

Central Administrative Tribunal, Principal Bench

Original Application No.112 of 2002

New Delhi, this the 1st day of October, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.K. Naik, Member (A)

Hari Charan  
S/o late Shri Madan Mohan,  
C/o B.S. Meena,  
R/o B-73, Vivek Vihar,  
New Delhi

.... Applicant

(By Advocate: Shri H.K. Gangwani)

Versus

1. Union of India  
through Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi-1
2. Commissioner of Police,  
Delhi, P.H.Q., I.P. Estate,  
New Delhi-2.

.... Respondents

(By Advocate: Mrs. Sumedha Sharma)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant Hari Charan was a Constable in Delhi Police. Disciplinary proceedings had been initiated against him pertaining to persistence absence which reads:

"It is alleged against Const. HARI CHARAN No.855/SW (PIS No.38900622) that while posted to P.S. Naraina he remained absent unauthorisedly and wilfully without permission or leave sanctioned by the competent authority on the following occasions:-

1. He was due to back from medical rest on the forenoon of 18.7.97 but neither he had reported for duty nor had sent any information, so he was marked absent vide DD No.35-B dated 18.7.97 P.S. Naraina, New Delhi. He had resumed his duty vide DD No.48-B dated 6.8.97 P.S. Naraina after an absence for 20 days, 4 hrs. and 45 mts.
2. He was detailed for night patrolling duty from 12 midnight to 5 A.M. on 13.8.97 but he did not turn up for the same and also did not sent any information and as such he was marked absent vide DD No. 2-B dated 13.8.97 P.S. Naraina. He reported for duty vide DD No.53-B dated 14.8.97

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P.S. Naraina after absenting for 20 hrs. and 55 mts. unauthorisedly at his own sweet will.

3. As per duty roster dated 17.8.97 he was detailed for patrolling duty from 12 midnight to 5 A.M. on 17.8.97 but he did not join his duty and as such he was marked absent vide DD No.2-B dated 17.8.97 P.S. Naraina. He reported back for duty vide DD No.6-B dated 20.8.97 after an absence for 2 days, 15 mts. at his own will.

4. He was due to back for duty from casual leave on the forenoon of 3.9.97 but he did not turn up and, therefore, he was marked absent vide DD No.39-B dtd. 3.9.97 P.S. Naraina. He had joined duty vide DD No. 4-B Dt. 14.9.97 P.S. Naraina after an unauthorised absence for 10 days and 11 hours.

5. According to the duty roster, he was detailed for duty from 8 p.m. to 8 a.m. on 15.9.97 but he did not join his duty for which he was marked absent vide DD No.80-B Dt. 16.9.97 P.S. Naraina. He reported back for duty vide DD No.87-B dt. 16.9.97 after absenting himself for 1 day 1 hrs. and 40 mts.

6. On 26.9.97 he was called by the SHO but was not found present at the P.S. and was marked absent vide DD No.40-B dated 26.9.97 P.S. Naraina. He reported back for duty vide DD No.47-B dated 21.10.97 P.S. Naraina after an unauthorised absence for 25 days and 7 hours.

7. As per duty roster he was detailed for picked duty from 8 p.m. to 8 a.m. on 30.10.97 but he did not turn up for duty and as such he was marked absent vide DD No.41-B Dt. 30.10.97 P.S. Naraina. He however, reported back for duty vide DD No.67-B Dt. 2.12.97 P.S. Naraina after absenting for 33 days and 25 mts. unauthorisedly.

The above acts on the part of Const. Hari Charan No.855/SW amount to gross misconduct of being habitual absentee showing totally disregard to the official duty which render him unbecoming of a member of the disciplined force in violation of rule 3 (i) (iii) of C.C.S. (Conduct) Rules 1964. Thus he is liable to be proceeded against departmentally under rule 16 of D.P. (Punishment and Appeal) Rules 1980."

