

(2018) 08 CAT CK 0005

In the Central Administrative Tribunal

Case No : Original Application No. 3575 Of 2012

Dinesh Kumar

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 31-08-2018

Acts Referred:

Constitution Of India, 1950 — Article 309, 311(2)

Citation : (2018) 08 CAT CK 0005

Hon'ble Judges : Nita Chowdhury, Member (A); S.N. Terdal, J

Bench : Division Bench

Advocate : Ajesh Luthra, P.K. Gupta, Rashmi Chopra

Final Decision : Allowed

Judgement

Nita Chowdhury, Member (A)

1. By filing the instant OA, the applicant is seeking the following reliefs:

"(a) quash and set aside the impugned orders and

(b) direct the respondents to reinstate the applicant in service forthwith with all consequential benefits.

(c) award costs of the proceedings and

(d) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

2. Brief facts of the case are that the applicant while working as a Constable in Delhi Police was issued an order dated 18.11.2009 (Annexure A/5) whereby a regular departmental inquiry was ordered to be initiated against the applicant on the allegations that :

"It is alleged against Const. (Mtd.) Dinesh Kumar, No.633/L (PIS No.28930952) (Under Suspension) that a CrI. Case FIR No.534/2006 dated 30.08.2006 u/s

25/54/59 A Act P.S. Narela was registered against Const. (Mtd.) Dinesh Kumar, No.733/L on the allegations that on 29.08.2006, one Lalit Kumar @ Lillu s/o Dharam Chand Chawla r/o H. No.R-287, Gali No.18-A Swantantra Nagar Narela Delhi was apprehended while he was in possession of one Country made Pistol with two live cartridges. During the course of investigation he disclosed that the above fire arms and ammunition were purchased by him from Const. Dinesh Kumar and he further disclosed that Dinesh Kumar will also supply two more Country made Pistols on 30.08.2006. On this, "Naka Bandi" was done at the proposed place i.e. Ram Dev Road in front of Radha Swami Satsang Bhawan, Narela and Dinesh Kumar apprehended at 9.30 A.M. on pointing out of Lalit Kumar @ Lillu. Two Country made Pistols (Desi Kattas) were recovered from his possession. He was placed under suspension w.e.f. 30.08.2006 vide order No.2024-46/HAP(P-II)/P&L dated 4.09.2006. Const. Dinesh Kumar was arrested in the said case on 30.08.2006. He was sent to judicial custody and later on bailed out from the court.

The above act on the part of Const. (Mtd.) Dinesh Kumar, 633/L amounts to gross misconduct and indulgence in unlawful activities by taking advantage of his post which renders him liable for departmental action under the provisions of Delhi Police (Punishment and Appeal) Rules-1980."

2.1 The Inquiry Officer was also appointed by the disciplinary authority to conduct the disciplinary inquiry proceedings against the applicant. The Inquiry Officer after completion of inquiry concluded the same vide his report dated 25.08.2011 holding that the charge levelled against the applicant stands proved that he was involved and arrested in case FIR No.534/06 U/s 25/54/59 Arms Act dated 30/8/06 PS Narela, Delhi and thereby indulged in unlawful activities amounting to gross misconduct by taking advantage of his post. Upon receipt of inquiry report as also the representation of the applicant against the said inquiry report, the Disciplinary Authority vide Order dated 1.11.2011 imposed the punishment of forfeiture of two years approved service permanently entailing proportionate reduction in his pay and his suspension period from 30.08.2006 to till date decided as "PERIOD NOT SPENT ON DUTY" for all intents and purposes. Against the aforesaid order of the Disciplinary Authority, the applicant preferred his appeal dated 1.12.2011 (Annexure A/10) to the Appellate Authority and the Appellate Authority vide show cause notice dated 12.7.2012 (Annexure A/2) disagreed with the punishment imposed by the Disciplinary Authority, as according to the Appellate Authority, the Disciplinary Authority had taken a very lenient view while deciding the punishment for the grave misconduct and, therefore, called upon the applicant to show cause why he should not be dismissed from the services of Delhi Police.

2.2 The applicant has also filed his reply dated 30.7.2012 (Annexure A/11) to the said show cause notice issued by the Appellate Authority and the Appellate Authority vide Order dated 7.8.2012 (Annexure A/1) after considering the records and the representation of the applicant to the said show cause notice

dismissed the applicant from the services of Delhi Police with immediate effect. His suspension period from 30.8.2006 to 1.11.2011 remains "PERIOD NOT SPENT ON DUTY" on the principle of "No Work - No Pay" for all intents and purposes and the applicant was granted 30 days time to file appeal against the said order.

