

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 09.10.2012

+ **W.P.(C) 751/2002**

HUKUM SINGH

... Petitioner

versus

THE COMMISSIONER OF POLICE & ORS.

... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Rishikesh

For the Respondent : Ms. Ruchi Sindhwani

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE M.L. MEHTA

BADAR DURREZ AHMED, J (ORAL)

CM No. 10681/2012 (early hearing)

Early hearing is allowed. The writ petition is being taken up for hearing today itself.

This application stands allowed.

W.P.(C) 751/2002

1. This writ petition is directed against the order dated 4th September, 2001 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2259/2001.

2. The main point urged by the learned counsel for the petitioner was that the punishment meted out to the petitioner was excessive and was in any event contrary to Rule 8 (d) (ii) of the Delhi Police (Punishment & Appeal) Rules, 1980 inasmuch as two alternative punishments of reduction in pay and deferment of increments have been foisted on the petitioner at the same time.

3. Disciplinary proceedings were initiated against the petitioner who, at that time, was a Head Constable in the Delhi Police. From the impugned order, we notice the following statement of allegations:-

“1. That he while posted in P.S. Punjabi Bagh and performing emergency duty on the night between 12/13.8.89, he was marked a DD Entry No. 17-A P.S. Punjabi Bagh regarding accident occurred at the red light on the road leading from General store, Punjabi Bagh to Rajouri Garden. At 8.10 A.M., Head Constable Hukam Singh, No. 431/W lodged D.D. No. 3-A dated 13.8.99 mentioning therein that on receipt of D.D. No. 17-A, he reached Moti Nagar Ring Road Crossing and found scooter No. DL-2SB-8299 in accidented condition at the spot. He also learned that injured had already been taken to DDU Hospital and the truck involved in the accident had fled away from the spot. Thereafter he reached DDU Hospital, Hari Nagar, New Delhi leaving Ct. Rakesh, No. 1755/West on the spot and obtained MLC No. E74897 vide which one Badri was reportedly admitted in the Hospital who had already left the hospital before H.C. reached there. The Doctor had mentioned the injuries as simple by Blunt object. The H.C. further mentioned in the report that he went to the house of the injured

at C-2/54, J.J. Colony, Inderpuri, New Delhi which was found locked. HC further mentioned that Truck No. DL-IGA-5521 was found detained at Raja Garden Picket. He went there and found that the Driver of the truck had already escaped leaving the truck. The HC further wrote in the report that from the R.C. of the truck he came to know the address of the truck owner and went to his place but he could not meet the owner of the truck. HC further wrote that in view of the above circumstances, the inquiry regarding DD No. 17-A of 12/13.8.99 is kept pending and SHO has been informed about this incident.

2. On 17.8.99, HC Hukum Singh, No.431/West again lodged DD No. 22-A PS Punjabi Bagh mentioning therein that he went to DDU Hospital and come to know that injured Badri Prasad S/O Sadu Ram R/O C-2/54, JJ Colony Inderpuri had already been discharged. HC went to this house and met the injured and came to know from the injured that he had already compromised the matter with the Driver and as such no police action was required by the injured and accordingly the D.N. No. 17-A dated 13.08.99 was filed.

3. On 17.8.99, father of the injured appeared before the ACP/Punjabi Bagh and reported that the HC Hukum Singh, No. 431/West forcibly made him to compromise the matter with the Driver and did not register the case. He also informed that he was paid ₹.1000/- by the Driver of the truck in lieu of the compromise. Later on, the injured as well as his father came to PS Punjabi Bagh and case vide FIR No. 666/99 dated 17.8.99 u/s 279/337 IPC was got registered against the Driver of truck No. DL-IGA-5521. On enquiry, it was found that HC Hukum Singh, No.431/West had brought the truck involved in the accident to the police station and he pressurized the complainant to compromise with the Truck Driver for ₹. 1000/- instead of registering a case u/c 279/337 IPC. He neither seized the Truck nor the Scooter involved in the accident case but instead, he allowed the Truck and its Driver to leave the Police Station possibly with an ulterior motive. He acted with malafied

intention right from the beginning and lodged false DD entries in the daily Diary with the intention to protect the culprit.”

4. The Inquiry Officer submitted his report on 25th July, 2000 wherein he was of the view that the above allegations were not proved. The Disciplinary Authority disagreed with the view of the Inquiry Officer and prepared a disagreement note which was served upon the petitioner who, then, submitted a representation dated 28th September, 2000. The Disciplinary Authority then considered the representation of the petitioner and by an order dated 6th November, 2000 came to the conclusion that the allegations stood proved. Consequently, the Disciplinary Authority directed as under:-

“I, Kewal Singh, Dy. Commissioner of Police, West Distt., New Delhi after considering the overall facts and circumstances, hereby order to forfeit five years approved service of H.C. Hukum Singh, No. 431/W permanently. The pay of H.C. Hukum Singh No. 431/West is reduced by five stages from ₹.3865/- to ₹.3540/- in the time scale of pay for a period of five years with immediate effect. He will not earn increments of pay during the period of reduction and on expiry of this period, the reduction will have the effect on postponing his future increments of pay.”

