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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 771/2014**

Date of Decision: 22nd February, 2017

ABDUL SATTAR Petitioner

Through: Mr. Sourabh Ahuja, Advocate

versus

GOVT. OF NCT OF DELHI & ORS Respondents

Through: Mr. Santosh Kumar Tripathi, ASC
with Mr. Rizwan, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Constable Abdul Sattar, in this writ petition, impugns two orders dated 14.1.2013 and 20.5.2013 passed by the Principal Bench of the Central Administrative Tribunal ('Tribunal' for short) dismissing OA No.3/2011 and RA No.94/2013, respectively.

2. In OA No.3/2011 the petitioner had challenged penalty of forfeiture of two years approved service permanently, (which had the effect of entailing a proportionate reduction in pay from Rs.11,400/- to Rs.10,730/-) imposed vide order dated 18.12.2009 passed by the Disciplinary Authority. The punishment order had further directed that the suspension period from 6.2.2009 to 22.11.2009 shall not be treated as period spent on duty.

3. The petitioner had also challenged in the OA No.3/2011, the appellate

order dated 2.7.2010 passed by the Joint Commissioner of Police, dismissing his appeal.

4. The petitioner was earlier awarded punishment of censure vide the order dated 18.8.2008. The petitioner had thereupon preferred an appeal before the Joint Commissioner of Police, who vide the order dated 5.2.2009, went into the different aspects and had recorded as under:

“This is an order in the appeal filed by Const. Abdul Sattar, No. 1386/NE (PIS No. 28830172 (hereinafter called the appellant) against the punishment of censure awarded to him by DCP/North-East Distt. vide Ext. Cell.

ACP/OPS. The facts of the case are that during public hearing SO-Shri Nasir Ali S/o Sh. Abdul Gani r/o H.No. 537, Gali No. 10, Block-A, RI/Shri Ram colony, Rajiv Nagar, Khajuri Khas, Delhi-94 appeared before the then DCP/NE Dist. on 15.5.2008 and submitted a complaint mentioning that he was running a readymade garments (shirt) factory at the given address where the appellant came and asked for licence. On denial, the appellant forcibly obtained Rs. 3,000/- from him and further demanded Rs. 500/-on monthly basis for running the garments factory. The complainant further alleged that the appellant had threatened him to implicate him in a false case if his illegal demand was not met out. The appellant not only indulged himself in corrupt activities but also misused the status of his job which was a serious lapse on his part. For this lapse, a show cause

notice for censure was issued to him vide No.5921-22/HAP/NE dated 9.7.2008 which he acknowledged and submitted his reply. The disciplinary authority after going through the file records and hearing in O.R., awarded him the punishment now appealed against.

I have gone through the appeal preferred by the appellant and the other file records. The scrutiny of file records indicates that the allegations of complainant Nasir Ali were substantiated during P.G. Cell enquiry as a result of which the appellant was transferred from the police station to the Distt. Lines and the instant punishment was awarded to him. The contentions of the appellant that complainant Nasir Ali due to some misunderstanding has filed complaint against him which he later on withdrawn is not acceptable because during P.G. Cell enquiry, the complainant and his employee have corroborated the allegations of taking of Rs. 3,000/- by the appellant but after some time he withdrew his complaint. It seems that he being police officer had put pressure on the complainant, win over him and managed to get a letter from him. Further on another complainant of Ajam Ali, (the real brother of Nasir Ali) regarding threatening on mobile phone and making conspiracy with criminal Guddu @ Ashraf to kill his brother Nasir Ali, the matter was also got enquired into from P.G. Cell/N.E. Distt. Subsequently, a case vide FIR No.274/08 u/s 384/324/506/34 IPC was registered on the statement of Nasir Ali and both the accused Guddu @ Ashraf (B.C. of PS/K. Khas) and Shamim, named in

FIR were arrested and the case has been put in court. Thus, it is crystal clear that the conduct of the appellant is not upto the mark. Since the matter is seriously and the allegations of taking money have already been substantiated during P.G. Cell enquiry, the instant punishment awarded to the appellant by the disciplinary authority is very less in comparison to his misconduct.

Thus, I being the appellate authority in exercise of the powers conferred upon me under Rule 25(f) of Delhi Police (Punishment & Appeal) Rules, 1980 set-aside the show cause notice for censure and its subsequent treatment/decision. The appellant be placed under suspension and regular departmental enquiry initiated against him for his gross misconduct.

Let the appellate be informed accordingly.”

5. Thereupon, the petitioner was under placed suspension with effect from 6.2.2009. Departmental proceedings were initiated under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 ('Rules' for short). An inquiry officer was appointed. Seven witnesses on behalf of the presenting officer and six defence witnesses were examined. The Inquiry Officer, on consideration of the statement of witnesses and documentary evidence, vide his report dated 27.10.2009, came to the conclusion that the charges were proved. He observed:-

