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Central Administrative Tribunal, Principal Bench

Original Application No.2849 of 2003

New Delhi, this the 6th day of July, 2004

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

HC Laxmi Chand
(PIS No.28740721),
R/o 482/31, Ashok Vihar,
Mahlana Road,
Sonipat, Haryana

...Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Govt. of NCT of Delhi,
Through Commissioner of Police,
PHQ, IP Estate,
New Delhi
2. Jt. Commr. of Police,
(Armed Police), PHQ,
I.P. Estate, New Delhi
3. DCP (6th Bn. DAP)
Kingsway Camp,
Old Police Lines, Delhi

....Respondents

(By Advocate: Mrs. Sumedha Sharma)

O R D E R (ORAL)

Justice V.S. Aggarwal, Chairman

The applicant Laxmi Chand is a Head Constable in Delhi Police. On an earlier occasion, he had filed O.A. No.2634/2002. Keeping in view the ratio deci dendi of the decision of the Delhi High Court in the case of Shakti Singh vs. Union of India and others (Civil Writ No.2368/2000) decided on 17.9.2002, the matter was remitted for passing a fresh order. In pursuance of the directions of this Tribunal, a fresh order has since been passed.

2. The applicant had been served with the following



summary of allegations:

"It has been alleged against you HC Laxmi Chand No.77/N and you Ct. Sheel Bahadur No.736/N that one Lal Bahadur S/o Gorakh Bahadur R/o Nepal domestic service of Sh. Shankar Lal Shagwani S/o Sh. Perhald Rai Shagwani R/o Plot No.34 Kanwar Nagar, Jaipur committed a theft in the house of his owner and left for Delhi along with jewellery and other articles. You HC Laxmi Chand No. 77/N and Ct. Sheel Bahadur No.736/N while posted on Picket Duty S.N. Marg, Delhi on 28.5.95 checked the belongings of Lal Bahadur. You both instead of producing Lal Bahadur along with jewellery, cash, and other articles in his possession, before the senior officers kept all the valuable and cash and let off Lal Bahadur. This fact came into notice when Sh.Narain Singh of Police Station Subhash Chowk, Jaipur visited Police Station Lahori Gate, Delhi and arrested HC Laxmi Chand No.77/N and Ct.Sheel Bahadur No.736/N on the disclosure statement and identification of Lal Bahadur accused of case FIR No.83/95 U/S 381 IPC PS Subhash Chowk, Jaipur. The stolen goods were recovered from the possession of the Head Constable and the Constable.

You HC Laxmi Chand No.77/N and Ct. Sheel Bahadur No.736/N have thus extorted the criminally misappropriated the stolen property and committed a breach of trust, having bad character which tarnished the image of whole of the police department in the eyes of the public. In this way both the Head Constable and the Constable failed to maintain integrity, devotion to duty and acted unbecoming of a police officer, which is also a contravention of CCS Conduct Rules 1964.

The above act on the part of you HC Laxmi Chand No.77/N (PIS No.28740121) and Ct. Sheet Bahadur No.736/N (PIS No.28823156) and Ct. Sheel Bahadur No.736/N (PIS No.28823156) amounts to gross misconduct, high dishonesty, disloyalty and dereliction in performing their official duties and unbecoming of a police officer for which they are liable to be dealt with departmentally under Delhi Police (P&A) Rules-1980."

3. The enquiry officer had been appointed. He recorded a finding that the allegations which had been

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transformed into a charge stood proved. Resultantly, acting upon the same, the disciplinary authority had passed a fresh order as already referred to above imposing the following penalty on the applicant:

"Hence, after careful examination of the case in the light of judgement of Hon'ble C.A.T. and PHQ's circular issued vide No. 12230-430/CR-I/PHQ dated 16.4.2002 relating clarification on Rule 8(d) of Delhi Police (Punishment & Appeal) Rules, 1980, I, P. Dass, Dy. Commissioner of Police, VI Bn. DAP do hereby award the punishment of forfeiture of 04 (four) years approved service permanently to H.C. Laxmi Chand, No.77/N (Now 7073/DAP) entailing reduction in his pay from Rs.4,050/- P.M. to Rs.3,710/- P.M. in the time scale of Rs.3200-85-4900. His suspension period from 6.6.95 to 12.2.2001 is also decided as period not spent on duty for all intents and purposes."

4. The appeal preferred by the applicant has been dismissed with the following order:

"The aforesaid Appeal of Head Const. Laxmi Chand, No. 77/N (now 7073/DAP) has been examined in this office. His appeal against the fresh modified punishment awarded to him vide this office order no.3217-47/HAP-VI Bn. DAP dated 28.7.2003 does not lie in accordance with Rule 23(2) of Delhi Police (Punishment & Appeal) Rules, 1980 and in spirit of Hon'ble Tribunal's judgement dated 26.5.2003 delivered in O.A. No.2634/2002.

Head Const. Laxmi Chand, No. 7073/DAP may please be informed accordingly."

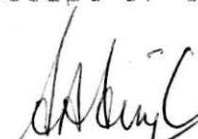
5. By virtue of the present application, the applicant assails the orders passed by the disciplinary as well as the appellate authority.



6. In all fairness to the learned counsel, we must state that certain arguments were advanced on the merits of the matter but it was noticed that against the order passed by the disciplinary authority dated 28.7.2003, an appeal was preferred which we have referred to above. It was dismissed on the ground that no appeal lies against such an order.

7. In fact once the disciplinary authority had passed a fresh order in pursuance to the directions of this Tribunal, the appeal automatically lies to the appellate authority who is duty bound to consider the same in accordance with law. The same has unfortunately not been done. Therefore, we are not delving into the merits of the matter.

8. Consequently, without delving into the merits of the matter, we quash the impugned order Annexure A-6 and direct the appellate authority to decide the appeal in accordance with law. Since the applicant repeatedly has to come to this Tribunal, he is awarded the cost of Rs.1,000/- (one thousand only). The appellate authority may preferably decide the appeal within four months of the receipt of the certified copy of the present order.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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