

Central Administrative Tribunal, Principal Bench

Original Application No.64 of 2003

M.A.No.1855/2003

New Delhi, this the 8th day of September, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. R.K. Upadhyaya, Member (A)

Const. Ravinder Kumar
(PIS No.28902044)
R/o Vill. Dalal Garh,
Post:- Bilaspur Dhankaur,
Distt. Bulandshahar, U.P.

.... Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Joint Commissioner of Police,
New Delhi Range, PHQ,
I.P. Estate, New Delhi
2. Shri U.K. Chaudhry
Addl. DCP (East Dist.)
Bhola Nath Nagar,
Shahdara, Delhi

.... Respondents

(By Advocate: Shri Ajesh Luthra)

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By Justice V.S. Aggarwal, Chairman

Applicant is a Constable in Delhi Police.

Following charge had been framed against him:

"I, Inspector Ashutosh Chatterjee SHO Farsh Bazar, D-1/582, charge you constable Ravinder Kr. No.1400/E, that while posted at P.S. Shakarpur you were detailed for patrolling duty in the area of P.S. Shakarpur on M-cycle No.D1-1SK/2215 with wireless set along with Ct. Daleep Kutti No.879/E on 4.4.99. You made your departure for patrolling vide DD No.16 B as per duty roster from 9 am to 9 pm on the same day you Ct. Ravinder Kr. No. 1400/E left Ct. Daleep Kutti No.879/E in the police station and went away along with above M-cycle and wireless set without information. A report was lodged by Ct. Daleep Kutti DD No.41B dt.4.4.99 stating that you Ct. Ravinder Kr. has not reported so far for which you were marked absent vide DD No.29 B dt.5.4.99 your return on 7.4.99 vide DD No.42 B dt.7.4.99 P.S. Shakarpur after absentsing your self unauthorisedly and willfully after a period of 2 days 18 hrs and 45 minutes it was found that certain damages were found on the M-cycle No.DL-1SK/2215 when questioned you could not have give any satisfactory reply. Prior to this you

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Ct. Ravinder No. 1400/E were ISJ/7794 vide DD No. 29 B dt. 6.1.99 P.S. Shakurpur B. dt. 8.1.99 Ct. Harinder No. 1273/E lodged a report vide DD No. 41 B dt. 8.1.99 that neither you Ct. Ravinder Kr. No. 1400/E were available nor M-cycle was found in the work-shop. You Ct. Ravinder Kr. No. 1400/E returned on 10.1.99 vide DD No. 13 B.P.S. Shakurpur on your own. The above act on the part of you Ct. Ravinder Kr. No. 1400/E amount to gross negligence, carelessness and dereliction in the discharge of official duties and misuse of Govt. property which renders you liable to be dealt departmentally under the provision of Delhi Police (Punishment/Appeal) Rules 1980."

2. The enquiry officer had been appointed who returned the findings that the charge against the applicant had been proved. The report of the enquiry officer had been accepted. The disciplinary authority imposed a penalty of removing the applicant from service with immediate effect. He preferred an appeal. The appellate authority modified the order passed by the disciplinary authority and instead imposed a penalty of forfeiture of three years approved service permanently entailing proportionate reduction in his pay by three stages for a period of three years. The intervening period from the date of removal to the date when the order was issued was to be treated as "dies-non" on the principle of no work no pay.

3. The applicant, by virtue of the present application, assails the said orders passed by the disciplinary as well as appellate authority.

4. The petition has been contested.

5. Alongwith the application, a petition has been filed seeking condonation of delay. The applicant

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contended that he was suffering from great financial crisis from September, 2002 to January, 2003. He had handed over the brief to the counsel but because of the financial crisis, he was not able to file the petition on an earlier occasion. Even this prayer seeking condonation of delay is being contested.

6. The present petition had been filed on 7.1.2003. The order passed by the learned appellate authority is dated 4.12.2001. In this process, for small intervening period, there is a delay. The question as to whether there are just and sufficient reasons for condonation of delay can always be seen in the facts and circumstances of each case. The facts referred to above show that the applicant did intend genuinely to challenge the orders. Except for the reasons recorded above, he would have filed the petition in time. In these circumstances, we condone the delay.

7. Learned counsel for the applicant, on merits of the matter, laid great stress on the fact -

(a) that the Additional Deputy Commissioner of Police was not competent to inflict the punishment; and

(b) he did not belong to the Indian Police Service and, therefore, could not be the disciplinary authority.

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8. On careful consideration of the matter, we find that the said contentions necessarily must fail. Both the pleas in fact can be taken up together.

