

Central Administrative Tribunal, Principal Bench

Original Application No. 3132 of 2002

New Delhi, this the 14th day of August, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member (A)Mahinder Dutt Sharma,
Ex-Constable No. 1891-DAP
House No. 185/5-A, Krishna Gali No. 8
Maujpur, Shahdara,
Delhi-92

.... Applicant

(By Advocate: Shri R.K. Shukla)

Versus

1. Union of India, through
The Secretary
Ministry of Home Affairs,
Shastri Bhawan,
New Delhi
2. The Commissioner of Police,
Police Headquarters, I.P. Estate,
New Delhi
3. The Addl. Commissioner of Police,
Armed Police,
Delhi
4. The Deputy Commissioner of Police
II Battalion, Delhi Armed Police,
Delhi
5. The D.C.P.
Crime and Railways
M.S.O. Building, I.P. Estate,
New Delhi

.... Respondents

(By Advocate: Mrs. Jasmine Ahmed)

O R D E R (ORAL)By Justice V.S. Aggarwal, Chairman

The applicant was a Constable in Delhi Police.
He was served with the following summary of allegations:

"It is alleged that Const. Mohinder Singh No. 1891/D.A.P. while posted in II Bn, DAP, Delhi did not attend evening roll call on 18.1.95 and therefore he was marked absent vide DD No. 114 Dt. 18.1.95. An absentee notice was issued to him vide No. 3161-62/ASIP/II Bn DAP, Dt. 25.5.95 directing him to join his duties at once failing which departmental action will be taken against him. The said absentee notice was delivered to him on 10.6.95. But neither he joined his duty nor sent any intimation. Therefore another absentee



notice was issued to him vide No.4807-8/ASIP II Bn, D.A.P. Dt. 24.8.95 and the same was received by him on 10.2.95 but he again did not send any response to the absentee notice. He is still running absent continuously since 19.1.95.

The above act on the part of Ct. Mohinder Dutt No.1891/D.A.P. amounts to grave misconduct, indiscipline, negligence, dereliction to duty and unbecoming of police officer and renders him liable for departmental action punishable under Section 21 of Delhi Police Act,1978."

2. The enquiry officer had been appointed. He returned the findings adverse to the applicant. In pursuance to the report of the enquiry officer, the disciplinary authority namely the Deputy Commissioner of Police, IIInd Battalion, Delhi on 17.5.96 imposed the penalty of dismissal from service on the applicant recording:

"I have carefully gone through the finding of the E.O., statements of PWs and other relevant record available on D.E. file and found that the E.O. rightly concluded the defaulter Const. guilty of the charge. The defaulter Constable was called in O.R., to submit grievances orally, three times but neither he turned up in orderly room nor submitted his representation against the findings, which was due to reach this office by 6.4.96. Full opportunity was given to the defaulter constable to submit his representation against the findings either in writing or orally but he failed to avail the same. I have again carefully gone through all relevant record of D.E. file, and found that the defaulter has nothing to say in his defence orally or in writing. The defaulter Constable remained absent from duty for a period of 320 days, 18 hrs and 30 minutes unauthorizedly which is not tolerable in a disciplined force and reflect bad impression to the new incumbents.

In view of the above discussion, I reach the conclusion that the defaulter Constable is an incorrigible type of person and is not fit for retention in the force. Therefore Constable Mohinder Dutt, No.1891/DAP is hereby dismissed from the force with immediate effect and his absence period from 18.1.95 to 4.12.95 is also treated as leave without pay."

The appeal was filed on 21.2.2002 which has since

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been dismissed.

3. By virtue of the present application, the applicant seeks quashing of the order of disciplinary as well as appellate authority.

4. Learned counsel for the applicant has urged:

(a) that the past conduct has been taken into consideration while imposing penalty by the disciplinary authority and, therefore, the order deserves to be quashed;

(b) it was not a case of grave misconduct and, therefore, in terms of the Delhi Police (Punishment and Appeal) Rules, the said order cannot be sustained; and

(c) the proceedings had been initiated by an authority not competent to do so because according to the applicant, the Dy. Commissioner of Police, IInd Battalion was not the authorised person to initiate the proceedings.

