

Union of India

Vs

Khazan Singh

Civil Appeal No. 1798 of 1992

(Kuldip Singh, Yogeshwar Dayal JJ)

06.04.1992

JUDGMENT

1. Special leave granted.

2. Khazan Singh, Head Constable (Driver), Delhi Police was awarded the punishment of censure by the Deputy Commissioner of Police. On an appeal filed by Khazan Singh the Additional Commissioner of Police, Armed Police Delhi set aside the punishment of censure and directed that regular departmental inquiry be held against him under Rule 25 of the Delhi Police (Punishment and Appeal) Rules 1980 (the Rules). Against the order of the Additional Commissioner of Police, Khazan Singh filed an application before the Central Administrative Tribunal. The tribunal by its judgment dated March 20, 1991 quashed the order of the Appellate Authority. This appeal by way of Special Leave Petition by the Union of India is against the order of the tribunal.

3. A show-cause notice dated December 14, 1989 was issued to Khazan Singh by the Deputy Commissioner of Police on the allegations that he while deputed to act as Motorcycle Rider, to an Inspector of Police, absented himself from duty leaving the Inspector without any vehicle. They were on VIP route duty. The show cause notice was in the following terms:-

"The above act on your part amounts to grave carelessness, negligence, misconduct and dereliction in the discharge of your Govt. duties. You are, therefore, called upon to show cause as to why your conduct should not be censured for the above lapse."

4. The reply filed by Khazan Singh was found to be unsatisfactory and penalty of censure was imposed. The powers of the appellate authority are provided under Rule 25 of the Rules which is as under:-

"25. Orders on appeal- (1) On appeal, the appellate authority may,

(a) confirm the impugned order, or

(b) accept the appeal and set aside punishment order, or

(c) reduce the punishment, or

(d) disagree with the disciplinary authority and enhance the punishment after issue of a fresh show cause notice to the appellant and affording him a reasonable opportunity

(including personal hearing if asked for) against the proposed enhancement);

(e) (Added vide Notification No. P/5/ 132/81/H(P) Estt. dated 20-7-83) remit the case to the authority which made the order or to any other authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(f) pass such other orders as it may deem fit.

(2) Every order passed on appeal shall contain the reasons therefor. A copy of every appellate order shall be given free of cost to the Appellant."

5. Khazan Singh filed an appeal under the rules. The Appellate Authority set aside the punishment of censure and ordered the Deputy commissioner Police to hold regular departmental inquiry in accordance with the Rules. The operative part of the order is as under:-

"I have carefully gone through the appeal submitted by HC (Driver) Khazan Singh No. 10179/DAP, parawise comments and other relevant papers. The appellant has raised point that the duty from which he is alleged to have absented himself was not his duty and he had dropped Inspector Prem Chand for VIP route duty at Dhaula Khan only as a matter of accommodation. He is also alleged that it is not part of his duty to drop any officer on such duties as he is only a Despatch Rider and any change in the nature of his duties requires approval of Gazetted Officer. Before taking any decision on his pleas, I feel the matter called for a thorough probe and disciplinary authority has adopted a short cut to arrive at on this conclusion by choosing to issue him a show cause notice for censure. In case the appellant did absent himself from duty in the manner stated in the punishment order, regular departmental enquiry was required to be held in order to ascertain all the facts and also award punishment commensurate with the misconduct. I, therefore, set aside the punishment of censure and order that D.C.P./9th Bn. DAP will order a regular departmental enquiry to be held against HC (Driver) Khazan Singh No. 10179/DAP for absenting himself from VIP route duty and for alleged misbehaviour under Rule 25 of D.P(P&A) Rules 1980."

The Central Administrative Tribunal set aside the order of the Appellate Authority on the following reasoning:-

"The learned counsel for the respondents replied that under Rule 25(1)(d), the appellate authority disagreed with the disciplinary authority and enhanced the punishment after issuing a fresh show cause notice to the appellants, affording him a reasonable opportunity. But the order of the appellate authority is in clear contravention of this provision. The appellate authority has accepted the appeal and set aside the order of punishment, but further directions by the appellate authority to the disciplinary authority for holding a fresh inquiry for major penalty is nowhere provided in Rule 25 of the Rules of 1980. If the appellate authority wanted to remit the case to the disciplinary authority, then he should have clearly done so under sub-rule (e), but the impugned order passed by the appellate authority is in clear contravention of the provisions of the Rules. The authority has clearly exceeded the jurisdiction vested in him. Consequently, the impugned order passed by the appellate authority has to be set aside."

6. We have heard learned counsel for the parties. Rule 25(1)(e) read with Rule 25(1)(f) of the rules gives very wide powers to the Appellate Authority. It has the power to remit the case to the disciplinary authority for further inquiry and pass such other orders as it may consider proper or deem fit in the circumstances of the case. The Appellate Authority did not mention in its order as to under which sub-rule of Rule 25(1) the appeal was being disposed of. The tribunal while noticing Rule 25(1)(e) of the rules and conceding that the Appellate Authority could remand the case to the disciplinary authority for further inquiry under the said sub-rule, grossly erred in setting aside the order on the concession of the learned counsel to the effect that the Appellate Authority had passed the order under Rule 25(1) (d) of the Rules. It is settled proposition of law that when the exercise of power can be justified under any provision of law then non-mention of the said provision in the order cannot invalidate the same. We are of the view that the appellate authority validly exercised its powers under Rules 23(1)(e) and 25(1)(f) of the rules. Mr. N. R. Nagaraj a learned counsel appearing for the respondent Khazan Singh stated that Rule 23(1)(e) would only be attracted if departmental inquiry was held by the disciplinary authority and since in this case no inquiry was held the Appellate Authority had no power under the said rule to remand the case. We do not agree. The powers under the rules are very wide enabling the Appellate Authority to do justice in a given case. No prejudice has been caused to Khazan Singh because the defence set-up by him can only be examined in a regular enquiry.

7. We, therefore, allow the appeal, set aside the judgment of the Central Administrative Tribunal dated March 20, 1991 and restore the order of the Appellate Authority dated April 25, 1990. No costs. Appeal allowed.

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