

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 1157/2002
New Delhi, this the 9th day of October, 2002

Hon'ble Dr. A. Vedavalli, Member (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Easter Bakhla,
S/o Shri Chohans Bakhla,
Presently residing at
Quarter No. 11, Type II
P.S. Kalyan Puri,
Delhi.

Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary,
Delhi Secretariat,
I.P. Estate, IG Stadium
New Delhi-110 002.
2. Commissioner of Police,
Police Headquarters,
MSO Building, IP Estate,
New Delhi-110 002.
3. Addl. Commissioner of Police,
Police Control Room & Communication,
Police Headquarters,
MSO Building, IP Estate,
New Delhi-110 002.
4. Deputy Commissioner of police,
(Communication)
Rajpura Road, Old Police Line,
Delhi.
5. Shri Madan Gopal,
ACP (Communication)
C/o DCP (Communication),
Rajpura Road, Old Police Line,
Delhi.

Respondents

(By Advocate: Shri Ram Kanwar Dhillon)

ORDER (Oral)

Hon'ble Shri Govindan S. Tampi, Member (A)

Heard, Shri S.K. Gupta, Learned counsel for
the applicant and Shri Ram Kanwar Dhillon, learned
counsel for the Respondents.

2. Applicant who was working as an Asstt.
Sub-Inspector (ASI) of Delhi Police, had been, at the
end of disciplinary proceedings, dismissed from

service by order dt. 31-8-2001, passed by Deputy Commissioner of Police communication, which has been upheld in appeal by the Addl. Commissioner vide order dt. 15-3-2002. The proceedings culminating in the imposition of penalty was on the charge of unauthorised absence from duty for a period of five months and nineteen days between 10-10-2000 and 30-3-2001 on the ground of habitual absenteeism.

3. During the oral submissions, Sh.S.K.Gupta, ld. counsel for the applicant has submitted that the disciplinary authority had traversed for be on the charges raised in the summary of allegations, which had vitiated the proceedings. The disciplinary authority had indicated that the applicant had not improved his performance inspite of having been awarded punishments of leave without pay Censure, warning etc., which did not form part of the summary of allegations. This was in clear violation of para 16 (11) of the Delhi Police (Punishment and Appeal) Rules and therefore the proceedings and the imposition of penalty could not be sustained. The appellate order upholding the decision of the disciplinary authority was also faulty and deserved to be set aside, as the original order was itself faulty and vitiated.

4. Replying on behalf of the respondents Sh. Ram Kanwar Dhillon, ld. counsel indicating that the applicant cannot claim that he was innocent of the charges raised against him. The reference made in the order about his habitual absenteeism and incorrigibility is based on facts and, therefore, the respondents could not have taken any different decision. The applicant was only trying to escape

from the situation by raising hyper-technical pleas, which deserved to be rejected as being without any basis, claims Sh. Dhillon.

5. We have carefully considered the matter. The impugned proceedings relate to the alleged unauthorised absence by the applicant for the period of five months and nineteen days from 10-10-2000 to 30-3-2001. In the summary of allegations, reference is made to seven instances of previous unauthorised absences by the applicant between 4-10-99 and 14-7-2000, which had been dealt with by award of 'dies-non' in four instances and 'not spent on duty' in three instances. However, in the order, it is mentioned that "his previous records shows that he is habitual absentee inspite of awarding punishment as leave without pay, Censure, warning and major punishment on absent basis, ASI could not meand himself and absented wilfully from duty". It is evident, therefore, that the decision of the disciplinary authority was influenced by matters which did not form part of the summary of allegations and was thus violative of Rule 16 (11) of the Delhi Police (Punishment and Appeal) Rules. The impugned order of the disciplinary authority was, as stated by the applicant, vitiated and, therefore, liable to be quashed and set aside. The appellate order which has endorsed and upheld the disciplinary authority's order also is, therefore, vitiated and liable to be set aside.

6. In the above view of the matter, the OA ~~is~~ succeeds and is accordingly allowed. The impugned order passed by the disciplinary authority dt. 31-8-2001 and the appellate order dt. 15-3-2002 are

quashed and set aside. The applicant is directed to be reinstated in service immediately. The respondents can, if they are so advised, initiate and complete further proceedings against the applicant in accordance with law, by confining themselves to only those charges which are indicated in the summary of allegations. This exercise shall be completed within three months from the date of receipt of a copy of this order. The regularisation of the period between the date of dismissal and date of reinstatement shall be decided upon by the respondents in accordance with law depending upon the findings in the disciplinary proceedings. No costs.

(Govindan S. Tampi)
Member (A)

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)