

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 2302/1999
T.A No.

Date of Decision 26-4-2001



Sh.Udai Singh ..Petitioner

ShrArun Bhardwaj with ..Advocate for the Petitioner(s)
proxy counsel Sh.Pradeep Dahiya.

Versus

UOI through ..Respondent
Commissioner of Police & Ors

Mrs.Meera Chhibber ..Advocate for the Respondents

Coram:-

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

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal ? No

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2382/99

New Delhi, this the 26th day of April, 2001

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

Udai Singh
S/o Shri Kishan
R/o V.Sundroj & P.O. Pithrawas
P.S. Khol Distt. Rewari
Haryana.

...Applicant.
(By Advocate Shri Arun Bhardwaj and his
proxy counsel Shri Pradeep Dahiya)

V E R S U S

Union of India : Through

1. Commissionere of Police,
Police Headquarters, New Delhi.
2. Addl. Commissioner of Police
Armed Police, Police Headquarter
I.P.Estate, New Delhi.
3. Deputy Commissioner of Police
IInd Bn. Kingsway Camp, New Delhi.

...Respondents.
(By Advocate Mrs. Meera Chibber)

O R D E R (ORAL)

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

In this application, the applicant has impugned the validity of the order passed by the disciplinary authority dated 29-12-1998 dismissing him from service. An appeal filed by the applicant against this order has also been dismissed by the appellate authority vide its order dated 9-7-1999 (Annexures A-1 & A-2).

2. The brief relevant facts of the case are that the aforesaid order has been passed after Departmental proceedings were held against the applicant. It was alleged against him that he had committed gross mis-conduct, negligence and carelessness in discharge of his official duties in

87

that while posted in P.S. Narela and detailed for Santry duty on 6-2-1995, he did not report for duty and was marked absent. It was alleged that he had continued his absence without any information/permission of the competent authority. It was also mentioned that he had absented himself intentionally four times from duty earlier, for which the details were also given. The Departmental enquiry was concluded by the IO, who had found the aforesaid charges proved against the applicant vide his report. The disciplinary authority in his order has agreed with the findings of the IO and in his detailed order dated 25-12-1998, wherein reference has also been made to certain other evidence, he came to the conclusion that the applicant is a thoroughly incorrigible person and is found unfit for disciplined Force. Hence, he has stated that he has dismissed the applicant from service on the basis of the findings submitted by the IO. The appellate authority has referred to the appeal submitted by the applicant and has stated that he has gone through the same, comments, DE file and service records of the applicant and has found that the punishment of dismissal from service given to him by the disciplinary authority does not require any interference. Hence, he has rejected the appeal.

3. We have heard Shri Arun Bhardwaj, learned counsel at length in this application as well as Mrs. Meera Chibber, learned counsel for the respondents.

4. A number of pleas have been taken by the learned counsel for the applicant to assail the validity of the punishment orders passed by the

respondents. One of the main grounds taken by the learned counsel was that the respondents, while passing the aforesaid punishment orders have taken into account extraneous material which has had the effect of influencing their decisions in awarding the extreme penalty of dismissal from service. This has been stoutly controverted by the learned counsel for the respondents who has submitted that whatever evidence or conclusions the disciplinary authority or the appellate authority have referred to in their orders do not vitiate the penalty orders. Her contention is that the factum of the absence of the applicant from duty during the relevant period, which was the subject matter of the disciplinary proceedings, has been proved by the evidence on record. Mrs. Meera Chibber, learned counsel has submitted that as per the applicant's own submission in the appeal, he has not submitted the medical certificate in time even during the disciplinary proceedings but has only submitted the photocopy of the same which, therefore, shows that there is nothing wrong in the conclusions arrived at by the competent authorities.

