

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No. 2784/2001

Date of decision: 13.08.2002

Ramesh Chand

.. Applicant

(By Advocate: Shri Anil Singhal)

versus

LG of Delhi & Another

.. Respondents

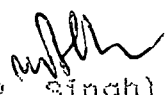
(By Advocate: Shri Harvir Singh)

CORAM:

The Hon'ble Shri Kuldip Singh, Member(J)

The Hon'ble Shri M.P. Singh, Member(A)

1. To be referred to the reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal?

  
(M.P. Singh)  
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2784/2001

New Delhi, this the 13<sup>th</sup> day of August, 2002

Hon'ble Shri Kuldip Singh, Member(J)  
Hon'ble Shri M.P. Singh, Member(A)

Ramesh Chand  
Ex. Constable of Delhi Police  
PIS No.28890736  
Vill. & PO Shahjahan Pur  
Dt. Alwar, Rajasthan .. Applicant

(By Shri Anil Singhal, Advocate)

versus

1. L.G. of Delhi  
Raj Niwas, Delhi  
2. Dy. Commissioner of Police  
North West District  
PS Ashok Vihar, New Delhi .. Respondents

(By Shri Harvir Singh, Advocate)

ORDER

Shri M.P. Singh, Member(A)

While the applicant was posted in N/W District, Delhi, a departmental enquiry was initiated against him vide order dated 12.1.94 on the allegations that he absented himself wilfully and unauthorisedly for a period of 230 days and 4 hours. An enquiry officer (EO) was appointed to conduct detailed enquiry and the EO issued summary of allegations to the applicant on 28.1.94. On applicant's denying the charges, a detailed enquiry was conducted by the EO, who framed the charges against the applicant vide order dated 17.5.94. EO gave his findings (A-3) concluding that the charges are proved. The disciplinary authority thereafter imposed upon the applicant punishment of dismissal from service vide its order dated 30.11.94. Applicant made a representation (A-6) to Lt. Governor of Delhi, which was rejected by the Lt. Governor vide his order dated 2.7.2001.

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Aggrieved by this, the applicant has approached this Tribunal with the prayer to quash and set aside the impugned orders dated 30.11.94 and 2.7.2001 with the directions to the respondents to reinstate him in service with all consequential benefits.

2. It is the case of the respondents in their reply that a copy of EO's findings holding the applicant guilty of the charge was given to the applicant on 26.7.94 to enable him to submit reply within 15 days. The applicant failed to submit his representation. Thereafter he was called to appear in OR on 1.9.94, 8.9.94 and 22.9.94 through SHO/Adarsh Nagar. SHO reported that the applicant was running absence since 5.8.94. Despite opportunities having been given to the applicant, he failed to submit his final reply. The DA had carefully gone through the findings of EO, statements of PWs/DWs and other material on record of DE file. The charge of unauthorised and wilful absence was fully proved. Thereafter the DA imposed the aforesaid penalty. In view of this, the applicant is not entitled for any relief and the OA be dismissed.

3. Heard the learned counsel for the parties and perused the records.

4. During the course of the arguments, the learned counsel for the applicant has contended that the enquiry is vitiated as the EO has relied upon extraneous charges like previous absence of the applicant on 11 occasions

*MR*

which do not find mention in summary of allegation. Similarly the disciplinary authority has also taken into consideration previous absence of the applicant while imposing the extreme penalty of dismissal from the service on the applicant. Since the previous absence on 11 occasions did not form part of the allegation, the applicant has not been given an opportunity to defend himself against this charge. The reliance placed by EO and disciplinary authority on the said charge is, therefore, in violation of Rule 16 (xi) of Delhi Police (Punishment & Appeal) Rules, 1980.

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5. The procedure contained in Rule 16(xi) of Delhi Police (Punishment & Appeal) Rules, 1980 is as under:

"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."

6. In this regard, the learned counsel for the respondents has drawn our attention to Rule 10 of the aforesaid Rules (relating to maintenance of discipline) which provides as under:

"The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank".

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The learned counsel has submitted that on scrutiny of applicant's past record, it was found that he absented himself on as many as 11 occasions earlier which proves that he was a habitual absentee. The EO has shown the past absentee record of the applicant just to show his tendency towards Government duty.

7. We have carefully perused Rule 10 and Rule 16 (xi) of the Delhi Police (Punishment & Appeal) Rules, 1980. Rule 10 of the Delhi Police (Punishment & Appeal) Rules, 1980 empowers the disciplinary authority to impose the extreme penalty of dismissal from service in case the previous record of the officer indicate the incorrigibility and complete unfitness for police service. But this rule does not dispense with the procedure to be followed as is laid down in Rule 16 (xi) in case the previous bad record of the defaulting officer is to be taken into consideration for awarding a severe punishment. This Rule clearly provides that in such cases defaulting officer shall be given an opportunity to defend himself so as to meet the requirement of the principles of natural justice.

8. In this case, we find that the EO and disciplinary authority have taken into consideration the previous absence of the applicant on 11 occasions, which was not part of the charge-sheet. Thus we are of the considered view that both orders passed by the disciplinary authority as well as appellate authority are in violation of Rule 16 (xi) of the Delhi Police (Punishment & Appeal) Rules, 1980 and, therefore, the same are not sustainable.




(5)

That apart we find that the order dated 2.7.2001 is a non-speaking order.

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9. In view of this position, the present OA is disposed of in the following terms:

Orders dated 30.11.94 and 2.7.2001 are quashed and set aside. The case of the applicant is remitted back to the respondents to pass fresh orders in accordance with law, rules and instructions on the subject. Applicant shall continue to be under deemed suspension till final orders are passed in this case. There shall be no order as to costs.

  
(M.P. Singh)  
Member(A)

  
(Kuldip Singh)  
Member(J)

/gtv/