



2024:DHC:8294-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3884/2019**

GOVT. OF NCT OF DELHI AND ORS.Petitioners

Through: Sh. R Venkat Prabhat, Mr.
Abhinav Goel, Mr. Ansh, Adv.

versus

HC (MIN) SHISHU PALRespondent

Through: Mr. Sachin Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

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23.10.2024

C. HARI SHANKAR, J.

1. The respondent who was working as a Head Constable (Ministerial in the Delhi Police) was subjected to disciplinary proceedings, initiated against him on 3 March 2009. The order dated 3 March 2009 initiating disciplinary proceedings was subsequently withdrawn by the Disciplinary Authority¹ on 19 June 2009 citing administrative grounds. By the same order, the DA initiated a regular disciplinary enquiry against the respondent.

2. By order dated 19 June 2009, the order dated 3 March 2009, whereby disciplinary proceedings were initiated against the

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respondent, was withdrawn on administrative grounds “without prejudice to the departmental action taken against him later on”.

3. “Later on”, to which the order dated 19 June 2009 refers, was, apparently, on the very same day, as, by a second order dated 19 June 2009, the respondent was issued a second charge-sheet on the very same allegations, as were contained in the charge-sheet dated 3 March 2009 which was withdrawn by the order dated 19 June 2009 passed on that date.

4. Mr. R. V. Prabhat, learned counsel for the petitioners, submits that the issuance of the fresh charge-sheet has been necessitated as prior approval of Joint Commissioner of Police had not been taken before issuing the earlier charge-sheet dated 3 March 2009.

5. Be that as it may, the respondent represented against the issuance of the second charge-sheet on 19 June 2009, on 20 July 2009 addressed to the DA. As the DA took no decision on the said representation, the respondent further represented to the Appellate Authority, i.e. the Joint Commissioner of Police, on 12 September 2009. The Appellate Authority, too, remained silent on the respondent’s representation.

6. Instead of responding to the aforesaid representations of the respondent, notices of hearing were issued by the EO, requiring the respondent to appear before him on 1 September 2009, 4 September 2009 and 19 September, 2009. However, on 12 September, 2009 the respondent addressed a representation to the Appellate Authority,



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drawing attention to an earlier decision of the learned Tribunal as well as circular dated 28 April 1993 issued by the Police Headquarters, which apparently commented on the sustainability of a second charge-sheet after a first was withdrawn.

7. We need not offer any observations on this stand of the respondent, as it is not strictly relevant for the controversy in issue in the present case. Suffice it to state that, by a further representation dated 20 October 2009, the respondent requested that the earlier representations were still pending, the disciplinary proceedings against the respondent be kept in abeyance till the representations were decided.

8. The response from the DA was by way of a show cause notice dated 22 September 2009, calling on the respondent to show cause as to why he should not be censured for not appearing in the disciplinary proceedings.

9. The respondent replied to the said show cause notice on 20 October 2009, reiterating his request that the enquiry proceedings be kept in abeyance in view of the pendency of his earlier representations.

10. Unsatisfied with the said response, the DA, *vide* order dated 13 January 2010 imposed, on the respondent, a penalty of censure. Aggrieved thereby, the respondent approached the learned Central



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Administrative Tribunal² by way of OA 990/2015.

11. The said OA stands allowed by the learned Tribunal by way of impugned judgment dated 14 September 2018. The learned Tribunal has reasoned thus:

11. The respondents in their reply have not cited any rules under which the annesure-1 show cause notice was issued and subsequently annesures-2 and 3 orders were passed. Though all these orders are for alleged misconduct of the applicant for not participating in the DE proceedings, nowhere non-participation in DE proceedings has been categorized as a misconduct. As a matter of fact, Rule 18 of the Delhi Police (Punishment & Appeal) Rules, 1980 clearly deals with such a situation and provides for conduct of the DE proceedings ex-parte. The EO ought to have acted in terms of the Rule 18.

12. I do not agree with the plea put forth by the applicant that the DE proceedings cannot be conducted till the representations of the applicant pending before Disciplinary and Appellate Authorities are disposed of. As a matter of fact, the plea taken in these representations could also be taken by the applicant before the EO himself.

13. In the conspectus of the discussions in the pre-paras, I quash and set aside annesures-1, 2 and 3 orders passed by Disciplinary and Appellate Authorities respectively. The respondents are at liberty to conduct the DE proceedings in accordance with annexure-10 order dated 22.06.2009.

12. Aggrieved thereby, the petitioners has approached this Court by means of the present writ petition.

13. We have heard Mr. R V Prabhat, learned counsel for the petitioners, and Mr. Sachin Chauhan who is appearing on behalf of the respondent at some length.

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14. Mr. Prabhat, learned counsel for the petitioner as relied on a judgment of the Supreme Court in *Secretary to Government v A C J Britto*³, particularly drawing attention to paras 6 and 9 of the said decision, which may be reproduced thus.

