

Central Administrative Tribunal
Principal Bench

(15)

O.A. 2333/99

New Delhi this the 18th day of April, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampli, Member(A).

Badri Prasad,
S/o Shri Jangli Ram,
Vill: Ganwari, PO: Pattan,
PS: Rajgarh,
Distt. Alwar (Raj). ... Applicant.

(By Advocate Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi through its Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Dy. Commissioner of Police,
(PCR),
Police Headquarters,
I.P. Estate,
New Delhi.
3. Addl. Commissioner of Police,
(PCR & Communication),
Police Headquarters,
I.P. Estate,
New Delhi. ... Respondents.

(By Advocate Shri George Paracken)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicant has impugned the penalty order passed by the respondents removing him from service dated 19.6.1998 and the order passed by the appellate authority dated 29.7.1999 rejecting his appeal.

2. ~~The~~ Departmental action was initiated against the applicant by order dated 1.5.1997. He has submitted ^{earlier} that ~~before~~ a preliminary inquiry had been held against him in which the charges/allegations were proved behind

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his back. The Inquiry Officer had examined 11 prosecution witnesses and defence witnesses, as submitted by the applicant. The Inquiry Officer gave his report on 29.1.1998 and has held that the charge against the applicant stood proved. Shri Shyam Babu, learned counsel has submitted that the findings of the Inquiry Officer are arbitrary as there is no evidence on the basis of which he could have arrived at that conclusion. Learned counsel has submitted that in the charge levelled against the applicant, there was no reference or allegation to the effect that the applicant was under the influence of liquor when he had made ^{the} telephone calls from Telephone No. 6985410, which is what the Inquiry Officer had concluded. He has submitted that even the findings are contrary to the provisions of Rule 16(ix) of the Delhi Police (Punishment and Appeal) Rules, 1980, (hereinafter referred to as 'the Punishment Rules'). The disciplinary authority has also referred to the Inquiry Officer's findings that the applicant had made ^{the} telephone calls from that telephone under the influence of liquor and misbehaved with the women Operators at Telephone No. 100, impersonating himself as the brother of Shri Sahib Singh Verma, Chief Minister of Delhi and insisted to talk to ACP/Shift. Shri Shyam Babu, learned counsel has submitted that on the basis of the findings of the Inquiry Officer, the disciplinary authority has imposed the extreme punishment of removal from service.

3. The second ground taken by the learned counsel for the applicant is that in the charge, there is no reference to the past record of the applicant, whereas

in the impugned order dated 19.6.1998, the disciplinary authority clearly states that he has gone through the past records. Learned counsel has submitted that this is in violation of Rule 16(xi) of the Punishment Rules. He has relied on the judgement of the Tribunal in **Constable Satish Kumar Vs. Union of India and Ors. (OA 139/98)**, decided on 16.11.2000 (copy placed on record).

4. The third ground taken by the learned counsel is that there is no evidence of any of the women operators who were called as witnesses in the inquiry, that the applicant had misbehaved with them on the telephone. He has referred to the statements of PWs 1,3 and 4 and has submitted that none of them have referred to any such misbehaviour on the part of the applicant. Therefore, he has contended that this part of the charge is also not proved against the applicant.

5. Another ground taken by Shri Shyam Babu, learned counsel is that in the charge it has been stated that the applicant had made 11 calls from Telephone No. 6985410 and 10 calls from Telephone No. 6985791 to PCR at Telephone No. 100 on 25.1.1997. Out of these calls, only three were recorded and, therefore, he has submitted that there is absolutely no evidence of balance ^{the P/} ~~of~~ 18 calls as alleged to have been made by the applicant, impersonating himself as the brother of Shri Sahib Singh Verma, Chief Minister of Delhi. He has, therefore, submitted that as there is no evidence, the punishment order should be quashed and set aside.

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6. The respondents in their reply have submitted that the inquiry has been held in accordance with the Rules. Besides, having regard to the gravity of the charge, the disciplinary authority had ordered the applicant to be removed from service, which order has also been upheld by the appellate authority.

7. Shri George Paracken, learned counsel has submitted that the disciplinary authority, in his order imposing the penalty has merely stated that he has gone through the past service record of the applicant. He has contended that this is only a passing reference and not the basis of ^{the} removal order. He has submitted that with regard to the conclusion of the Inquiry Officer that the applicant had made telephone calls while under the influence of liquor, these are also based on the statements made by the witnesses in the inquiry held against the applicant. He has submitted that, for example, PWs-1, 3, 4 and 8 have given statements that at the time of making the telephone calls, the applicant was under the influence of liquor. In the circumstances, he has submitted that there is nothing wrong in the conclusion of the Inquiry Officer which is based on the evidence on record.

