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Central Administrative Tribunal, Principal Bench

Original Application No. 3109 of 2001

New Delhi, this the 24th day of July, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. Govindan S. Tampi (A)

Ex. Constable Zahir Ahmed No. 2756/DAP
S/o Shri Jamin Ahmed Khan aged 46 years
Village Budhera, P.O. Bathot
P.S. Vindli, District Meerut,
Uttar Pradesh

.... Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India
Through Its Secretary,
Ministry of Home Affairs
North Block, New Delhi
2. Commissioner of Police
Delhi, Police Headquarters
I.P. Estate, M.S.O. Building,
New Delhi.
3. Addl. Commissioner of Police
AP&T,
New Police Lines, Kingsway Camp
Delhi

.... Respondents

(By Advocate: Shri Harvir Singh)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The short question that craves for an answer in the present application is as to whether the appellate authority vide the impugned order of 28.2.2001 was justified in taking into account the past conduct of the applicant and dismissing his appeal.

2. For purposes of the present application, we are not dwelling into any other controversy but are confining ourselves to the abovesaid dispute only.

3. The applicant had faced disciplinary proceedings. The disciplinary authority, taking note of his unauthorised

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absence for 73 days, 16 hours and 25 minutes, had imposed a penalty of dismissal from service. The charge as against the applicant reads:

"You, Const. Zahir Ahmed No.2756/DAP are charged that on 15.3.89 vide DD No.85 you proceeded on 4 days M/Rest under O.B. permitted by ACP/Adj. Sh. Joginder Singh dt. 14.3.89. You had to resume your duty on 17.3.89 at midnight but you failed and then marked absent vide DD No.122 Time 5.40 A.M. on 18.3.89. After three absentee notices which were sent to you vide No.1140/ASIP-IV Bn. dt.27.3.89, No.1451/ASIP-IV Bn. dt. 17.4.89 and No.1782/ASIP-IV Bn. dt.12.5.89 at your home address directly and through S.P./Meerut. You resumed your duty on 30.5.89 vide DD No.59 after absenting yourself unauthorisedly, wilfully and without any intimation to the concerned officials for a period of 73 days, 16 hrs. and 25 minutes."

4. Rule 16 (xi) of Delhi Police (Punishment & Appeal) Rules, in unambiguous terms, provide that in case it is considered necessary to award a severe punishment by taking into consideration his previous bad record, it should form basis of a definite charge. This is based on a well recognised principle that the delinquent must be given a reasonable opportunity to contest the material that is alleged against him. If the previous conduct is not a part of the charge, necessarily when it is taken into consideration by any authority, this would be denying a reasonable opportunity to the concerned person. In addition to that, if the charge against the delinquent does not contain the previous conduct and any such conduct is taken into consideration, this would again be taking note of the extraneous factors which cannot be so done because they were not communicated to the applicant with respect to

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the proposed penalty that may be imposed.

5. What is the position herein? For the answer, we need not dwell in great detail but perusal of the order passed by the appellate authority shows clearly that besides taking note of the absence of 73 days, the appellate authority is very much swayed by the fact that on 54 earlier occasions, he had been found absent from duty and thus confirmed his findings that the applicant is an undisciplined person in the force.

6. When such is the situation, we have no hesitation to conclude that extraneous factors had been taken into consideration while dismissing the appeal regarding which no reasonable opportunity had been given to the applicant to defend himself. In these circumstances, the order of the appellate authority necessarily deserves to be quashed.

7. For these reasons, we allow the present application on this short ground. The order of the appellate authority at Annexure A-2 is quashed with liberty to pass a fresh order in accordance with law. As already pointed above, the other questions in controversy are not being decided for the present.

(Govindan S. Tampi)
Member (A)

(V.S. Aggarwal)
Chairman

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