

(18)

Central Administrative Tribunal
Principal Bench

O.A. No. 738 of 1999

New Delhi, dated this the 12 APRIL, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Satbir Singh,
Constable No. 73, RB,
PIS No. 28893001,
S/o Shri Lai Singh,
R/o 715, Gali No. 8A,
Villi. Mandoli,
New Delhi-110093. Applicant

(By Advocate: Shri N. Safaya)

Versus

1. The Commissioner of Police,
Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. Jt. Commissioner of Police,
R.P. Bhawan (Sec),
New Delhi.
3. Dy. Commissioner of Police,
R.P. Bhawan,
New Delhi. Respondents

(By Advocate: Ms. Jasmine Ahemd)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns disciplinary authority's order dated 31.12.97 (Annexure A) and the appellate authority's order dated 17.8.98 (Annexure B).

2. Applicant was proceeded against departmentally on the allegations that he was transferred from Traffic unit to Rashtrapati Bhawan by order dated 8.5.96 and should have reported for duty at Rashtrapati Bhawan on 9.5.96 but he did not report for duty, despite absentee notice dated

3.12.96, and resumed duty at Rashtrapati Bhawan only on 11.12.96 after absenting himself unauthorisedly from duty for 217 days.

3. The E.O. in his report concluded that the charge of unauthorised absence from duty was fully substantiated.

4. A copy of the E.O's report was furnished to applicant for representation if any, and applicant submitted his representation.

5. After considering the same, as well as the other materials on record, the disciplinary authority, agreeing with the E.O's findings, by impugned order dated 31.12.97 reducing applicant's pay by five stages from Rs.3500/- to 3125/- p.m. permanently for five years with immediate effect which would have the effect of postponing future increments of pay. the period of absence of 217 days was ordered to be treated as leave without pay.

6. Applicant's appeal was rejected by order dated 17.8.98, giving rise to the present O.A.

7. Heard both sides.

8. A perusal of the disciplinary authority's impugned orders dated 31.12.97 reveals that he has taken applicant's previous record to conclude that he was a habitual absentee and an incorrigible type of

person. Thus applicant's previous record weighed with the disciplinary authority while inflicting the penalty of reducing applicant's pay by five stages with cumulative effect which is a severe or major punishment vide Rule 5 and 6(1) Delhi Police (P&A) Rules. Yet no materials have been shown to us on behalf of respondents to establish that applicant's previous record formed the basis of a definite charge against him, and was included in the charge sheet which respondents were mandatorily required to do under Rule 16(xi) Delhi Police (P & A) Rules.

9. Under the circumstances, the impugned orders cannot be legally sustained, as they have been passed without complying with the mandatory provisions of Rule 16(xi) Delhi Police (P&A) Rules.

10. Other grounds have also been advanced in support of the O.A., but without considering it necessary to discuss them, the foregoing discussion is itself sufficient to warrant judicial interference in this O.A.

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11. In the result the O.A. succeeds, and is allowed. The impugned orders are quashed and set aside. It will be open to the disciplinary authority to pass fresh orders in accordance with law, on the findings of the E.O's report, but while doing so, he will not take into account applicant's previous record. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

Adige
(S.R. Adige)
Vice Chairman (A)

karthik