

Constable Ravinder Kumar Vs. Additional Commissioner of

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Nov-16-1998

Judge : S A N., A Vedavalli

Appellant : Constable Ravinder Kumar

Respondent : Additional Commissioner of

Judgement :

1. Applicant, Ravinder Kumar, a Constable in the Delhi Police is aggrieved by the penalty of forfeiture of his two years approved service permanently and the reduction of his pay by two stages for a period of two years with effect on the increments during and after the said period and the treatment to his suspension period as not spent on duty, imposed upon him as a result of departmental enquiry proceedings conducted against him by the respondents.

2. He has impugned the disciplinary authority's order dated 4.8.92 (Annexure A-7), order the appellate authority dated 13.10.1992 rejecting his appeal (Annexure A-9), show cause notice dated 18.6.92 (Annexure A-5), charge dated 9.3.92 (Annexure A-3), summary of allegations (Annexure A-2) and the entire departmental proceedings in this OA. 3.1 The applicant while he was posted at the Railway Station Hazrat Nizamuddin on 15.11.91 was approached by a private citizen Shri K.R. Venogopal seeking assistance in hiring a TSR. On a complaint made by Shri Venogopal against the applicant regarding his misbehaviour he was placed under suspension by order dated 25.11.91 (Annexure A-1) and departmental enquiry proceedings were initiated against him.

According to the summary of allegations dated 29.1.92 (Annexure A-2) served upon the defaulter applicant, briefly, it was alleged that he failed in the performance of correct duty when his assistance was sought by the aforesaid private citizen regarding hiring of a TSR. He did not respond correctly to the annoyance of the complainant when the driver of the TSR refused to take him and his wife to their residence in Humayun Road and charged in excess of higher rate in his presence. The defaulter's demeanor was arrogant and unhelpful.

It was evident that he was mixed up in the racket of overcharging, refusal and misbehaviour by TSR drivers who frequently violated the permit condition knowing fully well that Police Officers will not interfere in the way they ought to. He had also behaved in such a manner which compelled the complainant to submit his grievance to senior police officers. The above act on the part of Constable Ravinder Kumar amounts to grave misconduct unbecoming of a member of the Police Force which renders him liable to be dealt with departmentally under Section 21 of the Delhi Police Act, 1978, according to the said summary of allegations.

3.2 During the departmental enquiry conducted by the enquiry officer, four PWs including the complainant (PW-2) were present.

Their statements were recorded by the enquiry officer. The defaulter applicant was also present. The complainant (PW-2) stated that he has nothing more to say to whatever he has already stated in his complaint. The said complainant was taken into account by the enquiry officer and it was recorded the defaulter did not wish to cross-examine PW-2. On examining the statements of PWs, enquiry officer found the charge against the defaulter constable is made out. The formal charge dated 9.1.92(Annexure A-3-) was served upon the defaulter applicant and he was given opportunity to submit his reply and the list of DWs if any within the time stipulated therein.

The applicant submitted a written reply and produced four DWs whose statements were recorded by the E.O. 3.3 After going through the complaint, statements of PWs and DWs and the written reply submitted by the defaulter applicant the enquiry officer gave his findings and exonerated the defaulter from the charge on

the ground that the allegations levelled against him could not be proved and submitted his report (Annexure A-4).

3.4 The disciplinary authority, however, disagreed with the findings and the conclusions of the enquiry officer on the ground of availability of sufficient material on record to prove the lapse of the defaulter constable. He proposed to forfeit his two years approved service permanently having cumulative effect on his pay.

Show cause notice dated 18.6.92 (Annexure A-5) was issued to the defaulter applicant to show cause within 15 days of the receipt of this notice as to why his two years approved service should not be forfeited permanently entailing proportionate reduction in his pay and as to why his period of suspension should not be treated as not spent on duty. His reply, if any, should reach the undersigned within the stipulated period failing which it will be presumed that he has nothing to say in his defence and the case will be decided on merits, ex-parte.

3.5 The defaulter applicant submitted his reply to the said notice (Annexure A-6).

3.6 The applicant was heard in person by the disciplinary authority.

Material portion of the impugned order dated 4.8.92 (Annexure A-7) imposing the punishment is extracted below : "He received a copy of the show cause notice as well as a copy of the Enquiry Officer's report on 19.6.92 and submitted his reply on 1.7.1992 mainly pleading that the prosecution witnesses had not quoted the version of the complainant during the course of enquiry and the E.G. had exonerated him from the charge on the basis of the evidence on DE file. That he had also offered a complaint against the erring Auto Driver as a Constable at that time. His explanation has been gone through. He was also heard in person on 24.7.92. He had nothing further to add to what he had already stated in the reply to the show cause notice. On being questioned as to how come and why did the TSR Driver refused to take the complainant his reply was that only the TSR Driver can answer that question. This clearly indicated the negative attitude of the Constable. The fact that if the presence of the Traffic Duty staff some one has the courage or guts to revise or misbehave, that in itself show the ineffectiveness of the Traffic staff. This kind of an attitude of the TSR Driver can prevail only when they know

that the Traffic staff are not concerned, or will not interfere or when there is collusion or connivance between the two.

