

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.382/99

(7)

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 25th day of October, 2000

Ex. Constable Rohtash Kumar
No.882/D.A.P., s/o Shri Ram Kala
previously employed in Delhi Police
r/o Village - Singhola
P.O. Tikri Khurd, P.S.Narela
Delhi - 110 040. ... Applicant

(By Shri Shankar Raju, Advocate)

Vs.

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. Sr. Addl. Commissioner of Police
A.P.&T.
Police Headquarters, I.P.Estate
M.S.O.Building
New Delhi.
4. Dy. Commissioner of Police
Ist Bn. D.A.P.
New Police Lines
Kingsway Camp
Delhi. ... Respondents

(By Shri Rajinder Pandita, Advocate)

O R D E R (Oral)

Justice V. Rajagopala Reddy:

The applicant who was Constable in Delhi Police was issued a charge sheet dated 27.11.1997 alleging the following charge:

"I, Gaytri Parkash Inspector Ist Bn. DAP, Inquiry Officer Charge you Constable Rohtash No.882/DAP that while posted in A Coy. (C.P.reserve) Ist Bn. DAP New Police Lines, you were found absent on 30.4.96 at 7 PM during the evening roll call. Further, you received two absentee notices dated 2.5.96 and 14.5.96 directing you to resume duties but you failed to comply with the orders contained there

✓

in. You joined your duties on 7.6.96 after wilfully absenting for 37 days 19 hours and 15 minutes. Moreover earlier during your service you absented yourself on 20 different occasions for which you were awarded one major punishment of forfeiture of service, I censure, punishment Drills, L.W.P. and warning etc., in order to give you chance to mend your ways. But you did not mend yourself. (S)

The above acts of habitual absentees, negligence, carelessness and dereliction in the discharge of your official duties on your parts amounts to grave misconduct and renders you liable to be dealt with under the provision of Delhi Police (Punishment & Appeal) rules, 1980."

2. As the applicant denied the charges a departmental enquiry has been ordered and after holding the enquiry the enquiry officer found the applicant guilty of the charge. Thereupon the disciplinary authority accepting the findings of the enquiry officer imposed the penalty of dismissal from service by the impugned order dated 3.7.1997 which has been confirmed by the appellate authority by order dated 21.11.1997. The revision filed was also rejected by order dated 1.12.1998. These orders are under challenge in this OA.

3. The learned counsel for the applicant vehemently contends that though the applicant had intimated by certificate of posting about his illness, the enquiry officer had found him guilty only on the mere ground that he had not examined defence witnesses. The learned counsel argues that the failure of examining the defence witnesses would not provide a ground for finding him guilty. The learned counsel for the respondents submits that the applicant had not intimated at all about his illness and has been absented from the office for a period of 37 days and that no intimation has been received by the office from the applicant.

D. O/W

9

4. The only allegation in this case is that the applicant was unauthorisedly absent from 30.4.1996 to 6.6.1996, for a period of 37 days. In order to appreciate the contentions raised we have perused the enquiry officer's report. Six witnesses have been examined on the side of prosecution and several documents have also been exhibited. The applicant however did not produce any defence witnesses but he submitted his written statement in his defence. The enquiry officer found on the basis of the evidence on record and after considering the written statement that he had failed to intimate about his illness to the superior officers. The conclusion of the enquiry officer is as under:

"I have carefully gone through the Written statement of Const. Rohtash No.882/DAP. He has pleaded that he informed about his sickness to DCP through U.P.C. on 30.4.96 and 10.5.96 and secondly he was under treatment with C.G.H.S. Ayurvedic Cell Kingsway Camp Delhi. He provided photo copies only in the support of his version.

As the defaulter did not produce any defence witness in support of his version this cannot be acceptable. Moreover the defaulter used to attend the Ayurvedic OPD from his native village to Kingsways Camp but he willingly avoided to inform his superior officer who are stationed in the same complex.

So I have come to Conclusion that Charges levelled against Const. Rohtash No.882/DAP are finally approved."