“I, Ishwar Singh, Inspector Investigation. Police Station Gokul

Puri, Delhi charge you, Const. Abdul Sattar No. 1386/NE PIS No. 28830172 that while you were posted at PS Khajoori Khas, forcibly obtained Rs. 3000/- from Sh. Nasir Ali S/O Abdul Gani R/O H. No. 537, Gali No.10, Shri Ram Colony, Delhi and further demanded Rs.500/- on monthly basis for running the garments factory. Sh. Nasir Ali, complainant further alleged that you had threatened him to implicate in a fake case if your demands were not made out. You were not only indulged yourself in corrupt activities but also misused the status of your post. An enquiry with the matter was got conducted by PG Cell/NE during which the complainant and his employee have corroborated the allegations of taking Rs.3000/- by you but after some time the complainant withdrew his complaint. It seems that you being a police officer had put pressure on the complainant, won over him and managed to get a letter from him for the withdrawal of complaint. Further another complaint of Azam Ali (The real brother of Nasir Ali) regarding threatening on mobile phone & making conspiracy with criminal of Guddu @ Assraf to kill his brother Nasir Ali was received. The matter was also got enquired by PG Cell/NE Distt. Subsequently, a case vide FIR No. 274/08 U/S 384/324/506/34 IPC was registered on the statement of Nasir Ali & both the accused persons Guddu @ Ashraf (BC of PS K. Khas) & Shamim Ahmed named in FIR were arrested & the case has been put in court for trial. Thus, it is crystal clear that the conduct of you, Const. Abdul Sattar No. 1386/NE is not up-to the mark. Allegations of complainant Nasir

Ali were substantiated during the enquiry earlier conducted by the PG Cell/NE, as a result of which you, Ct. Abdul Sattar No.1386/NE were transferred from PS K.K to Distt. Line/NE
The above act on the part of you, Ct. Abdul Sattar No. 1386/NE (PIS No. 28830172) amounts to gross misconduct, gross negligence, carelessness in the discharge of your official duties & indulgence in corrupt practice which renders you liable to be dealt with departmentally with the provisions of the Delhi Police (Punishment & Appeal) Rules,1980.”

6. The petitioner raised objections to the inquiry report vide representation dated 20.11.2009. The Deputy Commissioner of Police as the Disciplinary Authority on consideration vide the order dated 18.12.2009, imposed the aforesaid penalty. This order records that the Disciplinary Authority had gone through the evidence on record, deposition of prosecution witnesses, exhibits, defence witnesses and defence statements. At the time of personal hearing, the petitioner had not put forth any plea, except to rely on his written statements. The Disciplinary Authority elucidated that the petitioner had put pressure on the witnesses to influence and pressurise them.

7. As noticed above, the appeal preferred by the petitioner was dismissed by the Appellate Authority, vide the order dated 2.7.2010.

8. Learned counsel for the petitioner has submitted that Mr. Dharmendra

Kumar, the Joint Commissioner of Police, is the author of the first appellate order dated 5.2.2009 and also the appellate order dated 2.7.2010. Thus principles of natural justice have been violated. Specific reference was made to the language and observations in the order dated 5.2.2009.

9. On being pointedly asked whether the said contention was raised before the Appellate Authority or the Tribunal, learned counsel for the petitioner has stated that this contention was not raised at any stage. Raising a new contention at this belated stage before the High Court would be inappropriate and unfair, as an order of remand after a long gap would not be in the interests of justice. It is apparent that the petitioner did not perceive and believe that the Joint Commissioner of Police, who decided the appeal dated 2.7.2010, was prejudiced or biased so as to negate his right to fair and just consideration by the Appellate Authority.

10. We have also examined the order dated 5.2.2009 and observe that it could have been better worded, *albeit* it cannot be held that the said order had foreclosed or had conclusively held that the petitioner was guilty. The Joint Commissioner of Police, in the order dated 5.2.2009, had examined the preliminary inquiry report dated 12.12.2008 and on the basis of the evidence relied therein, felt that departmental proceedings for imposing major penalty

should have been initiated, as the allegations and the charges raised against the petitioner were serious. This order observed that the penalty of censure in the aforesaid factual background, imposed by the Disciplinary Authority, would not be in consonance with or in comparison to the petitioner's misconduct, as found. The direction given was for initiation of regular departmental proceedings. Pursuant thereto, regular departmental proceedings were initiated. Chargesheet was issued, inquiry officer was appointed, statements of witnesses were recorded and documents were examined and considered by the Inquiry Officer and the Disciplinary Authority. The petitioner was given fair opportunity to defend and contest the proceedings. The petitioner would have been exonerated in case charges were not proved or established in the ensuing departmental inquiry. The extent and nature of the examination and inquiry by the Appellate Authority at the two stages were vastly different and cannot be compared. The decision to initiate proceedings and examination at that stage was substantially distinct from consideration of the evidence, oral and documentary, by the appellate authority post the departmental inquiry and after the order by the Disciplinary Authority.

11. The Tribunal, on the factual aspects, had rightly observed that they

cannot delve into the evidence to evaluate and reassess the factual findings as an appellate forum. No error in the decision-making process could be pointed out or was specifically raised, except for the argument that, in the present case, there was a violation of Rule 15(2) of the Rules. The said contention was rejected as the Joint Commissioner of Police had directed initiation of major penal proceedings under Rule 25(f) of the Rules. Rule 15(2) was, therefore, not applicable. To this extent, we are in agreement with the findings recorded by the Tribunal. The Joint Commissioner of Police is senior in hierarchy to the Deputy Commissioner of Police, the authority specified in Rule 15(2). The Joint Commissioner of Police had duly applied its mind on the allegation and had come to the conclusion that major penalty departmental proceedings should be initiated against the petitioner. In the aforesaid factual background, when such power is exercised by the superior authority under Rule 25(f) of the Rules, prior approval of the lower authority, i.e., the Deputy Commissioner of Police, would not be mandated and required. The petitioner has not challenged or questioned the power and the authority of the Joint Commissioner of Police under Rule 25(f), and to this extent, the order dated 5.2.2009 has not been challenged.

12. In the aforesaid position, we do not find any merit in the writ petition and the same is dismissed. No order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 22, 2017
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