5. Needless to state that in the reply filed, the averments have been controverted and petition has been opposed. In addition to that, the respondents' learned counsel took up the plea that the present application is barred by time because the disciplinary authority had

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passed the order in the year 1996 while the appeal was preferred in February, 2002.

6. Keeping in view the preliminary objection having been raised pertaining to the period of limitation having expired, we deem it necessary that it should be taken up first for consideration.

7. The applicant's learned counsel pointed that after the order of dismissal, there were calamities suffered by the applicant. His wife was suffering from cancer. He himself was involved in a criminal case. His brother died and thereafter due to death of his father and brother's wife, he could not prefer the appeal in time.

8. On this count, we need not probe further in detail. Even if we accept the contention of the applicant to be gospel truth, still he has to explain each days' delay after the period of limitation expired. As per his own showing, all these unfortunate incidents took place before the year 2000. He was also acquitted by the court of competent jurisdiction in the same year. Still he did not deem it necessary to file an appeal within the period of limitation from that date. It is anybodies guess as to what were the compelling circumstances thereafter.

9. Our attention has been drawn towards the decision of the Supreme Court in the case of Madras Port Trust vs. Hymanshu International By Its Proprietor V. Venkatadri

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(Dead) By L.Rs., (1979) 4 SCC 176. The Supreme Court held:

"We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable."

10. Perusal of the findings recorded above which was so much relied upon by the learned counsel reveals that it was a pious wish of the Supreme Court rather than the law laid down to bind all the courts in India. In fact, the Supreme Court conscious of this fact, observed that if the Government or a public authority takes a technical plea, the court has to decide it. It was by way of advice that the Supreme Court pointed that such technical pleas should not be taken. Therefore, in the facts of the present case where delay is inordinate, we find nothing wrong if the respondents had taken up the said plea. The respondents' contention must prevail.

11. Even if we dwell into the merits of the matter, the net result is the same. It is true that in the summary

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of allegations which also culminated into similar charge having been framed, there is no mention of any past conduct. It is not disputed by the respondents' learned counsel that past conduct must be mentioned in case it has to be taken into consideration while awarding penalty but the order passed by the disciplinary authority which we have already quoted above, does not indicate that past conduct had been taken into consideration. The sole controversy was about the absence of the applicant for 320 days, 18 hours and 30 minutes. There is no other contention before the said absence that has been taken into consideration.

12. Learned counsel for the applicant, however, laid great stress on the fact that the disciplinary authority has mentioned that the applicant is an incorrigible type of person. This by no stretch of imagination can be taken that there is any past conduct to the credit of the applicant but it is an expression used by the disciplinary authority co-related with the absences of the applicant.

13. In that event, the second plea referred to above had been pressed into service. We do not dispute that under Rule 10 of the Delhi Police (Punishment and Appeal) Rules, if previous record of the officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, punishment awarded ^{could} ~~shall~~ ordinarily be dismissal from service.

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14. In the present case, the said rule has no application because here the previous record is not subject-matter of controversy. It was the long absences of the applicant from duty which ran into little short of an year. In a disciplined force, such long absence indeed can only be taken up as a gross misconduct. The same has been taken note of.

15. The last submission made in this regard was that the applicant could not be dealt with departmentally by the Deputy Commissioner of Police, IInd Battalion, DAP. Reliance is being placed on sub-rule 4 to Rule 14 of the Delhi Police (Punishment and Appeal) Rules which reads as under:

"14.(4) The disciplinary action shall be initiated by the competent authority under whose disciplinary control the police officer concerned is working at the time it is decided to initiate disciplinary action."

16. Different orders placed on the record clearly show that so far as the applicant was concerned, against his name it had specifically been mentioned that he is under suspension but under transfer to IInd Battalion, DAP. It is in this backdrop that the Deputy Commissioner of Police of IInd Battalion, DAP had initiated the action. The same cannot, therefore, be termed to be without jurisdiction.

17. No other argument has been raised. Resultantly, the O.A. being without merit must fail and is dismissed.

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

/dkm/

VS Agg
(V.S. Aggarwal)
Chairman.