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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
O.A. NO. 3156/2002

NEW DELHI THIS 20th DAY OF NOVEMBER 2003

HON'BLE SHRI JUSTICE V S AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Ct. Surendar Singh
S/o Sh. Bhoop Singh,
R/o Vill. Mandawali,
Tehsil Bahadurgarh,
Distt: Jhajjar (Haryana)

.....**Applicant**

(By Advocate: Shri Arun Bhardwaj)

VERSUS

1. Commissioner of Police,
PHQ, IP Estate, New Delhi

2. Jt. Commissioner of Police,
P&L, PHQ, IP Estate,
New Delhi

3. Deputy Commissioner of Police,
Prov. & Line, Rajpur Road,
Delhi.

.....**Respondents**

(By Advocate: Ms Renu George)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

Applicant Surendar Singh was a Constable in Delhi Police. Penalty of dismissal from service for unauthorised absence was imposed by the Disciplinary Authority and confirmed by Appellate Authority and also by Revisionary authority. The applicant challenged the impugned order in OA No. 1756/99 on the sole ground that the applicant's adverse service records in regard to unauthorised absence was also taken into account even though the same did not form part of the basic charge framed against him, thereby breaching the provisions contained in Rule 16(XI) of Delhi Police Punishment and Appeal Rules 1980 .

2. This Tribunal agreed with the argument of the learned counsels for the applicant that the Disciplinary Authority had considered the previous adverse record despite the fact that the previous records did not form part of the the specific charge. In the circumstances this Tribunal set aside the order and directed:

> " 7. In our judgement, it would not be open to the learned counsel as also to us to try and enter into the minds of the disciplinary authority. One thing is clear that the disciplinary authority has considered the previous adverse record which he has considered despite the fact that the said previous record did not form the basis of the specific charge framed against the applicant. Similarly the appellate authority has also considered the previous adverse record. He has given details of the previous adverse record and has thereafter proceeded to justify the order of penalty of dismissal from service which was imposed by the disciplinary authority. In the circumstances, we are constrained to hold that the aforesaid order of penalty is liable to be set aside. We direct accordingly.
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> 8. Present OA is allowed in the aforestated terms with the clarification that it will be open to the disciplinary authority to once again consider the issue of imposing a fresh order of penalty by keeping out of consideration the aforesaid previous adverse record or in the afore stated to frame an additional charge in regard thereto and thereafter proceed to impose a fresh order after affording the applicant reasonable opportunity to show cause. No costs."

3. In compliance to the Tribunal orders the applicant was re-instated and the Departmental proceedings were re-started by issuance of Show Cause Notice along with a copy of findings dated 04.6.1997 submitted by the Inquiry Officer. Applicant submitted a representation against IO's findings which were not accepted by the Disciplinary Authority and authority ordered Dismissal from service . This was upheld by the Appellate Authority. The applicant being aggrieved by

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the order of dismissal has filed the present OA No. 3156/2002 on the grounds that the findings of the Inquiry Officer show non application of mind and that the Show Cause Notice was in the form of a final decision whereas it should have been tentative as laid down in the case of **Yoginath D. Bagde Vs. State of Maharashtra & Anr**. **(JT 1999 (6) SC 62)** . Counsel for the applicant also argued that the defence witnesses were wrongly discredited and the authenticity of the medical documents improperly rejected . If this had been properly taken into consideration the inability of the applicant joining his duties resulting from sickness would have become apparent.

4. The respondents urged that the Show Cause Notice, was a summary of the absences and calling for reasons as to why a major punishment under rule 5 of the Delhi Police (Punishment & Appeal) Rules -1980 should not be imposed. The applicant was given opportunity to defend himself as provided under Rules. As far as the question of inability of the applicant to inform the department due to illness was concerned the respondents pointed out that the applicant was residing at Rohini Delhi and was getting treatment at Dichaon Kalan at a distance of about 16 KMs but did not make any effort to submit medical papers. Further one of the defence witness Shri Vasudev Sharma was attending his duties in Delhi Transport Authority at Battery Bus Depot, Jhandewalan, Delhi and could have made an effort to inform the applicant's office about his sickness, but did not do so.

5. Respondents also pointed out that since the applicant was absenting himself since 10.3.1997 , a messenger was deputed to go to his native village to ascertain the facts about his sickness or otherwise. The messenger reported that the applicant was not present at home but his mother had disclosed that the applicant was in good health .

