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Court : Central Administrative Tribunal CAT Delhi

Decided On : Apr-02-2012

Judge : The Honourable Dr. Dharam Paul Sharma, Member (J) & the Honourable Mr. Sudhir Kumar, Member (a)

Appeal No. : O.A. No.2003 of 2011

Appellant : Sumer Singh

Respondent : Commissioner of Police Phq, Mso Building, Ip Estate, New Delhi and Others

Advocate for Pet/Ap. : For the Applicant: Ajesh Luthra, Advocate. For the Respondents: Amit Anand, Advocate.

Judgement :

Dr. Dharam Paul Sharma, Member (J):

1. The orders impugned in this Application filed by the applicant a Constable with Delhi Police, under Section 19 of the Administrative Tribunals Act, 1985 are as follows:-

“(i) Order No.469-70/P.Sec./Addl.C.P./PCR dated 8.6.2010 (Annexure A/1) vide which appeal against penalty of censure has been rejected.

Order No. 1376-1410/HAP (P-III)/PCR dated 24.1.2007 (Annexure A/2) vide which a penalty of censure has been inflicted.

Order No.32414/P.Br. (AC-III) PHQ dated 30.12.2008 (Annexure A/3) to the extent it denies promotion to the applicant.

Order No.3885/P.Br. (AC-III) PHQ dated 2.2.2009 (Annexure A/4) informing the applicant that his promotion has been denied because of penalty of censure.

Order No.1801/P.Br. (AC-III) PHQ dated 27.1.2010 (Annexure A/5) to the extent it denied promotion to the applicant.”

2. In view of the facts mentioned in para 4 and on the strength of the grounds mentioned in para 5 of the Application, the applicant prays for quashing and setting aside of the impugned order with directions to the respondents to further consider him for promotion with effect from the date his juniors with all consequential benefits and costs.

3. The case of the applicant in brief is that he was awarded a penalty of censure on 24.1.2007. As a result of which he was denied his further promotion on 30.12.2008. The applicant moved under RTI to ascertain the reasons for which he has been denied his due promotion when he learnt vide respondent's communication dated 2.2.2009, a copy of which is at Annexure A/4, that censure awarded to him has been viewed as having been awarded in a corruption case which debar him for further promotion. Immediately thereafter within a week, the applicant preferred an appeal against the penalty of censure which has been rejected vide order dated 8.6.2010 as at Annexure A/1. In the meantime, the applicant has again been denied promotion on this count on 27.1.2010.

4. The short point raised by the applicant in these proceedings is as to whether the penalty of censure awarded to him has been in a corruption case. If not, he would not be rendered ineligible for promotion on this count as its only effect would be that this penalty would carry two marks while determining the suitability of the applicant for further promotion. It may not have further effect after expiry of 6 months from the date of the award of censure. However, if the censure has been

awarded in a corruption case, its consequences are serious as the delinquent would be deprived of his chance of further promotion for the reason of having been rendered ineligible for the same. The learned counsel for the applicant Shri Ajesh Luthra referred to Standing Order No.378/2009 in this regard containing guiding the principles on granting promotions, a copy of which is at Annexure A/10. Shri Luthra, learned counsel for the applicant, vehemently contended that the applicant has not been awarded censure in corruption case and the respondents have erred in proceeding on this assumption leading to denial of promotion to the applicant on two occasions firstly on 30.12.2008 and again for the second time on 27.1.2010. If this Hon'ble Tribunal finds that the applicant's contention is factually correct then he requests that the respondents be directed to reconsider the applicant's case on the premise that the applicant has not been awarded penalty of censure in a corruption case and he be granted such benefits by the respondents to which he might be found otherwise entitled to in terms of the applicable rules. The learned counsel for the applicant further submitted that the applicant is a Constable and a Gunman who was deployed with ASI Nandan Singh, and Constable (Driver) Sanjeev Kumar at Jhandewalan Mata Mandir, who were found at Azad Market doing unauthorized checking, when the vigilance detected them and learnt that they have taken Rs.100/- from truck driver whose name and particulars are not on record as they refused to give it in writing. Constable Gunman is the only applicant in this case. Other officers involved in the incident are not before us. As per his duty, he had to be with In Charge ASI and he has to be in the Van driven by another Constable Driver. He has no discretion of his own. Nor there is any allegation against the applicant that he has received money from anybody. This aspect, however, no longer be relevant in view of the limited prayer made by the applicant's counsel.

5. On the other hand, Shri Amit Anand, learned counsel appearing on behalf of the respondents submitted that penalty proposed in the show cause notice having been affirmed is with reference to both the allegations of corruption as well as leaving the base unauthorisedly.

6. The controversy between the parties is limited one. That is to say whether the applicant has been awarded the penalty of censure in a corruption case or in a

non-corruption case. For better appreciation of the controversy between the parties, it would be appropriate to see first the show - cause notice which reads as follows:-

“It has been brought to the notice of the undersigned that on the night intervening 30.09/1.10.2006, while Inspr. MT/PCR on vigilance checking found the MPV S-17 consisting of ASI Nandan Singh, No.2020/D I/C Van, Ct. Sumer Singh Gunman No.2121/PCR and Ct. (Dvr.) Sanjeev Singh No.4444/PCR near one Truck at Azad Mkt. The staff left their base (i.e. Jhandewala Mata Mandir) and was doing unauthorized checking. The truck driver told that the staff of PCR Van S-17 has taken Rs.100/- on the plea that unloading on the main Road is not allowed. However the truck driver and the owner refused to give it in writing.

The above act on the part of the ASI ASI Nandan Singh, No.2020/D, Ct. Sumer Singh 2121/PCR and Ct. (Dvr) Sanjeev Singh No.4444/PCR amount to gross misconduct negligence carelessness and unbecoming of a police official.

