

(15)

Central Administrative Tribunal
Principal Bench

O.A.No.2733/2001

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

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

Shri Shiv Kumar
Ex.Const. No.9947/DAP
s/o Shri Amrit Lal
r/o Vill. & P.O. Wazirabad
Distt. Gurgaon
Haryana.

... Applicant

(By Advocate: Sh. R.K.Kaushik)

Vs.

The Commissioner of Delhi Police
Police Headquarter
MSO Building
I.P.Estate
New Delhi.

... Respondent

(By Advocate: Sh. Harvir Singh)

O R D E R (Oral)

By Shri Shanker Raju, M(J):

Through this OA, applicant puts a challenge to the order of dismissal passed on 27.1.2000 as well as appellate order modifying the punishment of removal from service. He seeks reinstatement with all consequential benefits.

2. Applicant was proceeded against in departmental inquiry for the allegations of remaining unauthorisedly absent and not responding to the notice as well as for his habitual absentism keeping in view the past punishment imposed.

3. On an ex-parte proceedings, charge has been established by the inquiry officer. On the basis of findings of the inquiry officer disciplinary

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authority imposed a major punishment of dismissal upon the applicant and treated his absent period as dies non.

4. Applicant preferred a statutory appeal and taking a lenient view, punishment was reduced dismissal to removal from service, giving rise to the present OA.

5. At the outset, though several contentions have been taken by the applicant, one of his contentions is that the disciplinary authority took into account extraneous matter, i.e., past record, which has not been made part of the DE and imposed him the severe punishment which is in violation of Rule 16(xi) of the Delhi Police (Punishment & Appeal) Rules, 1980.

6. It is further contended that appellate authority has also taken into consideration the extraneous matter not forming part of the DE while modifying the punishment from dismissal to removal from service.

7. On the other hand, when the learned counsel for respondents, Shri Harvir Singh has been confronted with this factual position apparent on the face of record, he fairly stated that complaine of Rule 16(xi) is lacking and consented to remand back of this case from the stage of issuance of final order.

8. We have carefully coonsidered the rival contentins of the parties. The following observations have been made by the disciplinary authority in its order passed on 27.1.2000

"Recently after this DE was ordered, the defaulter has been awarded punishment of Censure vide order No.24380-400/HAP-8th Bn.DAP, dated 20.9.99 for his unauthorised absence of more than 3 months which was also treated as 'Dies-Non'. Not only that, another DE has been ordered against him vide order No.32060-89/HAP-8th Bn.DAP, dated 29.11.99 for similar misconduct of unauthorised absence w.e.f. 6.9.99. Though, these matters are not formally the part of this DE yet the same are good grounds to reflect the incorrigibility of the defaulter as far as his habit of absenting from duty is concerned."

9. Rule 16(xi) of the Delhi Police (P&A)

Rules ibid is reproduced as under:

"16. Procedure in departmental enquiries - The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where prima facie the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer:

(i) (x)

(xi) 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."

10. If one has regard to the statutory rule, in order to award a severe punishment upon Police Officer, if his past bad record is taken into consideration, the same has to form part of a specific charge against which reasonable opportunity is to be afforded. Admittedly, the fact of the punishment of censure and pending DE has not formed part of the

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charge levelled against applicant and against which no reasonable opportunity has been afforded to applicant, although the aforesaid record has been taken into consideration and admitted not to have formed part of the DE by the disciplinary authority.

11. In this view of the matter, the punishment imposed cannot be legally sustained as in violation of Rule 16(xi) of the Rules *ibid* and has greatly prejudiced the applicant as the aforesaid extraneous matter weighed in the mind of the disciplinary authority to award extreme punishment upon applicant.

12. In so far as the appellate order is concerned, this illegality has been perpetuated by making the following observations:

"I have also gone through the past service record of the appellant which shows that the appellant is a habitual absentee. Previously the appellant has been awarded many minor/major punishments for his unauthorized absences but he did not mend himself and again absented himself wilfully/unauthorisedly. Not only this, a D.E. is also pending against him for his wilful absence which is held-in-abeyance as the appellant has been dismissed from the force in the instant case. However, the quantum of punishment i.e. dismissal from service awarded to him by the Disciplinary Authority for remaining absent from duty appears to be disproportionate. Therefore, taking little lenient view I modify order of dismissal and award him punishment of removal from service."

13. Appellate authority has also taken into consideration, the past record, *dehors* the rules.

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14. In the result, the OA is partly allowed. Impugned order of dismissal as modified to removal in appellate order are quashed and set aside. Respondents are directed to reinstate the applicant forthwith. However, it shall not preclude the respondents, if so advised, to proceed further in accordance with law and rules. No costs.

S. Raju

(Shanker Raju)
Member(J)

/rao/

(Govindan S. Tampi)
Member(A)