5. Learned counsel for the applicant mainly lays stress upon the statement of the enquiry officer that the plea of the applicant was not acceptable only on the ground that the applicant had not produced any defence witnesses. But the enquiry officer had noticed the plea of the applicant that he was sick and that he had informed DCP through UPC (Under certificate of posting) on 30.4.1996 and 10.5.1996 and

OB

secondly that he was under treatment of CGHS Ayurvedic Cell Kingsway Camp, Delhi. He had also noted the allegation that the copies of the notices were sent by the applicant. The inquiry also stated that the failure of examining defence witnesses was one of the reasons why the plea of the applicant could not be given credence. It is the view of the enquiry officer that the applicant should have examined the defence witnesses in support of and to prove his plea that he had already intimated the superior officer. He also considered the fact that the applicant having attended the dispensary had not cared to inform the superior officers. These facts have been taken into consideration while coming to the conclusion that the applicant had not intimated to the superior officers about his illness. The disciplinary authority has also considered all these facts and accepted the findings of the enquiry officer. Thus, it cannot be said that the applicant's plea was not acceptance only on the ground that he had not produced defence witnesses.

6. The learned counsel further contended that the records of previous punishments which have been taken into consideration for awarding the extreme punishment of dismissal were not supplied to the applicant, nor exhibited during the enquiry. This submission appears to be wholly misconceived. As seen supra in the charge sheet a specific mention was made about the previous punishments. No doubt in the documents attached to the charge sheet all the documents with regard to the punishment awarded have not been supplied. But PW7 has been examined who has

(10)

QW

exhibited all the records of previous punishments. The learned counsel however submits that exhibit PW7/A did not contain the records as to the major penalty of forfeiture of service though it has been mentioned by the charge sheet. But from a perusal of Annexure-A7, the plea of the applicant, the applicant has not disputed about the correctness of the punishments awarded to him including the penalty of forfeiture of service. He states in Paragraph 10 of the defence statement as under:

(11)

"So far as my previous Absents are concerned, as mentioned in the 'Charge', I have to submit that these absence have already been decided by the respective Officers and when A Case has been decided, it is a settled Law of the Country, that no Punishment on the same allegations can be given. This may also kindly be taken into considerations."

7. Thus, the applicant though was apprised of the previous bad records in the charge sheet he has not disputed about the same. In the absence of such non-rebuttal of the charges, in our view, it is not necessary for the prosecution to prove the bad records by calling all the records during the enquiry. It is also seen from the evidence of PW7 that the applicant has not made any grievance of the penalty of forfeiture of service during his crossexamination. Rule 16(1) of the Delhi Police (Punishment and Appeal) Rules which is relied upon by the learned counsel, no doubt contemplates the attachment of all the documents to be relied upon to the summary of responds. But as stated supra, there was no necessity of proving the bad record in this case as the applicant had not denied the same.

Copy

(12)

8. The learned counsel for the applicant places reliance upon the State of Madhya Pradesh Vs. Chintaman Sadashiva Waishampayan, AIR 1961 SC 1623, where it was held that copies of all the documents should be relied upon by the prosecution to be supplied, failing which it would amount to denial of an opportunity to the public servant. In our view, this judgment has no application to the facts of the case. The prosecution has supplied all the documents upon which it sought to rely upon and there can be no violation of principles of natural justice or could it be said that reasonable opportunity of defending the case of the applicant was not afforded.

9. In State of U.P. Vs. Mohd Sharif (dead) through L.Rs, AIR 1982 SC 937, is against of no application to the issue that is involved in this case. In that case statements of witnesses recorded during the preliminary enquiry were not furnished. On that ground it was held that the applicant has been denied the reasonable opportunity to defend himself in the disciplinary enquiry. In the instant case there was no preliminary enquiry and hence the supply of the statements would not arise.

10. Further, Rule 16(11) of the Rules in our view has been fully complied with in the present case. In the instant case the charge contained a clear statement about the bad record of the applicant and the applicant was also made aware of the allegation of bad record and he had not controverted the allegations in his defence statement. The learned counsel also cites State of Mysore Vs. K. Manche Gowda, AIR 1964 SC

Opp

506. That was a case again where it was held that if a bad record of delinquent was taken into consideration the same has to be clearly mentioned in the charge sheet and the delinquent should be given an opportunity to controvert and defend the same. As stated supra, the requirement has been complied with in the present case.

11. The learned counsel lastly contends that the punishment was harsh and that a lenient punishment should have been awarded. The appellate authority noticed about the applicant's habitual absentism. He found that he was an incorrigible absentee. In view of the above it is difficult for us to hold that the punishment was too harsh and disproportionate to the misconduct.

12. The OA accordingly fails and is dismissed. We however do not order any costs.

GOVINDAN S. TAMPI)
MEMBER(A)

Unsignaturedly
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/RAO/