6. Respondents further states that during oral submissions the applicant had nothing more to add except reiterating that he was unable to comply with the instructions contained in SO 111 and CCS (Leave Rules) Rules 1972 due to his extreme sickness.

7. As far as Show Cause Notice being final and not tentative is concerned the summary of allegation (Annexure A-4 of the OA) reads as under:

> "It is alleged against you Ct. Surinder Singh No. 7294/DAP that while posted in P&L Unit you failed to report for Reserve Duty on 15.5.96 from 9 A.M. Thus you were marked absent vide DD No.35 dated 15.5.96. Despite issuing two absentee notices dated 21.5.96 and 2.8.96 you only reported back vide DD No. 34 dated 11.10.96 after absenting yourself wilfully and unauthorisedly for a period of 4 months , 26 days 2 hours and 46 minutes. After the above absent , you absented yourself wilfully and unauthorisedly on three occasions as per details below:

Sl No.	Period of absence	from	to
1.	1 day, 23 hours	30.11.96 DD No. 19	2.12.96 DD No.6
2.	18 days 23 hrs & 10 Mints.	11.10.96 DD No. 36	30.12.96 DD No. 31
3.	Since 1.1.97 he is still running absent vide DD No. 21 dated 1.1.97.		

> And whereas the above act on the part of you

Ct. Surinder Singh 7294/DAP amounts to grave misconduct, carelessness , habitual absentee, violation of SO No. 111 and leave rules, which renders you liable to be dealt with departmentally under the provision of the Delhi Police (Punishment and Appeal) Rules - 1980.'

From the plain reading of the above summary of allegation it is obvious that it is a statement of absences and indicates, as necessary in a Show Cause Notice, the misconduct on the part of applicant and is not in the form of a final decision. Hence, the case of **Yoginath D. Bagde (supra)** does not apply in this case. Further the facts of the present case are distinguishable from the case of **Yoginath d. Wagde** in so far as that there is no difference between the opinion of Inquiry Officer and the Disciplinary Authority. Relevant portion of the judgement clarifying this particular issue reads as under:

> 28. In view of the provisions contained in the statutory Rule extracted above , it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with the findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings , there would arise no difficulty. So also, if the Inquiring Authority has held the charge proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. this difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage.

8. In the above case the Inquiry Officer had held that the charges against applicant were not established. However, the Disciplinary Authority disagreed with the report of the Inquiry Officer and held that the charges against the applicant were proved. It was held that the Disciplinary Authority had been in violation of principles of natural justice in as much the disciplinary authority had not given an opportunity of hearing at the stage when it developed an inclination to differ with the findings recorded by the Inquiry Officer and as such the orders of the Disciplinary Authority were liable to be reversed.

9. In the present case there was no difference of opinion between the findings of the Inquiry Officer and the Disciplinary Authority, hence difficulties arising from difference of opinion between IO's findings and Disciplinary Authority's view do not arise. Ample opportunity was given to the applicant to represent against the findings of the Inquiry Officer and only after that were the orders passed by the Disciplinary Authority.

10. As regards the issue of sickness and inability of the applicant to inform the department is concerned this must be left to the judgement of the disciplinary authority. In the case of a departmental enquiry preponderance of probability is to be taken into consideration and conclusions drawn by a reasonable man would be sufficient for this purpose. In a case of **B. C. Chaturvedi Vs Union of India (1955 (6) SCC 749)** the following principle had been provided:

> "13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to

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reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India V. H.C. Goel, (1964) 4 SCR 718 this court held at p.728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

11. During arguments it came to light that the appliceant though entitled to free medical treatment had not made an effort to obtain the medical card even though he claimed to have been sick and unable to attend office. In addition, his mother had disclosed to the messanger who was deputed by the respondents to ascertain his well being and where abouts, that the applicant was in good health. As such we have not considered it necessary to go into the question of discrediting the authenticity of the medical documents and questioning the credibility of the defence witnesses by the respondents.

12. In view of the above we are not pursuaded that the process/procedure adopted by the respondents suffers from any legal infirmity . Also from the record, we find no over embracing condition related to his claimed sickness that made it impossible for the applicant to inform the department . Accordingly the OA is dismissed. No costs.

(S.A.Singh)
Member (A)

(V.S.Aggarwal)
Chairman

Patwal/