



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3940/2014

Reserved on: 17.12.2019
Pronounced on: 08.01.2020

Hon'ble Mr.S.N.Terdal, Member (J)
Hon'ble Mr. A.K.Bishnoi, Member (A)

Chand Parkash
Ex.Ct. of Delhi Police (PIS No. 28862154)
Aged about 55 years,
S/o Shri Ravi Dutt Sharma,
R/o VPO: Mandela Khurd,
Najafgarh, Delhi-73.

... Applicant

(By Advocate: Mr. Anil Singal)

VERSUS

1. Govt. of N.C.T of Delhi
Through Commissioner of Police,
PHQ, I.P. Estate, New Delhi.
2. Joint C.P (NDR)
PHQ, I.P. Estate, New Delhi.
3. D.C.P/ Railways
Through Commissioner of Police,
PHQ, I.P. Estate, New Delhi.
4. Sh. Sanjay Bhatia (DANIPS)
D.C.P/ Railways
Through Commissioner of Police,
PHQ, I.P. Estate, New Delhi.

... Respondents

(By Advocate: Ms. Sangita Rai)

ORDER

(Hon'ble Mr. S.N.Terdal, Member (J)):

We have heard Mr. Anil Singal, counsel for applicant and Ms. Sangita Rai, counsel for respondents, perused the pleadings and all the documents produced by both the parties.



2. In this OA, the applicant has prayed for the following reliefs:

- "1. To call for the records of the case and quash/set aside the impugned orders mentioned in Para-1 of O.A and direct the respondents to reinstate the applicant in service with all consequential benefits including promotion/seniority & arrears of pay.

Or alternatively

Direct the respondents to convert the punishment of dismissal into that of compulsory retirement (Voluntary retirement) with all consequential benefits to the applicant.

Or alternatively

Direct the respondents to grant Compassionate allowance to the applicant with all consequential benefits as provided in Rule 41 of CCS (Pension) Rules that issue was required to be considered while passing the order of punishment of dismissal but not considered by the disciplinary authority.

2. To award costs in favour of the applicant and pass any order or orders which this Hon'ble Tribunal may deem just & equitable in the facts & circumstances of the case."

3. The relevant facts of the case are that departmental action was initiated against the applicant on the allegation that he remained himself absent wilfully and un-authorizedly from 4.06.2012 until the date of issuing of summary of allegation. The detailed summary of allegation is extracted below:-

"It is alleged against Ct.(Exe.) Chand Prakash, No. 891/Cr.(PIS No. 28862154) that while posted at P.S. Qutab Minar Metro he absented himself wilfully and un-authorizedly from his official duty vide DD No.16 dated 04.06.2012, PS Qutab Minar Metro. He has not resumed his duty till date despite issuance of absentee notice vide this office letter No. 4420-22/SIP(AC)/C&R dated 13.07.12. His previous absentee record shows him that he is a habitual absentee.



The above act on the part of Ct.(Exe.) Chand Prakash, No.891/Cr.(PIS No. 28862154) amounts to gross misconduct, negligence, careless ness and dereliction in the discharge of his official duties for which he is liable to be dealt with departmentally under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

(Emphasis supplied)

In the summary of allegation that apart from he being absent from official duty from 04.06.2012 to the date of issuance of the summary of allegation it was also stated that his previous absentee record shows that he was a habitual absentee.

4. Along with the summary of allegation, list of witnesses and list of documents were served on the applicant. The applicant did not admit the allegation. As such, an Inquiry Officer was appointed. The Inquiry Officer conducted the enquiry proceedings and examined PW-1 and PW-2 and the documents and framed a charge in the same line extracted above. The detailed charge is extracted below:-

"I, Sanghamitra, SHO/Kashmiri Gate Metro (E.0), hereby charge you Const. Chand Parkash No.891/Crime (PIS No. 28862154) that you while posted at PS Qutab Minor Metro were found absent from duty wilfully from 4.6.2012 vide DD No. 16 PS Qutab Minar Metro. Absentee Notice was sent to your residence vide No. 4419/SIP/AC (C&R) dated 13.7.2012 and the same was executed. But you did not give any information and no resumed your duty till date.

It shows that you had also absented yourself and you failed to mend your ways, which shows that you are a habitual absentee.