They are therefore called upon to show cause as to why their conduct should not be censured for the above said lapse. Their reply if any should reach to this office with 15 days from the date of receipt of this notice failing which it will be presumed that they have nothing to say in their defence and the notice will be decided ex-parte on its merit.”

7. Now we may see the order passed on this show cause notice by the disciplinary authority and the finding recorded on the guilt of the applicant based on which the penalty of censure has been affirmed by the appellate authority. The order of the disciplinary authority reads as follows:-

“A show cause Notice for censure was issued to ASI Nandan Singh, No.2020/D, Ct. Sumer Singh No.2121/PCR and Ct. (Dvr.) Sanjeev Singh No.4444/PCR vide this office NO.14275-76/HAOP (P-III) PCR, dated 17-10-2006 on the allegations that on the night intervening 30-9/1-10-2006 while Inspr. M.T./PCR on vigilance checking found the MPV No.S-17 consisting of ASI Nandan Singh, No.2020/D, I/C Van, Ct. Sumer Singh, Gunman No.2121/PCR and Ct. (Dvr.) Sanjeev Singh No.4444/PCR near one Truck at Azad Mkt. The staff left their base (i.e.

Jhandewala Mata Mandir) and was doing unauthorized checking. The truck driver told that the staff of PCR Van S-17 has taken Rs.100/- on the plea that unloading on the main Road is not allowed. However the truck driver and the owner refused to give it in writing.

They received the copy of Show Cause Notice and submitted their reply stating there in that after seeking the prior permission from the S-4, they went to Qutab Road to take drinking water. When they were going towards Qutab Road saw a Truck surrounding by the Rikshaws and Rehri. They neither stopped there nor discussed anything with the Truck driver. On the way Inspr. Subhash Bakshi, MTI/PCR met them who asked about their duty position. After asking their position, Inspr. MTI/PCR got lodged a report in logbook that they had left their base. For the sake of natural justice, they were called in O.R. During O.R. ASI Nandan Singh, No.2020/D and Const. Sanjeev Kumar No.4444/PCR appeared in O.R. and reiterated their pleas. After considering their written reply, oral submission during O.R. and record on file, it has been found that they had left their base unauthorisedly. Therefore the Show Cause Notice for censure issued to ASI Nandan Singh, No.2020/D, Ct. Sumer Singh, No.2121/PCR and Ct. (Drv.) Sanjeev Kumar, No.4444/PCR is confirmed and their conduct is hereby censured.

Let a copy of this order be given to ASI Nandan Singh, No.2020/D, Ct. Sumer Singh, No.2121/PCR and Ct. (Drv.) Sanjeev Kumar, No.4444/PCR free of cost. They can file an appeal against this order to the Addl. C.P./PandC, Delhi within 30 days from the date of receipt of this order on a non-judicial stamp paper valued Rs.00.75 paise by enclosing a copy of this order, if they so desire.”

8. A plain reading of the aforesaid order reveals that the only finding returned by the disciplinary authority is on leaving base unauthorisedly. There is no finding whatsoever with regard to the allegation of bribe of Rs.100/-. The applicant being under the bonafide impression that the penalty of censure is for non-corruption case and as such would be of limited effect and did not bother to agitate against it. He realized the gravity of it only when he was denied his due promotion in 2008 after about a year of award of the penalty of censure referred to above. Even though he was not sure of the reasons underlying denial of promotion to him, he

has moved under the RTI when he learnt that award of penalty of censure was viewed as having been awarded in a corruption case. He immediately preferred an appeal there against which has been rejected by the appellate authority upon twin consideration (1) for it being time barred; and (2) that the vigilance team had reported that Truck driver told that the applicant having been paid Rs.100/-. This order is bad for the reason that the disciplinary authority has not recorded any finding on the report of the vigilance team and found the applicant guilty only on account of leaving the base unauthorisedly. We find force in the contention of the applicant's counsel Shri Ajesh Luthra that the disciplinary authority had confirmed the proposed penalty in terms of the show-cause notice and in terms of the show-cause notice allegation that was found proved by the disciplinary authority was only leaving base unauthorisedly and affirmed the proposed punishment in the show cause notice in respect thereto without recording any finding on the allegation of bribe. Since the appellate authority proceeded to deal with the appeal of the applicant on merit, the question of limitation would no longer be an impediment in granting the relief to the applicant to which the applicant is entitled to on merit otherwise. Since the disciplinary authority has not recorded any affirmative finding on the allegation of bribe, the confirmation of the show cause notice would be not extend to this allegation of bribe. It would be confined to the finding recorded by the disciplinary authority in respect of leaving base unauthorisedly. The appellate authority thus apparently erred in passing the impugned order.

9. In the aforesaid premises, we are of the considered view that the respondents have erred in processing the case of the applicant on the assumption that the applicant has been awarded the penalty of censure in a corruption case. This is factually not correct, as the award of penalty is only with reference to leaving the base unauthorized. There is no finding with regard to the allegations as contained in vigilance report on which the reliance placed by the appellate authority is not proper.

10. In the facts and circumstances of the case and for the reasons stated above, we allow this OA partly to the extent that the award of penalty of censure to the applicant vide order dated 24.1.2007 has been for leaving the base unauthorisedly

and not for any allegation of corruption and the same may, therefore, be viewed as penalty of censure not in a corruption case and the respondents are directed to reconsider the case of the applicant as if he has not been awarded the penalty of censure in corruption case and hold a review DPC for consideration of the case of the applicant afresh, whereupon such benefits, as the applicant is found entitled to shall be released to him.

11. The OA is partly allowed in terms of the above order. There shall be no order as to costs.

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