5. The learned counsel for the petitioner had attempted to argue that the proceedings were not in accordance with law and/or were contrary to the principles of natural justice. However, we find that this aspect of the matter has been adequately dealt with by the Tribunal. The Tribunal held that the Disciplinary Authority was well within his power to disagree with the findings of the Inquiry Officer. Furthermore, the Tribunal noted that in so far as the question of following the principles of natural justice was concerned, the Disciplinary Authority had served his note of disagreement upon the petitioner and had given him an opportunity to represent against the same. The petitioner had also availed of the said opportunity by submitting his representation dated 28th September, 2000 and the same had been duly considered by the Disciplinary Authority, who, on appraisal of the evidence on record, found the allegations against the petitioner to have been proved. The Tribunal, rightly came to the conclusion that this was not a case of no evidence. The findings of the Disciplinary Authority had also been affirmed by the Appellate Authority by virtue of the order dated 16th July, 2001 and therefore, the Tribunal felt that no interference was called for.

6. The Tribunal also concluded that the measure of penalty was commensurate with the gravity of the allegations of charge which have been

found to have been proved against the petitioner. We note that the contention of the learned counsel for the petitioner that the punishment was not in accordance with Rule 8(d)(ii) of the Delhi Police (Punishment & Appeal) Rules, 1980 had not been examined by the Tribunal. Perhaps, it had not been raised at all before the Tribunal. Anyhow, the learned counsel for the petitioner states that this is a legal issue and could be raised in this writ petition.

7. The learned counsel for the petitioner has placed reliance on a Division Bench decision of this Court in the case of **Shakti Singh Vs. UOI & Ors.**, WP(C) No. 2368/2000 reported in 2002 VII AD (Delhi) 529.

8. We have also heard the learned counsel for the respondent on this aspect of the matter.

9. We may straight away take up the question of whether the punishment/penalty given to the petitioner was in accordance with the said Rule 8(d)(ii) of the Delhi Police (Punishment & Appeal) Rules, 1980. In ***Shakti Singh*** (*supra*) the Division Bench was considering the following order of punishment:-

“The charge levelled against Inspr. Shakti Singh, No. D-1/231 is fully proved. Thus, the pay of Inspr. Shakti Singh, No. D-I/231 is reduced by five stages from Rs. 2525/- to Rs. 2100/- in the time scale of pay for a period of five years. He will not earn increment of pay during the period of reduction and on the expiry of this period, the reduction will have the effect of postponing his future increments of pay.”

10. It can be easily seen that the said penalty order comprised of two separate punishments one was of reduction in pay by five stages and the second was of deferment of increments as well as future increments. Rule 8 (d) (ii) of the said Rule reads as under:-

"8. Principles for inflicting penalties.--

(d) Forfeiture of approved service.--

Approved service may be forfeited permanently or temporarily for a specified period as under:-

- (i) For purposes of promotion or seniority (Permanent only).
- (ii) Entailing reduction in pay or deferment of an increment or increments (permanently or temporarily)."

11. The Division Bench in **Shakti Singh** (*supra*) interpreted the said Rule in the following manner:-

“Rule 8(d) of the said Rules provided that approved service may be forfeited permanently or temporarily for a specified period as

mentioned therein. Such a forfeiture of approved service may be (i) for purposes of promotion or seniority, which can only be permanent in nature; (ii) entailing reduction of pay; and/or (iii) deferment of an increment or increments permanently or temporarily.

4. It is not in dispute that by reason of the order impugned before the Tribunal, the services of the petitioner were forfeited as a result whereof reduction in his pay was directed. Thus, his pay was further reduced by five stages from Rs. 2525/- to Rs. 2,100/- in the time scale of pay for a period of five years. Yet again, it was directed that he would not earn increments of pay during the period of reduction and on the expiry of the said period such reduction would have the effect of postponing his future increments of pay.

Rule 8(d)(ii) of the said Rules is disjunctive in nature. It employs the word 'or' and not 'and'.

Pursuant to and/or in furtherance of the said Rules, either reduction in pay may be directed or increment or increments, which may again be either permanent or temporary in nature be directed to be deferred. Both orders cannot be passed together.

Rule 8(d)(ii) of the said Rules is a penal provision. It, therefore, must be strictly constructed.

The words of the statute, as is well known, shall be understood in their ordinary or popular sense. Sentences are required to be construed according to their grammatical meaning. Rule of interpretation may be taken recourse to, unless the plain language used gives rise to an absurdity or unless there is something in the context or in the object of the statute to suggest the contrary.

Keeping in view the aforementioned basic principles in mind, the said rule is required to be interpreted.”

(underlining added)

12. From the above, it is apparent that forfeiture of approved service may entail reduction in pay or deferment of increment(s) permanently or temporarily. The word ‘or’ being used distinctively, clearly signifies that forfeiture of approved service can be accompanied only by a reduction of pay or deferment of increments, but not both.

13. The Division Bench in ***Shakti Singh*** (*supra*) ultimately came to the conclusion as under:-

“15. In this view of the matter, we are of the opinion that the petitioners herein could not have been inflicted with both the punishments.

We, therefore, set aside the second part of the order whereby and where under their future increments had also been stopped permanently.”

14. Similarly, we feel that in the present case also petitioner could not have been inflicted with the two alternate penalties at the same time. The penalty could have either been reduction in pay or deferment of increments, but not both.

15. Consequently, we modify the order of penalty by setting aside that part of the penalty order which pertains to deferment of increments of pay. In other words, the penalty order of the petitioner would read as amounting to forfeiture of five years approved service entailing a reduction by five stages from ₹.3965/- to ₹.3540/- in the time scale of pay for a period of five years w.e.f. the date of the Disciplinary Authority's order, that is, 6th November, 2000. Consequential benefits be given to the petitioner within eight weeks.

16. The writ petition is partly allowed as above.

17. There shall be no orders as to costs.

BADAR DURREZ AHMED, J

M.L. MEHTA, J

OCTOBER 09, 2012
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