Under the circumstances the lapse of the Constable is clearly apparent and I deem it necessary to take a serious view of such unhelpful attitude on the part of Traffic Personnel. As such, I find no reason to deviate from the proposed punishment. Therefore, his two years approved service is forfeited permanently. His pay is reduced by two stages from Rs. 1050/- to Rs. 1,010 for a period of two years from the date of issue of this order. He will not earn increment of pay during the period of reduction and after expiry of this period the reduction will have the effect of postponing his future increments of pay. He is reinstated from suspension with immediate effect and his period of suspension from 16.11.91 to the date of issue of this order is treated as not spent on duty. He will draw nothing more than that he has already drawn in the shape of subsistence allowance for the period under suspension.

Let a copy of the order be given to him free of cost. He can file an appeal against this order to the Additional C.P. (S and T), Delhi within 30 days of its receipt on a non-judicial stamp paper valued Rs. 0.75 paise by enclosing a copy of this order, if so desires.

3.7 The applicant submitted an appeal dated 3.9.92 (Annexure A-8) against the said punishment order to the appellate authority. The said authority by the impugned order dated 13.10.92 (Annexure A-9) rejected the appeal as under: "I have seen the documents as well heard him in appeal. On the basis of record I fully agree with the disciplinary authority that the defaulting Constable was not able to stop the malpractice and illegality of the TSR Driver who had committed default in his view.

I am of the view that he was mixed up and was a part to the illegal act of refusal by the TSR Driver. I do not find justification to deviate from the punishment, the disciplinary authority has inflicted. Accordingly the appeal is rejected. Let the appellant be informed accordingly.

4. The O.A. is contested by the respondents who have filed their reply to which a rejoinder has been filed by the applicant.

5. We have heard the learned Counsel Mr. Shankar Raju for the applicant and Mr. Vijay Pandita for the respondents. The pleadings and the material papers and documents placed on record have been perused. The matter has been considered carefully.

6. The first main ground urged is that the punishment imposed on the applicant amounts to multiple punishment and is illegal since it is contrary to Rule 8 (d) of the Delhi Police (Punishment and Appeal) Rules 1980 and Section 21 of the Delhi Police Act, 1978, Though the learned Counsel for the applicant stated that there is a judgment to support his argument he has neither furnished a copy of the same nor the citation thereof. While so, learned Counsel for the respondents submitted that the punishment is in accordance with FR 29 and note below the said provision and is not contrary to Rule 8 (d) of the Delhi Police (Punishment and Appeal) Rules, 1980 and Section 21 of the Delhi Police Act, 1978. In support of his submissions he relied upon the decision of the Apex Court in *Kulwant Singh Gill v. State of Punjab* (1991 (supp.) (1) SCC 504 and 1993 (24) ATC 485 (CAT-FB) - *Y.D. Parwana v. Union of India*, 1987 (5) ATC 916 (CAT) - *Farooq Ahmed v. Union of India and Ors.* He also contended that the period of suspension was not treated as spent on duty since the defaulter applicant was found guilty of the allegation and awarded the punishment.

7. On consideration of the rival contentions of the learned Counsel for the parties, we are of the view that the applicant has failed to establish with supporting material as to how the punishment imposed is contrary to Rule 8 (d) of the Delhi Police (Punishment and Appeal) Rules, 1980 and Section 21 of the Delhi Police Act, 1978 and has not been able to refute the submissions and contentions of the respondents regarding the aforesaid ground. Moreover, it has been held in a number of decisions of the Tribunal, including the judgment dated 5.12.1996 in OANo. 1995/91--Insp. *Joginder Singh v. Commissioner of Police and Anr.*

and the judgment dated 3.8.98 in OA No. 1951/92--*Virender Singh v. Commissioner of Police and Ors.* where such a ground is raised and considered

that there is no violation of Rule 8 (d) (ii) / Rule 8 (d) of the said Rules or Section 21 of the Delhi Police Act, 1978 where the punishment order is similarly worded. The said ground is, therefore, rejected, as untenable in law.