2.3 The applicant submitted his appeal on 29.8.2012 against the said order of appellate authority but the same was dismissed on the ground that there is no provision of revision petition, i.e., second appeal.

2.4. Being aggrieved by the aforesaid orders, the applicant has filed the instant OA seeking the reliefs as quoted above.

3. During the course of hearing, counsel for the applicant besides other grounds has raised a ground that the show cause notice issued by the Appellate Authority disagreeing with the punishment awarded by the Disciplinary Authority is not a tentative one but final decision. Counsel for the respondents submitted that the said show cause notice issued by the Appellate Authority is a tentative show cause notice as vide which the applicant was called upon to make representation and the Appellate Authority after considering the records of the case as well as representation of the applicant passed the aforesaid order, which is also impugned by the applicant in the instant OA.

4. To appreciate the aforesaid contentions of the parties, it is relevant to see the said show cause notice dated 12.7.2012 (Annexure A/2), the relevant part of the same is reproduced as under:-

"On scrutinizing the DE file, punishment order and grounds mentioned in the appeal against punishment order, I, as appellate authority, disagree with the punishment imposed by the disciplinary authority. The disciplinary authority has taken a very lenient view while deciding the punishment for the grave misconduct. You, Const.(Mounted) Dinesh Kumar, No.633/L (PIS No.28930952) being a uniform personnel, engaged to protect Law & Order and prevent criminal activities, yourself indulged in criminal activities/organized crime. Hence, your conduct not only brought bad name to Delhi Police but contributed to shattering the faith of society towards police organization.

Your indulgence in organized criminal activities i.e. supplying illegal fire arms to criminals, make you a liability in an organization which is entrusted to protect the society from criminals and to uphold law & orders. A person, who can help criminals by himself indulging in criminal activities, while taking advantage of his post and uniform, cannot protect the society.

You are, therefore, called upon to Show Cause why you should not be dismissed from the services of Delhi Police, Your reply, if any, should reach this office within 15 days of receipt of this Show Cause Notice."

(emphasis supplied)

5. From the perusal of the above, it is clear that Appellate Authority has already made up its mind to dismiss the applicant from service. The said show cause notice was only an empty formality. The Hon"ble Supreme Court in the case of Yoginath D. Bagde vs. State of Maharashtra (1999) 7 SCC 739, held as under:-

"a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

Even the Hon"ble Apex Court in the case of K.C. Sharma vs. BSES Yamuna Power Ltd. LPA No.646/2013, decided on March 18, 2015, in para Nos.15 to 18 held as under:-

"15. In the decisions reported as (1998) 7 SCC 84 Punjab National Bank & Ors. Vs. Kunj Bihari Misra and (1999) 7 SCC 739 Yoginath D. Bagde Vs. State of Maharashtra & Anr., the Supreme Court held that a facet of the principles of natural justice was that if the Disciplinary Authority disagreed with the findings returned by an Enquiry Officer it should record tentative reasons for the disagreement, leaving scope for an open mind to consider the response of the charged officer, give the tentative reasons for the disagreement to the charged officer and invite his response and then dealing with the response pass a reasoned order.

16. The jurisprudence behind said principle of law is that unless a person is given

an opportunity to respond to a tentative reason to disagree, the person affected loses a valuable right of being heard before a decision adverse to his interest is taken and that the final decision must contain the reasons because it is this reasons which would determine the appellate remedy of the person whose interest is adversely affected by the decision.

17.

18. An argument was advanced in Yoginath Bagde's case before the Supreme Court that a post - decisional hearing may be granted. The Supreme Court negative the plea holding that the same would not be adequate because the Disciplinary Authority had already closed its mind by taking a determinative view."

6. Further we find that the Appellate Authority while issuing the show cause notice dated 12.7.2012 (Annexure A/2) did not give any reasons for disagreeing with the punishment imposed upon the applicant by the Disciplinary Authority but merely stated that Disciplinary Authority has taken a very lenient view while deciding the punishment for the grave misconduct.

7. In view of the aforesaid discussion, for the foregoing reasons, the order of the Appellate Authority dated 7.8.2012 (Annexure A/1) and show cause notice dated 12.7.2012 (Annexure A/2) need to be set aside only on one ground noted above. We order accordingly. The matter is remanded back to the Appellate Authority to give a fresh tentative note of disagreement with regard to punishment awarded by the disciplinary authority vide its order dated 1.11.2011 and call for a representation from the applicant and by considering the same pass a fresh order within a period of 60 days.

8. As the instant OA is allowed on the sole ground that the Appellate Authority has not given the tentative note of disagreement, this Tribunal is of the view, it may not be necessary for this Tribunal to refer and consider all the other judgments relied upon by learned counsel for the parties.

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