5. She has relied on the Full Bench judgement of the Tribunal in Hariram Vs. Delhi Administration and Ors. (1993 (25) ATC 697), Stava Prakash Vs. UOI & Ors. (1993 (23) ATC P.260), State of UP & Ors. Vs. Ashok Kumar 1996 SCC (L&S) 304), UOI & Ors. Vs. B.Dev (1999 (1) AISLJ 196; State of UP Vs. Girija Shankar Sonkiya (1999 (1) AISLJ SC P.219).

6. Another ground taken by the learned counsel for the applicant was based on Rule 16 (xi) of the Delhi Police (Punishment & Appeal) Rules, 1980, (herein- after referred to as "the Rules"). His contention was that as the applicant had already been given punishment for the previous absences, those very four absences could not have been taken for awarding him the extreme punishment of dismissal from service. He has submitted that Rule 16 (xi) of the Rules is in violation of the principles of natural justice as the Rule postulates the proposition that a severe punishment has to be imposed on the applicant which means that the whole issue is pre-judged. Mrs. Meera Chibber, learned counsel has submitted that this contention of the applicant is not contained in the OA and, according to her, the validity of the Rules cannot be challenged merely by making oral submissions. She has also relied on the judgement of the Hon'ble Supreme Court in UOI Vs. E.I.D. Parry (India) Ltd. (2000 (2) SCC 223. We find force in the submissions made by the learned counsel for the respondents on this ground. It is also relevant to note that this Rule has been considered and followed since 1980 and we see no reason to set aside this Rule, considering also the fact that this has not been made a ground of challenge in the pleadings in the OA. Therefore, the plea taken by the applicant's counsel that Rule 16 (xi) of the Rules is invalid is rejected.

7. Learned counsel for the applicant has relied on the judgement of the Hon'ble Delhi High in Satyapal Yadav Vs. UOI & Ors. [71 (1998) Delhi Law Times 68 (SB)]. To controvert this submission, Mrs.

Meera Chibber, learned counsel has relied on the judgement of the Hon'ble Supreme Court in State of Madhya Pradesh vs. Harihar Gopal (1969 SLR 274 SC) and Ex. Head Constable (DRI) Kali Ram vs. Union of India & Ors. [86 (2000) Delhi Law Times 163 (DB)]. In view of what has been stated with regard to the provisions of Rule 16 (xi) of the Rules and having regard to the judgement of the Supreme Court and the later judgement of the Delhi High Court in Kali Ram's case,^(supra) we are unable to agree with the contentions of the learned counsel for the applicant.

8. We have also considered the other submissions made by the learned counsel for the parties. We find that the contention of Mrs. Meera Chibber, learned counsel, that the disciplinary authority as well as the appellate authority have not taken into account extraenous materials, as contended by Shri Arun Bhardwaj, learned counsel, cannot be accepted. The disciplinary authority in his order dated 29-12-1998 has stated as follows :-

The charge of wilful absence of 5 months, 17 hours and 20 minutes stands proved against defaulter Constable Udai Singh No.1973/DAP. The plea of the defaulter Constable Udai Singh No. 1973/DAP that he was unwell and hence could not attend duty has been found false and concocted. Examination of hospital record/proved as lie and deceit. Not only that pages from the OPD register were also torn. His deceit is proved beyond doubt and his criminal malafide as regards torn pages of OPD register put him in definite possibility of conspiracy to remove evidence. Keeping his previous record in view and also the facts that another default is pending for final decision, his intentions are not found correct. He is thoroughly incorrigible and is found unfit for a disciplined force. His presence is totally undesirable in our disciplined ranks. Hence he is dismissed from

service with immediate effect on the basis of the findings submitted by the EO in this instant DE.