9. Reliance had been placed on the decision of this Tribunal in the case of Constable Suresh Kumar vs. Commissioner of Police, New Delhi and ors. (O.A.1818/2001) decided on 18.7.2002. According to the learned counsel for the applicant, this Tribunal had clearly held that if Additional Deputy Commissioner of Police is not from Indian Police Service, he cannot be the disciplinary authority. We reproduce that portion of the order of this Tribunal:

"We also find the letter dated 29.6.98 from Legal Adviser to CP, Delhi makes it abundantly clear regarding the appointing/disciplinary authority in case of the applicant, which is extracted below:

"The post of Addl. DCP-II was created to accommodate the JAG Grade ACPs who were sanctioned the JAG Grade and were ordered to be appointed against the post of Adl. DCP. In that order it is neither mentioned that they have been promoted from the DANI cadre to the IPS or even promoted to Addl. DCP. There is no mention of the word promotion in their order of appointment. The matter was also previously examined at the instance of the CP and it was decided that the Addl. DCP who has been given JAG Grade cannot exercise the powers of either the appointing authority or the Disciplinary authority. Hence, in my opinion, Addl. DCP-II cannot exercise the powers of the Disciplinary authority under the Delhi Police (P&A) Rules, 1980."

6. Though respondents' counsel has stated that LA's opinion cannot nullify the orders of LG, Delhi appointing Addl. DCP/PCR vide order dated 7.11.97, he has failed to produce a copy of the said letter. Moreover, LA had issued the aforesaid letter on 29.6.98, i.e. much later than 7.11.97, which is vital for the present case."

10. Bare reading of the same clearly shows that this



Tribunal had merely referred to the opinion of the Legal Adviser to the Commissioner of Police. There is no expression written that this Tribunal had accepted that reasoning. There were so many reasons recorded by this Tribunal while allowing that application. In the absence of any specific finding having been given, it cannot be termed that this plea of the applicant had found favour in the earlier decision of this Tribunal.

11. A person, once he is appointed as Addl. Deputy Commissioner of Police will exercise the powers of the post even if he is not a member of the Indian Police Service and is so appointed, the orders so passed will not be without jurisdiction. The appointment of the disciplinary authority is not otherwise challenged on any other ground. In fact the applicant had submitted to the jurisdiction of the said authority and at the relevant time raised no objection in this regard.

12. As regards the other contention that the Additional Deputy Commissioner of Police could not be the disciplinary authority, we need not dwell further because of the decision of the apex court in the case of Ram Kishan vs. Union of India, (1995) 6 SCC 157. One of the question for consideration was as to whether the Additional Dy. Commissioner of Police is the competent authority to impose the penalty. The Supreme Court referred to Delhi Police (Punishment and Appeal) Rules and Delhi Police (Appointment and Recruitment) Rules and held that the order passed in that case by the Additional Dy. Commissioner of

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Police could not be stated to be without jurisdiction and he was competent to pass the order.

13. Taking stock of all these factors, we have no hesitation in rejecting the said contention of the learned counsel.

14. In that event, the learned counsel highlighted the fact that the enquiry officer had cross-examined the witnesses and consequently the proceedings as such, deserve to be set aside. Even on this count, we have no hesitation in rejecting the contention because the enquiry officer is not a silent spectator. To remove the ambiguity, he can certainly ask questions. It is not one of those cases where this Tribunal can say that the enquiry officer by excessive cross-examination had termed himself as a ^{disciplinary} authority. In the absence of the latter having been shown, the contention in this regard must be held to be without merit.

15. The only other plea in that event pressed was that the comments of the disciplinary authority have been taken into consideration and as a result thereto, the order cannot be sustained.


16. Perusal of the order passed by the appellate authority clearly shows that he did consider the parawise comments that were sent by the disciplinary authority.


17. When appeal has to be decided, necessarily it has

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to be so decided on the basis of the evidence on record alongwith the findings of the enquiry officer, pleadings and the findings of the disciplinary authority. If extraneous factors are taken into consideration, the order as such cannot be sustained. Herein the parawise comments have also been taken into consideration. They have not been communicated to the delinquent. He was not aware of the same. He cannot, therefore, urge anything as to what were the comments submitted. In this view of the matter, he rightly pleads that prejudice has been caused to him.

18. For these reasons, while rejecting all other contentions, we allow the present application in terms that the order passed by the appellate authority is quashed. The appellate authority may in accordance with law pass a fresh order.


(R.K. Upadhyaya)
Member (A)


(V.S. Aggarwal)
Chairman