

Central Administrative Tribunal, Principal Bench

Original Application No.2631 of 1999

New Delhi, this the 30th day of May, 2000

(5)

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

Ex. Head Constable Hawa Singh, No.373/SB,  
S/o Shri Sukh Ram, Aged-46 years, Previously  
employed in Delhi Police, R/o RZ-D-II/24-A,  
Deshwal Chowk, Vinod Puri, P.S.Dabri, New Delhi - Applicant

(By Advocate Shri Shanker Raju)

Versus

1. Union of India, Through Its Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. Commissioner of Police, Police Head Quarters, I.P.Estate, M.S.O.Building, New Delhi.
3. Joint Commissioner of Police, Intelligence Police Head Quarters, I.P.Estate, M.S.O. Building, New Delhi.
4. Dy.Commissioner of Police, Special Cell/ Special Branch, Police Head Quarters, I.P.Estate, M.S.O. Building, New Delhi. -Respondents

(By Advocate Shri Devesh Singh)

O R D E R (Oral)

By Justice Ashok Agarwal, Chairman.-

Pleadings in the O.A. are complete. By consent, present O.A. is taken up for hearing and final disposal. Heard parties.

2. 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 charge framed against him.

3. A perusal of the order passed by the disciplinary authority shows that the charge of <sup>framed against the applicant</sup> ~~framed against the applicant~~ is ~~not~~ <sup>related</sup>

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unauthorised absence ~~related to~~ <sup>for</sup> a period from 19.3.1997 and onwards. The disciplinary authority has <sup>however</sup> taken into account absence of the applicant for ~~the~~ <sup>an</sup> earlier period ranging from June, 1977 to October, 1996, during which period he was found to have absented himself on 19 different occasions. Aforesaid absence during June, 1977 and October 1996 did not form the basis of the charge framed against the applicant. Aforesaid order of ~~removal from service~~ <sup>of removal from service</sup> penalty is impugned by Shri Raju, learned counsel appearing in support of the O.A. by placing reliance on Rule 16(xi) of Delhi Police (Punishment & Appeal) Rules, 1980 which provides as follows :-

"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."

Based on the aforesaid Rule it is vehemently contended that the impugned order of removal from service cannot be sustained.

4. Shri Devesh Singh, learned counsel appearing on behalf of the respondents has, however, sought to meet the aforesaid contention by placing reliance on Rule 10 of the Delhi Police (Punishment & Appeal) Rules, 1980, which provides as under :-

"The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the complete unfitness awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank."

According to the learned counsel previous absence has been taken into account for a collateral purpose, namely, for finding the applicant as an incorrigible absentee. The same has been taken into account for arriving at a finding of applicant's being completely unfit for police service. The aforesaid finding of being completely unfit for the purpose of awarding extreme penalty of removal from service, therefore, cannot be faulted.

5. In our judgment it would be impermissible to read and construe provisions of Rule 10, *ibid*, in isolation. The same has to be read in harmony with the provisions of Rule 16(xi), *ibid*. A combined reading of the said provisions would indicate that if previous bad record of a delinquent is to be taken into consideration, the same has to form the basis of a definite charge framed against the delinquent. It is only after the aforesaid previous record is made the basis of a charge that the same can be taken into account. Rule 10 is for the purpose of imposing the extreme penalty of dismissal/ removal from service.

6. The situation similar to the one which has arisen in the present case arose before this Tribunal in the case of Ex. Const. Vinod Kumar Vs. Union of India & another being O.A. No.1260 of 1995 decided on 11.8.1999. This Tribunal has *inter alia* observed as under:-

"5. 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."

In 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. It has been observed as under:-

".....We are in agreement with the Tribunal inasmuch as Rule 16(11) of the Rules makes it obligatory for the disciplinary authority to specifically include the previous bad record in the Memo of Charges as a definite charge in the event the disciplinary authority wishes to rely upon it for the purposes 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...."

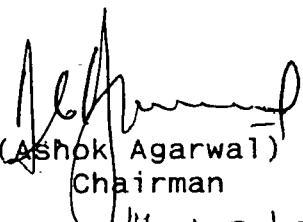
If one has regard to the aforesaid decisions which decisions are binding upon us, ~~the~~ conclusion is irresistible that the impugned order of penalty of removal from service of the applicant cannot be sustained.

7. For the forgoing reasons, the impugned order passed by the disciplinary authority on 21st April, 1998 as also the one passed by the appellate authority on 25th June, 1998 and the one passed by the revisional authority on 8th March, 1999 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

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disciplinary authority will keep out of consideration the previous bad record of unauthorised absence during the 19 occasions between June, 1977 and October, 1996 and proceed to pass an appropriate order of penalty upon the applicant. While doing so, the disciplinary authority will issue a notice to the applicant and will afford him reasonable opportunity of being heard before passing the appropriate orders. Present OA is accordingly disposed of with the above directions. No order as to costs.

  
(Ashok Agarwal)  
Chairman

  
(V.K. Majotra)  
Member (Admnv)

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