The above act on the part of you, Const. (Exe.) Chand Parkash No. 891/Crime (PIS No. 28862154) amounts to gross misconduct, negligence, carelessness and dereliction in the discharge of your official duties for which you are liable to be punished under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

The Inquiry Officer after discussing the evidence came to the conclusion that the charge levelled against the applicant is established vide his inquiry report. The inquiry report was served on the applicant. The applicant submitted his representation. The disciplinary authority vide order dated 10.02.2014 after considering the entire material before the inquiry officer and also going through the representation submitted by the applicant to the findings of the inquiry officer and also hearing the applicant in orderly room on 28.11.2013 imposed a penalty of dismissal from service on the applicant holding that the prolonged absence from duty is a serious misconduct. The appeal filed by the applicant was also dismissed by the appellate authority vide order dated 12.09.2014.

5. The counsel for the applicant vehemently and strenuously submitted that the allegation against the applicant is not only regarding being absent from 4.06.2012 until the date of serving the summary of allegation but also about the allegation of he being habitually absentee but however, the details of his earlier conduct of being habitually absent has not been given nor any records regarding the said previous absenteeism have been furnished to him as required under Rule 16(xi) of the Delhi Police (Punishment



and Appeal) Rules, 1980 and he has been awarded severe punishment of dismissal from service and this has resulted in non compliance of the rules governing the holding of departmental enquiry.

6. The counsel for the respondents equally vehemently and strenuously contended that in the summary of allegation itself it was stated about his habitually being absent and in the charge also it is stated about he being habitually absent and he has not requested for supply of any documents in that regard and the applicant has not even cross-examined the PW 1 and 2 in this regard nor he has offered any defence witnesses as such there is no violation of principles of natural justice or the provisions concerning holding of the departmental enquiry.

7. As submitted by the counsel for the applicant the above stated rule 16(xi) states that whenever severe punishment is required to be awarded on the defaulting officer by taking into consideration his previous bad records then the said bad records shall form the basis of a definite charge and he shall be given opportunity to defend himself. The said Rule is extracted below:-

"16 (xi) If it is considered necessary to award a **severe punishment** to the defaulting officer by taking into consideration his **previous bad records**, 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."

From the list of witnesses and list of documents provided along with the summary of allegation also, it is clear that the said records regarding his previous mis-conduct have not been provided to the applicant. The list of witnesses as well as list of documents are only with respect to absenting of the applicant only from 4.06.2012 and the notices issued regarding the same and the officers who served the same on the applicant. The said list of witnesses and list of documents are extracted below:-

List of Witnesses

1.	SIP/C&R	He will prove that Ct. (Exe.) Chand Prakash, No. 891/Cr.(PIS No. 28862154) was posting at P.S. Qutab Minar Metro on 04.06.12 and he will also produce the copy of the Absentee notice issued and received by the delinquent.
2.	MHC R, P.S.Qutab Minar Metro	He will produce the original D.D.No. 16 dated 04.06.12 reg. marked as absent in r/o Ct(Exe.) Chand Prakash, No. 891/Cr.and also produce Duty Roster dated 04.06.12.

List of Documents

1.	Copy of D.D. No. 16 dated 04.06.12 P.S. Qutab Minar Metro reg. absence of Ct. Chand Prakash, 891/Cr.
2	Copy of Absence Notice received by Ct.Chand Prakash, 891/Cr.
3	Official correspondence of absentee case in r/o Ct. Chand Prakash, 891/Cr.

8. The severe punishment of dismissal from service is imposed on the applicant taking into account his previous bad records regarding absenteeism and though it is mentioned in the summary



of allegation and the charge framed thereafter. But, however, previous bad records have not been enlisted in the list of documents nor provided to the applicant and hence he was not given any opportunity to defend himself regarding those documents, hence there is non compliance of above stated Rule 16(xi) of the above stated rules. Therefore, we hold that the very issuance of summary of allegation and all the subsequent proceedings are not legally sustainable for imposing severe punishment of dismissal.

9. In the facts and circumstances, we allow the OA to the extent of setting aside penalty of dismissal from service on the applicant by order of the disciplinary authority dated 10.02.2014 and the order of the appellate authority dated 12.09.2014, with the liberty to the respondents to impose any penalty other than the severe penalty of dismissal or removal from service. However, the applicant shall not be entitled to any wages from the date of dismissal till the date of reinstatement and the said intervening period from the date of dismissal to the date of reinstatement shall be decided as per law by the respondents. The respondents are at further liberty to proceed ahead with the further enquiry after



issuing fresh summary of allegation including previous habitual absenteeism by providing relied upon records if they intend to impose any severe punishment based on previous bad records, by complying with the above extracted rule 16(xi). No order as to costs.

(A.K.Bishnoi)
Member (A)

(S.N.Terdal)
Member (J)

'sk'

..