

(2009) 12 DEL CK 0153

In the Delhi High Court

Case No : Writ Petition (Civil) No. 5117 of 2001

Commissioner of Police

APPELLANT

Vs

Ram Niwas and Another

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Citation : (2009) 12 DEL CK 0153

Hon'ble Judges : Mukta Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Neeraj Choudhary, for the Appellant; Jagjit Singh, for the Respondent

Final Decision : Allowed

Judgement

Mukta Gupta, J.—A departmental enquiry was initiated against the Petitioner for unauthorized absence from duty while he was working in the Foreigners Regional Registration Office (in short "FRRO"). Thereafter, the Petitioner was transferred to the Third battalion, Delhi Police and pursuant to an enquiry held, the FRRO acting as disciplinary authority, vide its order dated 14th October, 1992 awarded the punishment of dismissal from service to the Respondent No. 1. On appeal the Appellate Authority vide its order dated 20th April, 1993 set aside the order the FRRO on the ground that it ceased to be the disciplinary authority after the Respondent No. 1 reported for duty in Delhi Armed Police (in short DAP), Third battalion and directed that the findings of the Enquiry Officer be forwarded to the Deputy Commissioner of Police/III Bn. DAP Delhi along with Disciplinary Authority for passing appropriate orders. The Respondent No. 1 was reinstated and subsequent thereto the Deputy Commissioner of Police, Third battalion after considering the entire material, while acting as the disciplinary authority dismissed the Respondent No. 1 from service by an order dated 28th November, 1994. His appeal/revisions to the Appellate Authority, the Revisionary Authority and the Lt. Governor were rejected.

2. Challenging the orders of disciplinary authority dated 28th November, 1994

and the Appellate Authority dated 8th November, 1995, the Respondent herein filed an application before the Central Administrative Tribunal being OA No. 2118/1999. The Tribunal allowed the application on 1st February, 2001 in the light of its earlier decision rendered in the case of Union of India and Ors. v. Constable Braham Prakash and Ors. in OA No. 2598/1996. It allowed the application to the extent that the order initiating disciplinary proceedings, Inquiry Officer's report, the disciplinary authority's order as well as appellate authority's order and the revisional authority's order were quashed and set aside. The Tribunal also remanded the matter to the Commissioner of Police for entrustment of the departmental enquiry to the competent authority from the stage of issue of the summary of allegations.

3. The Tribunal in its earlier decision in the case of Union of India and Ors. v. Constable Braham Prakash and Ors. (supra) had held that the notification vesting powers of the Disciplinary Authority in the FRRO would have no effect till it was published in the gazette.

4. The Petitioner impugns the order dated 1st February, 2001 of the Tribunal before us.

5. The issue which arises in the present writ petition is no longer *res integra*. This Court in its earlier decisions rendered in the case in Davinder Kumar v. Union of India and Ors. WP (C) No. 213/2001 and Union of India and Ors. v. Constable Braham Prakash and Ors. WP (C) No. 3030/1990 has held that the FRRO has jurisdiction to hold disciplinary proceedings.

6. Moreover in the present case, the order of the FRRO acting as disciplinary authority had already been set aside by the appellate authority vide its order dated 27th April, 1993, with a direction of the DCP Third Battalion to consider the case as the disciplinary authority, as the Respondent had been transferred to Third Battalion. The order dated 27th April, 1993 passed by the appellate authority has not been challenged by the Respondent herein, before the Central Administrative Tribunal. Thereafter the DCP Third Battalion acting as disciplinary authority imposed the penalty of dismissal from service vide order dated 28th November, 1994. Thus the Tribunal clearly erred on facts in ignoring the order dated 28th November, 1994 passed by the DCP, Third Battalion and subsequent orders and in holding that:

In any case delay if at all would be only for a period of about four months, and in the light of the fact that the FRRO did not have the powers of the Disciplinary Authority till 29.1.98 and the impugned orders are *prima facie* non-est and void, we hold that limitation cannot be advanced as a ground at this stage to reject applicant's legitimate claims.

In the result this O.A. succeeds and is allowed to the extent that the order initiating disciplinary proceedings, I.O.'s report, the disciplinary authority's order as well as appellate authority's order and the revisional authority's order are quashed and set aside.

7. The writ petition is allowed. The impugned judgment passed by the Central Administrative Tribunal in OA No. 2118/1999 is set aside. The matter is remanded back to the Central Administrative Tribunal for hearing on the issues urged by the Respondent. The parties should appear before the Tribunal for directions on 6th January, 2010.