

Central Administrative Tribunal, Principal Bench

Original Application No. 2712 of 2003

New Delhi. this the 13th day of May. 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Ct. Mohd. Ilyas
No. 2659/PCR
Rose Bud Lines,
PCR, Delhi

....Applicant

(By Advocate: Shri Arun Bhardwaj)

Versus

1. Commissioner of Police.
Police Head Quarter.
Indraprastha Estate.
New Delhi

2. Addl. Commissioner of Police
PHQ (PCR and Communications)
Indraprastha Estate.
New Delhi

3. Deputy Commissioner of Police
PCR
Police Head Quarters.
I.P.Estate, New Delhi

....Respondents

(By Advocate: Shri S.Q. Kazim with Shri Falak Mohd.)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant is a Constable in Delhi Police. He faced disciplinary proceedings. The summary of allegation against the applicant was:

"It is alleged against Const. Mohd. Ilyas No. 2659/PCR (PIS No. 28760687) while posted in Central Zone/PCR he misbehaved, used abusive language and also slapped to H.C. Hira Lal No. 1211/PCR twice with threatening language in the presence of other staff, when H.C. collected his pay for the month of June - 2001 from L.O. Central Zone/PCR. The H.C. was got medically examined at J.P.N. Hospital vide M.L.C. No. CR58872 dt. 30.6.01.

The above act on the part of Const. Mohd. Ilyas No. 2659/PCR amounts to gross misconduct. Dereliction to duty and misbehaviour attitude is an act of unbecoming member of disciplined force for which he is liable to be dealt departmentally under

18 Ag

the provisions of Delhi Police (Punishment and Appeal) Rules, 1980."

2. The enquiry officer had been appointed. He recorded the testimony of the witnesses and on appraisal of the same, concluded:

"I have gone through the entire testimonies of the P.Ws reply of the defaulter Const. and other relevant papers in the D.E. Only two P.Ws i.e. HC Hira Lal. No.1211/PCR and Const. Ashok Kr. No.4701/PCR who are complainants in the D.E. are supporting the prosecution. However, their plea that Const. Mohd. Ilyas gave a slap on the face of HC Hira Lal is quite doubtful because if a man slaps with his right hand to anybody who is facing him, its impact should be on left part of face/cheek and not on right cheek as given in medical paper.

Hence, it seems that these were minor altercations between both the HC Hira Lal was first to start it. The Const. was provoked as such he reacted. But it was not a way to behave in a disciplined force. We are bound and governed by various rules and regulations.

Conclusion :- In view of all above discussions the charge against the Const. Mohd. Ilyas No.2659/PCR is partly proved."

3. The disciplinary authority by virtue of the impugned order dated 19.3.2002 recorded that if the applicant was provoked by Head Constable Hira Lal. he should have brought these facts to the notice of senior officers rather than misbehaving with the Head Constable. Resultantly, the following penalty was imposed:

"I have carefully and meticulously gone through the D.E. file, representation and other material and record available on the file. With the doctrine on audi altrem Partem, he has been heard in O.R. on 15.2.2002 but he did not advance any additional plea except the pleas that he has already presented in his written representation the other in a judicious manner. I Dr. M. Ponnaian, IPS, DCP/PCR. Delhi hereby order that the pay of Const. Mohd. Ilyas, No.2659/PCR is reduced by one stage from Rs.4600/- to Rs.4500/- P.M. in his time scale of pay for a period of one year with immediate effect. It is further directed that he will earn increments of his pay during the period

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-3-

of reduction and on the expiry of this order the reduction will not have the effect of postponing of his future increments of pay. His suspension period is also decided as period not spent on duty for all intents and purposes.

4. The applicant preferred an appeal. The appellate authority on 31.10.2002 dismissed the same. By virtue of the present application, the applicant seeks to assail the orders passed by the disciplinary as well as the appellate authority.

5. The petition is being contested.

6. We have heard the parties counsel.

7. We do not dispute the broad proposition that if a member of a disciplined force misbehaves, necessarily departmental action can be taken against him. We also, therefore, do not contradict the findings of the disciplinary authority that if the applicant had been provoked, he should not have misbehaved and brought this fact to the notice of the superior authority.

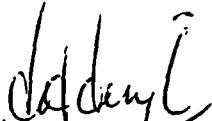
8. However, the main question is as to if the applicant has misbehaved or not. In this regard, we are conscious of the fact that in disciplinary proceedings, the scope for interference is limited. Only if the findings are perverse, based on no evidence or otherwise are illegal, this Tribunal will interfere.

9. In the present case, we have already reproduced above the operative part of the findings of the enquiry officer. It clearly shows that with respect to

18 Aug

misbehaviour which was attributed to the applicant that he slapped Head Constable Hira Lal. the finding returned was that this fact was not proved. The enquiry officer went on to hold that it appears to be a minor altercation and Head Constable Hira Lal who had misbehaved, had started the trouble. It is not known as to once it is held that the applicant had not slapped Head Constable Hira Lal, what else the misbehaviour on his part. There is no such finding given by the enquiry officer. In the absence of any such finding, it cannot therefore be taken that the applicant had misbehaved. Once he has not misbehaved, question of imposing any penalty does not arise. Therefore, these facts prompt us to conclude that the findings arrived at are totally perverse. Resultantly, they cannot be sustained.

10. For these reasons, we allow the present application and quash the impugned orders. The applicant would be entitled to the consequential benefits.


(S.A. Singh)

Member (A)


(V.S. Aggarwal)
Chairman

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