day-to-day basis and submitted his report concluding therein that the charge framed against the applicant stood proved. Tentatively agreeing with the same, a copy of the enquiry report was given to the applicant on 21.5.20202, in response to which applicant gave his representation on 19.6.2002.

3. After carefully going through the statements of PWs/DWs, defence statement of the applicant as well as his representation against the findings of EO, other documentary evidence on DE file and after hearing him in OR on 3.7.2002, the disciplinary authority vide his order dated 30.7.2002 imposed the punishment of forfeiture of two years of approved service of the applicant temporarily entailing reduction in his pay from Rs.5125 to Rs.4875 for a period of two years and the period of his suspension was decided as "period not spent on duty" for all intents and purposes. The applicant made an appeal against this order which was decided on 8.11.2002 by the appellate authority who took a lenient view and modified the punishment to that of forfeiture of one year

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approved service from that of two years. Aggrieved by this, applicant is before us seeking to quash the impugned orders.

4. We have heard the learned counsel for the parties and perused the material available on record.

5. The main planks of attack of the learned counsel for the applicant during the course of arguments in support of the reliefs sought for are that it is not a case of misconduct on the part of applicant but it is a case of no evidence inasmuch as the applicant was plying his bus under prescribed route and not giving to the demand of the senior officers who are passengers for altering the route as per their convenience resulting into complaints against the applicant. It is further contended that the disciplinary authority passed the order without competence and jurisdiction as he cannot act as FRRO and that the appellate authority had passed the order in a mechanical manner without taking into previous good record of the applicant.

6. On the other hand, counsel for the respondents has rebutted the aforesaid contentions and submitted that PWs 1 to 4 reported the misconduct of the applicant to their senior officers and therefore it cannot be termed as a case of no evidence. Further in exercise of power conferred by Section 8 of Delhi Police Act, 1978, the Administrator of UT of Delhi has power to appoint the Dy. Commissioner of Police as FRRO in relation to the

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superintendence and control over the police officers and other staff of Delhi Police vide notification dated 21.5.1997. Therefore the Dy. Commissioner of Police in his capacity as FRRO is fully competent to initiate/decide the departmental enquiries. As regards the third ground, it was stated that the appellate authority took into consideration the past good record of the applicant and that is why he reduced the punishment. Therefore, the contention of the applicant that the appellate authority passed the order in a mechanical manner is baseless. We find force in the arguments advanced by the learned counsel for the respondents and we have no reason not to agree with the same.

7. During the course of arguments before us, learned counsel for the applicant has placed great emphasis on the prosecutive witnesses being annoyed with the applicant as he was not changing the route of the bus as per the direction of the complainants and was sticking to the prescribed route. The counsel has further contended that the applicant was not given any order with regard to the change of route and therefore respondents could not have taken action against him on this ground. In this regard, it would be relevant to extract the order passed by the disciplinary authority which states that:

"The misconduct committed by the defaulter ASI(Dvr) shows his utter disregard to not only decency and discipline but also apathy towards safety of the staff sitting in the bus on the alleged day. Had he been driving the bus in a proper manner, there was no reason for the staff to have complained against him. It is clear that his misbehaviour with staff and applying brakes intermittently to give unnecessary jerks etc. caused such anguish to the staff that they were compelled to lodge a formal complaint. I am sure that had his misbehaviour not


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crossed tolerable limits, the staff present in the bus would have definitely ignored it. I am of the opinion that he is required to be punished."

It is clear from the order passed by the disciplinary authority above that it is not the change of route which has weighed in the mind of the disciplinary authority but the order of punishment has been based primarily on the misconduct and misbehaviour of the applicant.

8. We also find that the appellate authority has taken the good conduct of the applicant into account while reducing the punishment order passed by the disciplinary authority. The orders passed by the disciplinary authority as well as the appellate authority are quite in detail and fully reasoned and it cannot, therefore, be said that they have passed them without application of mind, as has been contended by the learned counsel for the applicant.

9. In the result we find no merit in the present OA and the same is accordingly dismissed. No costs.


(S.K. Naik)
Member(A)


(V.S. Aggarwal)
Chairman

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