

8

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 1323/99

New Delhi this the 4th day of August, 2000

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member (A)

Ex. Constable Hawa Singh No. 4530/DAP,
S/o Shri Ran Singh,
R/o Vill & P.O -Dichaun Kalan,
P.S. Najaf Garh, New Delhi.

...Applicant

(By Advocate: Shri Shankar Raju)

Versus

1. Union of India,
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. Addl. Commissioner of Police,
Armed Police,
New Police Lines, Kingsway Camp,
Delhi.

3. Dy. Commissioner of Police,
5th Bn, D.A.P.,
New Police Lines, Kingsway Camp,
Delhi.

...Respondents

(By Advocate: Shri Ajesh Luthra)

ORDER (Oral)

By Justice Ashok Agarwal, Chairman

12.1

Short ground on which the order of penalty of removal from service imposed upon the applicant in disciplinary proceedings conducted against him is impugned, is that the disciplinary authority while imposing the extreme penalty of removal from service has taken into account previous unauthorised absence of the applicant which does not form part of the charges framed against him. A perusal of the proceedings shows that the charge framed against the applicant related to his unauthorised absence on 27 occasions during the period from 7.2.94 to 3.7.95.

9

The disciplinary authority as also the Appellate Authority has taken into account his previous bad record ~~into account adverse record~~ and has thereafter proceeding^{ed} to impose the extreme penalty of dismissal from service. As far as the unauthorised absence which ^{is concerned} it is found is subject matter of the charge, this is what the disciplinary authority has observed:-

"Merely obtaining the medical certificates does not confer any right to leave. Hence the charge of habitual and unauthorised absence for a period of 184 days 12 hours 40 mts. on 27 different occasions stand proved".

2. Apart from the aforesaid ^{finding} ~~circumstances~~, it ~~has been taken into account~~ the previous adverse record of the applicant has also been taken into account by the Disciplinary Authority by observing:-

"His previous record of numerable major and minor penalties for absence on 42 occasions, reveal his level of incorrigibility. In spite of 3 censures and 2 major penalties, he has failed to mend his ways".

3. As far as the Appellate Authority is ^{in respect of previous bad record} concerned, this is what has been observed in his order:-

"The service record of the appellant shows him in poor light. He has been awarded three censures, two major penalties and many absences have been treated as L.W.P. Despite these penalties, the appellant learnt no lesson and continued to misconduct. Moreover there are another two departmental enquiries pending against him for absents from duty".

4. Appellate Authority's observations make it clear that it not only ^{has} taken into account his previous adverse record but has further gone on to

12-1

take into account the pendency of two departmental enquiries ~~pending~~ against the applicant. Both the aforesaid previous adverse record as also the pendency of two other departmental enquiries did not find a basis of the charge framed against the applicant. Applicant in this case is similarly placed as the applicant in the case of Ex. Head Constable Hawa Singh Vs. Union of India & Ors being OA No. 2632/99 decided by us on 30.5.2000 wherein on similar facts, the order of penalty has been set aside. Reliance is placed by us in the aforesaid decision on the case of Ex. Const. Vinod Kumar Vs. Union of India & another being OA No. 1260 of 1995 decided on 11.8.99 wherein the Tribunal has inter alia observed as under:-

"After hearing the learned counsel for the parties and perusing the record, we are of the view that if the provisions of Rule 16(xi) of the Delhi Police (Punishment & Appeal) Rules were followed, the applicant could demonstrate the circumstances under which his record was shown to be bad in the past and could have appealed to the wisdom of the disciplinary authority for inflicting any serious punishment on him. The non-compliance with the said provision could not be said to be a mere irregularity and, therefore, we are of the view that for that reason the impugned order of punishment by the disciplinary authority and the appellate order deserve to be quashed".

5. Further reliance was placed on the case of Delhi Administration and another Vs. Ex. Const. Yasin Khan being C.W.P. No. 4225 of 1999 decided by the Delhi High Court on (date not legible) April, 2000 whereing it has been observed as under:-

"We are in agreement with the Tribunal inasmuch as Rule 16 (1) of the Rules makes it obligatory for the disciplinary authority to specifically

include the previous bas record in the Memo of Charges as a definite charge wishes to rely upon it for the purpose of imposing penalty. In the present case the absence of specific charge to the effect that the respondent has previously also been absenting himself without leave, could not have been relied upon by the disciplinary authority while awarding punishment of dismissal from service. It is difficult to say as to what extent the previous conduct of the respondent influenced the mind of the disciplinary authority and, therefore, the awarding of penalty, based on previous conduct, has rightly been disallowed by the Tribunal".

6. If one has regard to the aforesaid decisions which are binding upon us, a conclusion is irresistible that the impugned order of penalty of removal from service of the applicant cannot be sustained.

7. Shri Ajesh Luthra, however, in his valiant attempt to get over the position in which he has found himself has sought to place reliance on a decision of the Supreme Court in the State of U.P. and Others Vs. Ashok Kumar Singh and another (1996) 32 ATC 239 wherein the Supreme Court has observed as under:-

"Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that "his absence from duty would not amount to such a grave charge". Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that "the punishment does not commensurate with the gravity of the charge" especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.

[Handwritten signature]

2

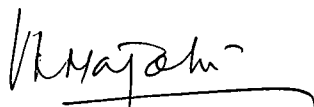
For all these reasons, we set aside the impugned order of the High Court in WP No. 9547 of 1990 and restore the order of the U.P. Public Services Tribunal. The appeal is allowed. No order as to costs".

8. In our view, aforesaid decision cannot advance the argument sought to be made by Shri Luthra. The ^{High} ~~Supreme~~ Court in the aforesaid case had interfered with the penalty imposed by the disciplinary authority which interference, the Supreme Court, found was un-called for. While up-holding the extreme penalty of removal from service the Supreme Court has observed that a Police constable was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. As far as the present case is concerned, ^{that previous bad record does not form a} we ~~did not find~~ the part of the charge framed against him. It is, therefore, ^{difficult to follow} ~~found that~~ what penalty the disciplinary authority would have imposed ^{if} ~~on~~ the said ^{previous bad record had been kept} ~~material will keep~~ out of consideration.

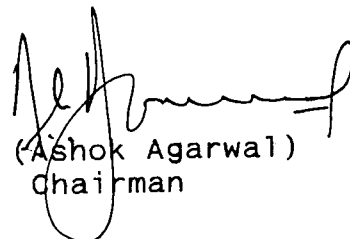
9. For the forgoing reasons, the impugned order passed by the disciplinary authority on 6.5.98 as also the one passed by the appellate authority on 12.10.98 are set aside. The matter is now remitted back to the disciplinary authority for the purpose of imposing a fresh penalty based only on the finding of unauthorised absence which forms the basis of the charge framed against the applicant. The disciplinary authority will keep out of consideration the previous bad record of unauthorised absence and proceed to pass an appropriate order of penalty upon the applicant.

12.10

While doing so, the disciplinary authority will issue a notice to the applicant and will afford him reasonable opportunity of being heard before passing appropriate orders. Present OA is accordingly disposed of with the above directions. No order as to costs.



(V.K. Majotra)
Member (A)



(Ashok Agarwal)
Chairman

cc.