

Central Administrative Tribunal  
Principal Bench: New Delhi

O.A. No. 1235/99

New Delhi this the 22nd day of February, 2001

Hon'ble Mr. V.K. Majotra, Member (A)  
Hon'ble Mr. Shanker Raju, Member (J)

Prahlad Singh  
S/o Shri Ram Lal  
R/o Baroda Mayo District  
Alwar

-Applicant  
(By Advocate: None)

Versus

1. Union of India  
Commissioner of Police, PHQ,  
M.S.O. Building, I.P. Estate,  
New Delhi.
2. Addl. Commissioner of Police, PHQ  
MSO Building, I.P. Estate,  
New Delhi.
3. Dy. C.P. IIIrd Bn DAP  
Vikaspuri,  
Delhi.

-Respondents  
(By Advocate: Shri Amit Rathi, proxy for  
Shri Devesh Singh)

ORDER (Oral)

Mr. Shanker Raju, Member (J)

As none has appeared on behalf of the applicant, we proceed to dispose of the matter under Rule-15 of CAT (Procedure) Rules, 1987.

2. The applicant, a Constable in Delhi Police, challenges an order of dismissal passed on 2.9.97 as well as appellate order dated 10.8.98 whereby an appeal preferred against the order of dismissal had been rejected by the Appellate Authority. The applicant had been proceeded against in a department enquiry on the allegations of remaining wilfully and unauthorisedly absence for a period of 91 days. The charge framed against the applicant in the

departmental enquiry does not contain a specific charge of his previous misconduct of remaining absent from duty. The Disciplinary Authority while imposing an extreme punishment of dismissal took into consideration the previous bad record of the applicant and punishments awarded therein on 14 different occasions, while recording the finding that the applicant is absolutely unfit for retention in Delhi Police. The Appellate Authority also took into consideration the past record of the applicant on 28 occasions and the punishments awarded therein in the order. The applicant in his OA had challenged the orders on the ground that the same are violative of Rule-16 (xi) of Delhi Police (Punishment & Appeal) Rules, 1980 and contended that as the Disciplinary Authority as well as the Appellate Authority took into recognition the previous bad record of the applicant without framing a definite charge against him, the enquiry is vitiated. The respondents took exception to the contention of the applicant and stated that although the previous bad record is not incorporated as a definite charge but it was incorporated in the D.E. order passed by the Disciplinary Authority. It is further contended that the previous bad record is not taken into consideration for the purpose of awarding extreme punishment for a collateral purpose to indicate the continued misconduct of the applicant, rendering him unfit for police service.

3. We have carefully gone through the pleadings of the OA and heard the learned counsel of the respondents and also perused the material on record.

4. Provision of Rule-16(xi) of Delhi Police (P&A) Rules, 1980 are substantive in nature and provides that in the event the previous bad record of a police officer is to be taken into consideration by the Disciplinary Authority to award a severe punishment upon him, the previous record should form part of definite charge framed against the applicant and Rule-10 of the Delhi Police (P&A) Rules also provides that if the previous bad record of an officer, against whom the 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. In our view, the contention of the learned counsel of the respondents that the previous record who was taken into consideration for a collateral purpose is not correct. If the previous record of a police official is taken into consideration by the Disciplinary Authority and a severe punishment of dismissal is awarded to him, in that event the previous bad record should form the basis of definite charge against him and against which the police official concerned should be afforded a reasonable opportunity. The rules 16(xi) & (10) of Delhi Police ibid cannot be read separately and are to be read conjunctively & cumulatively.

5. In this view of ours we are fortified by a ratio laid down by the Hon'ble High Court of Delhi in CWP 4225/99 decided on 9.4.2000 Union of India Vs. Mohd. Yasin Khan which was later on relied upon by a co-ordinate Bench of this Tribunal in OA-2631/99 Hawa Singh Vs. Commissioner of Police decided on 30.5.2000. We find from the order of the Disciplinary Authority that the previous record of the applicant of remaining absent from duty on 14 different occasions and the punishment imposed therein have been taken into consideration and on that basis a finding of complete fitness had been recorded by the Disciplinary Authority. This has been done without incorporating the fact of previous record in the charge framed against the applicant.

6. The aforesaid illegality was also perpetuated by the Appellate Authority also and they are while maintaining the punishment he had taken into consideration the previous bad record of the applicant on 28 occasions without complying with the substantive rules of procedure. In our view, by non-compliance of a substantive mandatory provision, the applicant has been deprived of a reasonable opportunity to defend which is in violation of the rules ibid as well as against the principles of natural justice resulting in prejudice to him.

7. In view of the above stated illegality, the order of the Disciplinary Authority as well as the Appellate Authority are not legally sustainable.

(1)

8. In the result, the OA is allowed. The order of dismissal dated 2.9.97 as well as the appellate order dated 10.8.98 are quashed and set aside. The matter is remanded back to the Disciplinary Authority to pass a fresh order and while doing so if he opts to rely upon the previous bad record then the same should be made part of a specific charge against the applicant and a reasonable opportunity to defend should be provided to him. If the Disciplinary Authority chooses not to rely upon the previous bad record than the final order should be passed on the basis of the charge framed against the applicant. The intervening period shall be decided by the Disciplinary Authority after passing a final order in accordance with rules and instructions. Respondents are directed to comply with these directions within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju  
(Shanker Raju)  
Member (J)

cc.

V.K. Majotra  
(V.K. majotra)  
Member (A)