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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
New Delhi

O.A. No. 1485 of 1999

New Delhi, this 15th day of the November, 2000

Hon'ble Mr. Justice Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mr. Govindan S. Tampi Member (A)

Sudesh Rana,
S/o Shri Yadh Pal,
R/o Vill & P.O. Daha,
P.S. Doghat,
Distt. Baghat, (U.P.),

(By Advocate: Shri Ajesh Luthra)

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... Applicant

Versus

Union of India through

1. The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001.
2. The Commissioner of Police
Police Head Quarters,
M.S.O. Building, I.P. Estate,
New Delhi.
3. The Sr. Addl. Commissioner of Police
(AP&T), M.S.O. Building,
I.P. Estate,
New Delhi.
4. The Deputy Commissioner of Police
VIIIth Bn, DAP, Malviya Nagar,
New Delhi.

... Respondents

(By Advocate: Shri Devesh Singh)

ORDER (oral)

Justice V. Rajagopala Raddy,

The applicant while he was working as a Constable in Delhi Police, ^{it} was alleged that when he was detailed for Quarter Guard duty on 13.11.1995 but he did not turn up for duty, two absentee notices were sent at his residential address but the same were received back undelivered. Later on, it is alleged that another Constable, Shri Anil Kumar was deputed to find out his

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whereabouts but when he went to his residence he was informed by the applicant that he was sick and would join his duty once he was fit. Thereafter, Head Constable, Shri Dharambir was deputed for getting the second medical opinion of the petitioner's illness from GTB Hospital, Delhi, but he refused to go for a second medical examination. He however, resumed his duty on 2.5.1996 after absenting himself for a period of 30.11.1995 to 2.5.1996. On these allegations unauthorised absence, a departmental enquiry was ordered and the enquiry officer submitted his findings holding that they were proved. Aggrieved with the findings of the enquiry officer, the disciplinary authority ordered forfeiture of two years approved service temporarily for a period of two years, by the impugned order dated 2.12.1996. The applicant filed an appeal to the appellate authority who felt that the penalty was not commensurate with the gravity of misconduct. It issued a show cause notice dated 30.6.1997 under rule 25 (1) (b) of Delhi Police (Punishment and Appeal) Rules 1980, proposing enhancement of punishment to that of dismissal from service. Thereafter, considering the representation made by the applicant, the notices have been confirmed by the order dated 3.10.1997 dismissing the applicant from service. The revision petition filed by the applicant, however, failed.

2. Learned counsel for the applicant Sh. Ajesh Luthra contends that as the applicant was sick, he could not attend office and the medical certificates filed during the enquiry were not considered by the enquiry officer



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on the ground they were not proved by the doctors. It is also contended that the show cause notice has been issued with a predetermined mind to dismiss the applicant from the service. Lastly he contended that the impugned order is vitiated as the previous bad record did not form part of the charges as required in Rule 16 (xi) of the Rules 1980. Learned counsel for the respondents Shri Devesh Singh submits that it was the duty of the defaulter to produce the defence witnesses and it was not the job of the prosecutor to procure them. It is also submitted that the previous bad record was only referred to in passing the impugned order and not for taking that into consideration in awarded the penalty.

3. The only allegation against the applicant was unauthorised absentee, it was alleged that he has not sent any leave application alongwith the required medical certificates. On the basis of evidence on record the enquiry officer found the charges proved. We find it not possible to interfere with the findings of the disciplinary authority in this regard. The next question, in this case is whether the impugned order was issued by the enquiry officer having predetermined mind. We have perused the notice, we do not find any force in the submission as it is clear from the show cause notice that the punishment was only proposed by the authority concerned. The last submission, however, merits consideration. Respondent No.3 in the notice for enhancement he has not mentioned that the applicant was having a bad record. But while passing the impugned order, he has taken into consideration, the

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previous bad record of the applicant, when it was stated by him that "he was awarded minor punishment several times for his absence which shows that he is a habitual absentee and is incorrigible". The previous bad record, thus weighed with the disciplinary authority in passing the impugned order and in enhancing the punishment. It is also stated by the applicant that during the entire period of confirmed service, he was only awarded minor punishment of censure that too only once. The Rule 16(xi) of the Delhi Police (Punishment and Appeal) Rules, 1980 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".

4. Rule therefore, enjoins that in case of previous bad record was taken into consideration, that should form the basis of definite charge against him and he should be given opportunity to defend his case. This requirement, in this case is not complied with. The appellate authority i.e., Senior Addl. Commissioner of Police in his order dated 1.12.1998 had not made considered, the plea raised by the applicant in this regard in his appeal. We are supported in our view by the judgement of the High Court in the case of Delhi Administration and others Vs. Ex. Const. Yasin Khan being C.W.P.No. 4225 of 1999 decided by the Delhi High court.

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5. In view of the forgoing reasons, the impugned orders are set aside. The case is remitted back to Respondent No.3 i.e., Senior Additional Commission of Police to pass a fresh order, without taking into consideration, the previous bad record of the applicant. It should be done within a period of three months. Accordingly, the OA is allowed with cost of Rs.2000/- (Rupees Two thousand only). This amount is to be paid to the CAT Bar Association for the purpose of purchasing books for the library.

(Govindan S. Tampi)
Member(A)

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(V. Rajagopala Reddy)
(Vice-Chairman(J)