(19)

9. Mrs. Meera Chibber, learned counsel has contended that the charge levelled against the applicant is absence from duty which has been proved by evidence on record. However, from perusal of aforesaid order of disciplinary authority, we also find that he has referred to and relied on certain other evidence and has come to the conclusion that the applicant's deceit is proved beyond doubt and his criminal malafide as regards torn pages of OPD register puts him in definite possibility of conspiracy to remove the evidence. It is not the case of the respondents that at any time in the DE proceedings held against the applicant, the OPD register was produced as evidence or the same was shown to the applicant or he has confronted with the fact that there are torn pages in the OPD register. In the facts and circumstance of the case, we are, therefore, unable to agree with the submissions made by Mrs. Meera Chibber, learned counsel, that the evidence as regards torn pages of the OPD register has not weighed at all with the disciplinary authority. She has submitted that it was the duty of the applicant to have produced the medical certificates which he has not done in the Departmental Enquiry proceedings. If that was so, they could not also have examined the Hospital records or the other relevant records behind the back of the applicant and come to the conclusion that deceit as well as conspiracy are proved against him. These facts admittedly do not form part of the charges levelled against the

18/

applicant. Therefore, in the circumstances of the case, we see force in the submissions made by learned counsel for the applicant that the respondents have looked into extraneous materials behind the back of the applicant, on which the applicant was not given any chance to rebut by giving him a reasonable opportunity of defence. Accordingly, while opportunity to appear in the Departmental proceedings might have been given to the applicant by the respondents, we are of the view that on the evidence mentioned above in the Disciplinary Authority's impugned order, the principles of natural justice have not been complied with.

10. Similarly we also find force in the submissions made by Shri Arun Bhardwaj, learned counsel that the appellate authority's order also suffers from the same infirmity, as mentioned above. He has also taken into account extraneous materials, in addition to the grounds taken in the appeal submitted by the applicant and other records in the Departmental enquiry file while coming to the conclusion to dismiss the applicant from service. He has also rightly pointed out that in the order reference has been made to "comments" which were not known to him and neither is this apparent from the documents on record. Mrs. Meera Chibber, learned counsel has produced the DE proceeding file. It is not clear from the records what were the "comments" which were furnished to the appellate authority and by whom, which he has seen before passing the impugned order dated 9-7-99. As mentioned above, the Hospital OPD Register and the fact that it was torn which have been referred to in the disciplinary authority's order

do not also form part of the records in the DE proceedings.

11. In the facts and circumstances of the case, as the punishment orders of dismissal from service have been passed against the applicant by the disciplinary authority and the appellate authority taking into consideration the aforesaid extraneous materials, these orders are liable to be quashed and set aside.

12. The respondents have, therefore, not followed the procedure laid down under Section 21 of the Delhi Police Act, 1978 read with the Rules made thereunder, nor complied with the principles of natural justice in the conduct of the disciplinary proceedings. If the respondents were relying on the extraneous materials, they ought to have included the relevant facts as part of the charges against the applicant and also given him a reasonable opportunity to defend the same, which has not been done in the present case.

13. In view of what has been stated above, we do not consider it necessary to refer to the other points raised by the learned counsel for the parties.

14. In the result for the reasons given above, the OA partly succeeds and is allowed with the following directions :-

(i) The impugned orders dated 25-12-1998 and 9-7-1999 are quashed and set aside;

(ii) The respondents to reinstate the applicant within two months from the date of receipt of a copy of this order. Following the judgement

of the Hon'ble Supreme Court in State of Punjab Vs. Dr. Harbhajan Singh Greasy & Ors.

(JT 1996 (5) SC 403), since the applicant was placed under suspension, he shall be deemed to continue under suspension.

(22)

(iii) In the circumstances of the case, the case is remitted to the disciplinary authority to pass an appropriate order in accordance with law and rules, keeping in view the observations made above, and after affording the applicant a reasonable opportunity to put forward his case. It shall be done as expeditiously as possible, and in any case within four months from the ^{date of} receipt of a copy of this order. It is made clear that the applicant shall also fully co-operate with the proceedings to be taken by the respondents.

(iv) Respondents shall also pass an appropriate order with regard to the intervening period i.e. from the date of dismissal of the applicant to the date of his reinstatement, in accordance with law.

No order as to costs.


(Govindan S. Tampli)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

/vikas/