2. The enquiry officer had recorded the evidence and framed the charge. Thereupon the findings recorded were that the allegations pertaining to absence stood proved. The disciplinary authority agreed with the said findings and recorded that the applicant is a habitual absentee. He

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was removed from service. The operative part of the order reads:

"This clearly shows that he is a habitual absentee. Therefore I, R.P. Upadhyaya, Addl. Deputy Commissioner of Police, South West District, New Delhi hereby order to remove the defaulter constable Hari Charan No.855/SW from the service of Delhi Police with immediate effect. The absence period mentioned/Para-Ist is treated as dies-non i.e. "No work hence, No Pay"

The applicant preferred an appeal which has been dismissed.

3. By virtue of the present application, the applicant assails the abovesaid orders.
4. Needless to state that the petition has been contested in the reply that has been filed.
5. Learned counsel for the applicant, at the outset, urged that the charge was never served on the applicant and in this regard referred to the report of the enquiry officer in which he has recorded "the same could not be served upon the defaulter as he remained absent from P.S. Naraina from 23.7.98 to till date." In the opinion of the learned counsel, it indicates that the applicant was never served.
6. However, the plain reading of the report clearly indicates that the enquiry officer was referring to the fact that because the applicant remained absent from P.S. Naraina, therefore, the charge could not be served upon him. It is not intended that the charge, in fact, was

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never served on the applicant. This becomes apparent from the subsequent paragraphs of the report of the enquiry officer. It clearly indicates that after that Constable Tara Chand was sent to the applicant's permanent address in Rajasthan but he could not be served. However on 8.12.98, he was again sent to the applicant to serve copy of the charge and it was served on the elder brother of the applicant. It was followed by sending of the same by Registered Post. These facts clearly show that repeated attempts were being made to serve the applicant who was determined not to accept it personally. There is no reason to disbelieve the report of Constable Tara Chand. If the charge was served on the elder male member who happened to be the brother of the applicant, it must be presumed that it was served on the applicant.

7. Otherwise also, under Section 114 of the Evidence Act read with Section 27 of the General Clauses Act, a correctly addressed letter would be delivered to the addressee unless there are extenuating circumstances when normal course of events will not be followed. Bare denial would not make much difference. The letter was sent by registered post. Keeping in view the above presumption, we hold that the charge was served on the applicant.

8. In that event, learned counsel for the applicant had drawn our attention to the fact that medical reports of the applicant had not been taken into consideration.

9. In the first instance, it must be noted that it

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is within the domain of the concerned authorities to go into this controversy but in the present case when the applicant himself did not care to prove the medical reports by producing any evidence and has chosen to remain absent, he cannot be allowed to rake up this plea at this stage.

10. The enquiry report was further assailed on the ground that the enquiry officer has recorded that the charge stood proved because of the reluctant attitude of the applicant. This indeed is picking up a few words from the sentence. The complete recorded findings of the enquiry officer indicate that he has come to this conclusion after going through the statements of the witnesses of the departmental proceedings record. Consequently it cannot be termed that the report of the enquiry officer on this count deserves to be set aside.

11. Sub-rule (xi) to Rule 16 of the Delhi Police (Punishment and Appeal) Rules reads as under:

"if it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules."


12. In face of the aforesaid, if the past conduct of an official has to be taken note of for giving a severe punishment, the said record should form part of the charge. We have already reproduced the charge that was framed against the applicant and incorporated in the summary of allegations. But the disciplinary authority had gone

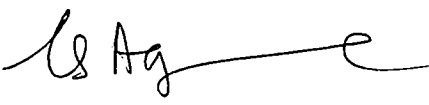
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further and had taken note of even the subsequent absences of the applicant from 30.10.97 onwards which was never a part of the charge. This has greatly influenced the disciplinary authority while imposing the penalty of removal from service.

13. Sub-rule 11 to Rule 16 of the aforesaid Rules is a substantive provision and not a procedural one. Deviation from it would permit the delinquent, in normal circumstances, to contend that prejudice has been caused. Same is the position herein. Therefore, on this short ground, the impugned orders are liable to be quashed.

14. For these reasons, we allow the present application and quash the impugned orders. The disciplinary authority from the stage the report of the enquiry officer was received, may pass a fresh order in accordance with law. The applicant would be entitled to the consequential benefits.

  
( S.K. Naik )  
Member (A),

  
( V.S. Aggarwal )  
Chairman.

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