“6. The third reason given by the Tribunal that there was no justification for initiating a disciplinary proceeding against the respondent is also not sustainable. The proceeding was initiated against the respondent for his indisciplined conduct in disobeying a lawful order passed by his superior officer who was competent to pass such an order. The respondent was transferred from Madras to Trichy and was posted as Sub-Inspector in charge of the Vikkiramangalam Police Station. After joining duty there on 12-11-1980 he proceeded on leave from 13-11-1980 and continuously remained on leave till he was called upon by the Superintendent of Police, by passing an order on 4-6-1981, to appear before the Medical Board at Trichy on 9-6-1981. As he was remaining absent on medical grounds and had produced certificates from different Medical Officers the Superintendent of Police becoming suspicious about the genuineness of the ground on which he was remaining absent had passed that order. The fact that he did not comply with that order is not disputed. His explanation that he had no money to travel from Madras to Trichy and, therefore, he had requested the Superintendent of Police on 8-6-1981 to issue a railway warrant and as a railway warrant was not given to him he could not remain present before the Medical Board on 9-6-1981 as directed, was not accepted by the authorities concerned. We will hereafter point out that there were good reasons for the authorities not to accept the said explanation. Such an act of insubordination or disobedience of an order by a police officer has to be viewed seriously as higher degree of discipline is expected of a member belonging to the Police Force. Therefore, it cannot be said that there was no good and sufficient reason or a valid justification for initiating the disciplinary proceedings against him.

9. The Rules applicable in this case do not specify acts of misconduct for which a delinquent officer can be punished. Rule 2 empowers the competent authorities to impose upon members of the Service penalties specified therein “for good and sufficient reason”. Therefore, the decision of this Court in *A.L. Kalra*⁴ is

³ (1997) 3 SCC 387

⁴ *A.L. Kalra v Project & Equipment Corpn of India Ltd*, (1984) 3 SCC 316



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clearly distinguishable. Before holding that there was no justification to initiate disciplinary proceeding against the respondents, the Tribunal ought to have considered whether there was “good and sufficient reason” for initiating such proceedings against him. It was not justified in taking that view on the ground that such an act of delinquency has not been specified in the Rules as an act of misconduct. Not obeying a legitimate order of his superior by a member of the Police Force has to be regarded as an act of indiscipline and would certainly provide a good and sufficient reason for initiating a disciplinary proceeding.”

15. Having heard learned Counsel for the parties and perused the material on record, we find no reason to interfere with the impugned judgment of the learned Tribunal. While, it is true that courts have to be circumspect in interfering with the decisions passed by Disciplinary Authorities and Appellate Authorities, one of the rare circumstances in which such interference is justified is where the allegation against the Charged Officer, even if taken as true, does not disclose the commission of any misconduct.

16. Mr. Prabhat does not dispute the fact that absenting from the disciplinary proceedings is not one of the misconducts envisaged by the Delhi Police (Punishment and Appeal) Rules, 1980.

17. He has drawn our attention to Rule 21 of the said rules which reads thus:

“21. Maintenance of discipline in departmental enquiries-

Discipline must be maintained during the proceedings of departmental enquiries. Refusal of an accused police officer to answer question, inordinate delay in producing his defence, insubordinate behaviour before the Enquiry Officer or intemperate or impertinent questioning of superior officers by accused officer, are, in addition to being contrary to the spirit of the rules for the conduct of departmental enquiries, entirely contrary to the



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requirement of discipline and shall be treated accordingly.”

18. Mr. Prabhat also placed reliance in the case of *A C J Britto* as already noted.

19. There can be no comparison between the present case and the facts which were before the Supreme Court in the case of *A C J Britto*. That was a case in which the concerned officer in question had disobeyed orders of transfer which had been passed. In the present case, the only disobedience if at all was in the respondent not appearing in the disciplinary proceedings with regard to the summons issued by the EO. The respondent had given reasons for not being present. According to the respondent, as the very issuance of the charge-sheet on 19 June 2009 was unjustified, the enquiry proceedings were without authority of law. The representations made by the respondent to the DA and Appellate Authority in that regard on 20 July 2009 and 12 September, 2009 admittedly went unanswered. In these circumstances the respondent had sought that the enquiry proceedings be kept in abeyance awaiting the outcome of the said representations.

20. It was for these reasons that the respondent did not turn up for the enquiry. It cannot be treated as a case of deliberate non-compliance with the orders passed by the superior authorities or insubordination of any kind.

21. *Ex facie*, in our opinion, no actionable misconduct can be said to have been committed by the respondent merely because he did not



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turn up for participation in the enquiry proceedings when they took place.

22. Nor does the case of the respondent fall within any of the categories of circumstances envisaged by Rule 21 of the Delhi Police (Punishment and Appeal) Rules.

23. We, therefore, are in an agreement with the learned Tribunal that the punishment of censure awarded to the respondent merely because he did not appear in the disciplinary proceedings was completely unjustified.

24. Accordingly, we uphold the order of the Tribunal and dismiss this petition. There shall be no order as to costs.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 23, 2024

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Click here to check corrigendum, if any