

(15)

Central Administrative Tribunal
Principal Bench

O.A. 1803/99

New Delhi this the 1st of August, 2001

Hon'ble Shri Govindan S. Tampi, Member(A)
Hon'ble Shri Shanker Raju, Member(J).

Kundan Singh (4338/PCR),
son of Shri Hakim Singh,
R/o Vill- Kadar Nagar,
PO - Jindoli, PS: Khaithal,
Distt. Alwar (Rajasthan) Applicant.

(By Advocate Shri Shyam Babu)

Versus

1. Lt. Governor,
Delhi, Rajniwas,
Delhi.

2. Commissioner of Police,
Delhi,
Police Headquarters,
I.P. Estate,
New Delhi.

3. Sr. Addl. Commissioner of Police
(Operation),
Police Headquarter, IP Estate,
New Delhi.

4. Dy. Commissioner of Police,
(Police Control Room),
Police Headquarter,
I.P. Estate,
New Delhi.

... Respondents.

(By Advocate Shri Rajinder Pandita)

O R D E R (ORAL)

Hon'ble Shri Shanker Raju, Member(J).

The applicant, who is an ex-Constable (Driver) in Delhi Police, has assailed an order of dismissal dated 21.3.1997 whereby it is alleged that he remained absent unauthorisedly on 4 occasions and his past absentee record also shows that he is a habitual absentee. The dismissal order has been maintained by the appellate authority by an

order dated 16.9.1997 and thereafter by the revisional authority as well as by the reviewing authority by orders dated 10.8.1998 and 3.5.1999, respectively. These orders are also assailed by the applicant.

2. We have heard both the learned counsel for the parties and perused the materials on record.

3. At the outset, learned counsel of the applicant though raised several contentions to challenge the orders has stated that the applicant has been charged for remaining absent for a period of 22 days from 14.9.1995 to 6.10.1995, 34 days from 17.10.1995 to 20.11.1995 and 11 days from 6/7.1.1996 to 17.1.1996, respectively as well as the previous record was also taken into consideration. Drawing our attention to the findings of the Inquiry Officer, it is stated that the Inquiry Officer has also proved the charge against the applicant of remaining absent from 4.3.1996 to 1.7.1996 against which he has not been afforded a reasonable opportunity to defend. Learned counsel for the applicant while drawing our attention to the order passed by the disciplinary authority has stated that this period of absence which was not formed part of the charge has been taken into consideration to award an extreme punishment of dismissal by the disciplinary authority. The aforesaid period has also been taken note of and is relied upon by the appellate authority as well as the revisional authority. Referring to Rule 16(ix) of the Delhi Police (Punishment and Appeal) Rules, 1980, it is contended that in case in the findings of the Inquiry Officer the new charges are made against a police officer, then in that event he has to be given a reasonable opportunity to deny the same and to

defend it in accordance with the Rules. The learned counsel for the applicant has also stated that this part of the charge which has not been framed against the applicant has never been put to him and he has not been afforded a reasonable opportunity to defend the same.

4. On the other hand, learned counsel for the respondents strongly rebutting the contentions of the applicant stated that the inquiry has been held in accordance with law and the procedure laid down and the Inquiry Officer has rightly charged of the new charge which is borne out from the evidence recorded during the proceedings.

5. In our considered view, the Inquiry Officer as well as the disciplinary authority has taken into consideration an extraneous matter, i.e., the absence of the applicant w.e.f. 4.3.1996 to 1.7.1996 while holding him guilty and imposing upon him an extreme punishment of dismissal. The aforesaid misconduct of remaining absent for 120 days has neither figured in the summary of allegations nor made a specific charge framed against him. The applicant had also been denied a reasonable opportunity to defend the same. As provided in Rule 16(ix) of the Rules, it was mandated upon in such a situation to have put this part of the charge to the defaulter and accord him a reasonable opportunity to defend which has admittedly not been done in the present case. In our considered view, the applicant has been denied a reasonable opportunity to defend which has greatly prejudiced his right. As a substantive provision of procedure, the same should have been followed by the Inquiry Officer as well as by the disciplinary authority. We hold that the findings of the Inquiry Officer as well as the order passed by the

disciplinary authority and also the orders passed by the appellate authority, revisional authority and reviewing authority are vitiated on account of the material illegality.

6. In the result, having regard to the discussion made above, we allow this O.A., set aside the order of dismissal, appellate authority's order, revisional authority's order as well as the order on review. The respondents are directed to reinstate the applicant forthwith but he shall not be entitled to any back wages. However, we give liberty to the respondents to draw the proceedings from the stage of passing the final order and if they choose to include the period of 120 days as a charge in the Departmental inquiry, the applicant shall be accorded reasonable opportunity to defend in accordance with law. However, if they decide not to include the same the final order shall be passed. The aforesaid exercise shall be completed by the respondents within a period of two months from the date of receipt of a copy of this order. No order as to costs.

S. Raju
(Shaker Raju)
Member(J)

(Govindan S. Tampi)
Member(A)

'SRD'