8. With regard to the allegations of misbehaviour with the women operators, Shri George Paracken, learned counsel has submitted that this expression has to be understood in the context of the allegations made against the applicant, which means harassment of the women telephone operators by making repeated telephone calls at Telephone No. 100 and telling

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that he is the brother of Shri Sahib Singh Verma, Chief Minister, Delhi. Learned counsel has, therefore, submitted that the instant misconduct of the applicant which has been proved shows his unsuitability for being continued in the police force and there is no illegality in the punishment orders. He has, therefore, prayed that the O.A. may be dismissed.

9. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

10. In the impugned order passed by the Deputy Commissioner of Police dated 19.6.1998, he has, inter alia, referred to the past service record of the applicant which has been referred to as follows:

"I have carefully gone through the findings of the E.O., DE file and representation submitted by Const. Badri Prasad, No. 3012/PCR. I have also gone through his past service record. Having gone through the findings of the E.O. I tend to agree with him. Seeing the gravity of charge and proclivity towards serious deviance, I, Uday Sahay, DCP/PCR, Delhi hereby order to remove him from service with immediate effect".

11. From the above reasoning of the disciplinary authority, it cannot be held that the past record of the applicant has not weighed with *the* *Disciplinary* authority while imposing the punishment of removal from service on the applicant. In the facts and circumstances of this case, therefore, we find force in the contention of Shri Shyam Babu, learned counsel that the respondents have not complied with the provisions of Rule 16(xi) of the Punishment Rules which provides, inter alia, that if it is considered necessary to award a severe punishment to

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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. A similar view has been taken by the Tribunal in Satish Kumar's case (supra) and we respectfully agree with the reasoning in that case. The contention of Shri George Paracken, learned counsel that the reference to the past record has been made as a passing reference, cannot also be accepted in the present case because if that was not to form part of the charge, the disciplinary authority need not also have made any such reference to his past service record. As the past record has not been made part of the charge, the applicant has not been given an opportunity to defend himself, as required under the Punishment Rules. Therefore, on this ground also, the disciplinary authority's order is liable to be quashed and set aside.

12. We also find substance in the submissions made by the learned counsel for the applicant that while in the charge issued against the applicant, there has been no reference to the fact that he had made the calls at Telephone No. 100 on 25.1.1997 while he was under the influence of liquor, the Inquiry Officer had come to the conclusion that he had made the telephone calls under the influence of liquor. The disciplinary authority has stated that he tentatively agrees with the findings of the Inquiry Officer, including the findings that the telephone calls were made under the influence of liquor. Learned counsel for the respondents has submitted that

the findings of the Inquiry Officer were based on the statements made by the witnesses in the inquiry held against the applicant, but at the same time considering the fact that the applicant's services were being terminated by passing the extreme penalty of removal from service, the respondents ought to have ensured that, the relevant Rules and principles of natural justice are fully complied with. They could have, if they had wanted to, made this allegation also part of the charges which they have not done.

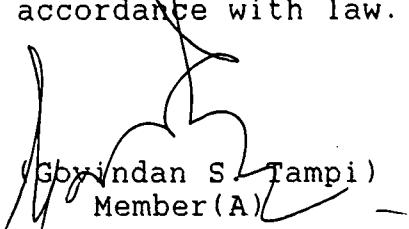
13. In the same way, the conclusion of the Inquiry Officer and the Disciplinary Authority that the applicant had misbehaved with the women operators at Telephone No. 100 is also not supported by the statements of these ladies. On this ground also, we find force in the submissions made by Shri Shyam Babu, learned counsel, that the lady operators have not referred to any such misbehaviour on the part of the applicant as alleged, nor has it been proved. We hasten to add that we are not reassessing the evidence on record but the conclusion of the respondents that the applicant had misbehaved with the women operators at Telephone No. 100 on 25.1.1997 by impersonating himself as the brother of Shri Sahib Singh Verma, the then Chief Minister of Delhi, has not been substantiated by the evidence on record. Shri George Paracken, learned counsel has tried to explain the position by stating that the allegations of misbehaviour with the women operators have to be understood in the context of the allegations that the applicant had harassed them by making repeated telephone calls at Telephone No. 100 but this explanation offered by the learned counsel is an after thought to try and

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justify the action of the respondents. The Disciplinary Authority has in this respect also agreed with the findings of the Inquiry Officer in his report that he had misbehaved with the women operators while imposing one of the extreme punishments under the Punishment Rules of removal from service, against the applicant.

14. In the circumstances of the case, we find that the Disciplinary Authority has not complied with the provisions of the Punishment Rules or the principles of natural justice and has also given findings of facts which are beyond the scope of the charge levelled against the applicant.

15. In the result, for the reasons given above, the O.A. succeeds and is allowed. The Disciplinary Authority's order dated 19.6.1998 imposing the penalty of removal from service against the applicant is quashed and set aside. Accordingly, the Appellate Authority's order dated 29.7.1999 is also quashed and set aside. The respondents are directed to reinstate the applicant in service with consequential benefits in accordance with the relevant rules and instructions. However, in the circumstances of the case, liberty is granted to the respondents to proceed in the matter, if so advised, in accordance with law. No order as to costs.


Sby. Jindan S. Tampi
Member (A)

SRD


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)