

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1062/1999

New Delhi this the 30th day of November, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Ex. Constable (Driver) Rajender Parsad
No.4966/DAP
S/o Shri Rameshwar Dayal
R/o Village & P.O. Metawas
P.S. Madin, District Alwar
Rajasthan. Applicant

(By Shri Shanker Raju, Advocate)

-versus-

1. Union of India
through its Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Additional Commissioner of Police
Armed Police & Training
New Police Lines
Kingway Camp
Delhi.
3. Dy. Commissioner of Police
5th Bn., DAP
New Police Lines
Kingsway Camp
Delhi. Respondents

(By Shri Ram Kumar, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Non-observance of the provisions contained in Rule 16 (xi) of the Delhi Police (Punishment & Appeal) Rules, 1980, in our view, will vitiate the impugned orders of penalty of dismissal from service imposed upon the applicant. Aforesaid provision reads as under:-

"16.(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." (9)

2. As far as the order of the disciplinary authority is concerned, the same in so far as is relevant for the issue at hand, recites as under:-

"Such a serious and severest misconduct shows that Ct.(Dvr.) Rajinder Prasad, 4966/DAP has not interest in the Govt. duty as it is evident that he is thoroughly and wholly incorrigible and is deteriorating day by day. His continued misconduct indicates his incorrigibility and complete unfitness for the police service. His further retention in service will be a burden on the Govt. Exchequer. Therefore, I, A.A. SIDDIQUI, Dy. Commissioner of Police, 5th Bn. DAP, Delhi hereby DISMISS Ct. (Dvr.) Rajinder Prasad, No. 4966/DAP from the force with immediate effect."

Aforesaid order, it is clear, has taken the previous adverse record of the delinquent into account while imposing the extreme penalty of dismissal from service. This is further clear from the appellate order which, in so far as is relevant, provides as follows:-

"Antecedents of the appellant indicate that in past too, he was penalised for the similar conduct. He was awarded two major punishment -(a) reduction in pay by two stages vide order No.728-88/HAP/PCR dated 18.1.93 (b) Temporary forfeiture of approved service of one year vide order No.1366-80/SD-(P-III) dated 30.1.96. It seems these penalties could not bring about any improvement in his conduct Presently, apart from this DE, another two DEs, one for causing accident and another for theft of diesel from Govt. vehicle are pending against him.

The appellant seems to be highly indisciplined and incorrigible person. Continuation of such persons in the department results in lowering of efficiency and down- grading of discipline and hence their weeding out is essential. The Disciplinary authority has done so by dismsssing him from the service and I see no reason to interfere in his order. Hence the appeal is rejected." W.J.

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Aforesaid previous adverse record as also the pendency of two further disciplinary proceedings do not form the basis of the charge as also the summary of allegations framed against the applicant. The same, in terms of the aforesaid provisions of Rule 16(xi) could not, therefore, have been considered against the applicant. Shri Shanker Raju, the learned advocate appearing on behalf of the applicant, in the circumstances, is justified in his aforesaid criticism.

3. Shri Ram Kumar, the learned counsel appearing on behalf of the respondents, has sought to ~~salvage~~ ^{to some} the present position by contending that the present proceedings have been conducted *ex parte*. Applicant has not cooperated in the conduct of enquiry. In the circumstances, he cannot claim to have been prejudiced. In our view, the aforesaid contention can have no force as even though the applicant was *ex parte*, he can legitimately claim that the aforesaid material should not have been used against him for imposing the extreme penalty of dismissal from service. Aforesaid contention of the learned counsel in the circumstances is rejected.

4. For the foregoing reasons, the impugned order of penalty passed on 7.3.1998 at Annexure A-1 by the disciplinary authority and the consequent order of the appellate authority passed on 12.10.1998 at Annexure A-2 are quashed and set aside with liberty to the respondents to once again, after notice to the applicant, consider the passing of a fresh order of penalty either by keeping out of consideration the

M. J.

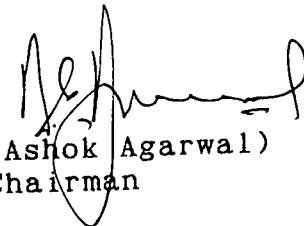
aforesaid extraneous material or after giving due notice of the said material to the applicant, and after affording him a reasonable opportunity of showing cause.

5. Present OA, in the circumstances is allowed in the aforesaid terms. No order as to costs.



(S.A.T. Rizvi)
Member (A)

sns



(Ashok Agarwal)
Chairman