8. The next ground pressed by the learned Counsel for the applicant is that the impugned order of the appellate authority is a non-speaking order and hence there is a violation of the principles of natural justice and Rule 25 (2) of the Delhi Police (Punishment and Appeal) Rules, 1980.

9. The learned Counsel for the respondents in reply contended that the impugned appellate order is a reasoned order and there is no violation of either the principles of natural justice or Rule 25 (2) of the aforesaid Rules.

"Every order passed on appeal shall contain the reasons therefore. A copy of every appellate order shall be given free of cost to the appellant." 11. It is noticed that the appellate authority after examining the relevant material and facts and evidence on record has given his order with cogent reasons and specific findings. We are, therefore, of the view that the said order is not capable of being construed as a non-speaking order which is violative of the principles of natural justice or Rule 25 (2) of the aforesaid Rules. The aforesaid ground is, therefore, rejected, as unsustainable and invalid.

12. The next and the most crucial ground urged by the learned Counsel for the applicant is that there was "no evidence" to justify the punishment imposed upon him. He contended that PW-2 (complainant) merely affirmed his complaint during the departmental enquiry and his evidence is not supported or corroborated by any other evidence and amounts to "no evidence." He argued that the impugned orders are, therefore, void and deserve to be quashed.

13. In reply, the learned Counsel for the respondents vehemently refuted the aforesaid ground and submitted that there was sufficient evidence to support the punishment imposed upon the defaulter applicant. He argued that the statement made by PW-2 (complainant) affirming the contents of his complaint given by him establishes beyond doubt the charge against the applicant. He contended that even otherwise this Tribunal has only limited powers to interfere and cannot re-

appreciate the evidence adduced during disciplinary proceedings. He relied strongly on the judgment of the Apex Court in *B.C. Chaturvedi v.U.O.I*, (1995) 6 SCC 749, *State of Tamil Nadu v. K.V. Perumal* (1996) 5 SCC 474 and *State of Tamil Nadu v. S. Subramaniam* (1996) 7 SCC 509 in this regard. The learned Counsel for the respondents submitted that the aforesaid ground is baseless since PW-2 (complainant) as well as the defaulter applicant were very much present during the enquiry and the statement of PW-2 affirming his complaint was recorded in the presence of the defaulter applicant who 'was given the opportunity to cross-examine the said witness. It is the applicant who declined to cross-examine PW-2 and he cannot now turn back and say that the aforesaid evidence amounts to "no evidence." 14. We have given our anxious consideration to the aforesaid ground of "no evidence." 15. Re "no evidence," it is seen from the enquiry officer's report (Annexure A-4) that four PWs were examined during the enquiry in the presence of the defaulter applicant and their evidence was recorded.

In spite of the opportunity given, the defaulter applicant did not wish to cross-examine the said witness. Though a copy of the complaint given by PW-2 was served upon him and an opportunity to cross-examine the said witness was given to the defaulter applicant who was very much present during enquiry, he did not wish to avail the opportunity as is evident from the report of the enquiry officer. Even otherwise the complaint given by the complainant (PW-2) extracted in the enquiry officer's report shows in graphic detail the harassment, humiliation and also the rude, crude, arrogant behaviour to which a private citizen and his wife who have just got down from Kerala express at night were subjected to not only by the TSR driver but also by a police officer.

Such incidents are well-known and occur daily. If the defaulter applicant had any doubt regarding the veracity or genuineness of the contents of the complaint or the evidence given by PW-2 nothing prevented him from cross-examining the said witness during the said enquiry. The observations and findings of the disciplinary authority and the appellate authority extracted supra as well as summary of allegations and the charge also show that the malpractices and the illegalities of the TSR drivers and the mixing up or the collusion of the traffic staff in the same

are in the knowledge of the superior police officers also and the defaulter applicant was found to be a party to the illegal act of refusal by the TSR driver. In the circumstances the complaint given by PW-2 (complaint) can stand on its own even without any supporting or corroborating evidence and the impugned orders of the disciplinary authority and the appellate authority cannot be faulted on this ground. We are, therefore, of the view that the aforesaid ground of 'no evidence' is not based on any valid or tenable ground. Hence it is rejected, as untenable in the eye of law.

16. As the OA can be disposed of on consideration of the aforesaid major grounds themselves, we do not think it necessary to deal with the minor grounds raised in the O. A.17. In the facts and circumstances of this case and in view of the foregoing discussion we are of the considered opinion that the O.A. is devoid of any merit and the impugned orders do not warrant any judicial interference.

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