

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 743/1999

New Delhi, this the 31th Day of January, 2001.

Hon'ble Shri V.K. Majotra, Member(A),
Hon'ble Shri Shanker Raju, Member(J),

Shri Yash Pal (1433/E)
S/o Shri Rajpal Singh
R/o Qr. No.B-3, PS Nand Nagri,
Delhi.

(By Advocate:Shri Shyam Babu)

.....Applicant.

Versus

1. Govt. of NCT Delhi
through its
Chief Secretary
5, Sham Nath Marg,
Delhi.
2. Commissioner of Police Delhi
Police Headquarter,
I.P. Estate,
New Delhi.
3. Sr. Addl. Commissioner of Police,
(Now Joint Commissioner of Police)
(AP&T)
Police Headquarter,
I.P. Estate,
New Delhi.
4. Dy. Commissioner of Police,
4th Batallian, DAP
Kingsway Camp,
Delhi.

.....Respondents.

(By Advocate:Shri ~~Davesh~~ Singh)

O R D E R(Oral)

Shanker Raju, Member(J)

Applicant, a Constable assailed an order dt. 11.12.96 whereby the major punishment of forfeiture of five years approved service with entailing reduction his pay from Rs. 1130/- to 1030 from the date of issue of the order has been inflicted upon him. The applicant as a result will not earn increments of pay during the period of reduction. The period of absence is also treated as 'leave without pay'.

11

2. Applicant who is Constable has been proceeded against in a departmental enquiry on the allegation whereby threatening calls on telephone to the family of the then, R-I 4th Bn. Shri H.C. Joshi to liquidate the whole family of the Inspector and also on the allegations of remaining unauthorisedly and willfully absenting from the duty for 13 days on five occasions.

3. In the enquiry, three witnesses had been examined and thereafter charged was framed regarding threatening calls through applicant to the family of Inspector and also the charge of remaining absent from the duty. Enquiry Officer vide his findings dated 15.9.96 proved the charge against the applicant. Relying upon the findings the disciplinary authority on receipt of the representation of the applicant imposed the major punishment and treated the absence period as leave without pay. The disciplinary authority imposed the punishment upon the applicant on the charge of remaining absent unauthorisedly from duty for the period of 13 days and also on his threatening calls extended to Inspector H.C. Joshi.

4. The applicant has challenged the impugned orders on the ground that the impugned orders are not legally sustainable as the punishment imposed is not in conformity with Rule 8(d)(ii) of the Delhi Police(Punishment & Appeal) Rules 1980(hereinafter after called as Rules) According to the applicant, forfeiture of five years approved service permanently alongwith reduction of pay and also withhoding of increments and deferring the future increments would amount to multiple punishments in contravention of Section 22 of Delhi

12

Police Act 1978 and Rule 8(d)(ii)(ibid). The Full Bench of this Tribunal in ASI Chander Pal Vs. Union of India has already upheld the legality of the Rule(ibid). We are bound by the ratio of Full Bench, as such contention of the applicant is rejected.

5. It has been next contended that in the orders of punishment, the disciplinary authority has already regularised the period of absence and treated as leave without pay. According to the applicant's counsel by treating the absence period as leave without pay the charge of remaining absent no more survives and his impliedly condoned by the respondents. In support of this ratio of Hon'ble Apex Court laid down to in State of Punjab Vs. Bakshish Singh 1998(7) JT 142 has been relied upon. We do not agree with the contention applicant as a Larger Bench of Hon'ble Apex Court in State of Madhya Pradesh Vs. Haridhar Gopal 1969 SLR 274 rejected this contention by observing that treatment of absence period as leave without pay is not by way of regularisation but to maintain the correct service record. Apart from it in one of the judgements carried to Hon'ble High Court after the aforementioned contention rejected in Ram Karan Vs. Union of India. It has been stated by the applicant's counsel further that the judgement of Ram Karan(supra) has already been taken to Hon'ble Apex Court whereafter observing the contradictory judgements, notices have been issued for constituting a Larger Bench. As the order passed by Hon'ble High Court in Ram Karan(Supra) have neither been modified nor set aside the same would be a binding precedent. Therefore this contention of applicant is rejected.

6. It has been next contended by the learned counsel of the applicant that in the summary of allegations, he has been alleged to have threatened Inspector H.C. Joshi and his family over telephone and also in the charge framed a specific allegations have been made regarding his threatening the family of Inspector H.C. Joshi. Whereas in the findings, the enquiry officer has proved a different charge against the applicant of getting Inspector S.C. Joshi and his family threatened by someone or through a mediator. Having regard to this findings of the enquiry officer, the learned counsel for the applicant took resort to Rule 16(9) of Delhi Police(Punishment & Appeal) Rules, 1980 and contended that in the event a new charge different from the charge what has been framed to against applicant in the enquiry is proved by the enquiry officer, in that event the delinquent police officer is to be afforded a reasonable opportunity to defend himself and also an opportunity to deny or admit the facts constituting the said different charge. It has been further stated by the counsel for the applicant that the disciplinary authority also agreed with the findings of the enquiry officer and imposed a major punishments on this different charge of making threatening calls through someone at the residence of Inspector H.C. Joshi. The respondents' counsel refuted this contention of the applicant by referring to the Rule of preponderance of probability and also stressed upon the fact that the Gravaman of charge in the departmental enquiry is the intimidation. According to him whether this threatening has been extended directly or indirectly would not be relevant factor and the fact remains that in the enquiry it has been proved that the intimation has been extended to Inspector S.C. Joshi.

14

7. We have given careful thought to the rival contentions. Before we proceed to decide this legal issue, it is relevant to reproduce the provisions of Rule 16(9)(abid):-

The Enquiry Officer shall then proceed to record the findings. He shall pass orders of acquittal or punishment if himself empowered to do so, on the basis of evaluation of evidence. If the proposes to punish the defaulter he shall follow the procedure as laid down in Rule 16(xii). If not so empowered he shall forward the case with his findings(in duplicate) on each of the charges together with the reasons therefore, to the officer having the necessary powers. If the enquiry establishes charges different from those originally framed, he may record finding on such charges, provided that findings on such charges shall be recorded only if the accused officer has admitted the facts constituting them or has had an opportunity of defending himself, against them.

8. In our view, if the departmental enquiry establishes a different charge from what is framed, then the enquiry officer has to put to the delinquent officer that charge for admission and denial and then to afford him reasonable opportunity to rebut the same. In our considered view, the charge of threatening himself and getting the Inspector threatened by someone are absolutely two different charges. The action of the enquiry officer by proving a different charge other than what has been framed without affording the applicant an opportunity of denial and further depriving him an opportunity to defend it in accordance with law the would be contrary to the Rule 16(9) (ibid) and also against the principles of natural justice. As this different charge framed by the enquiry officer has been relied upon by the disciplinary authority, where the applicant has been deprived a reasonable opportunity to defend, the order of the disciplinary authority would also be in violation of the Rules 16(9)(ibid) is not legally sustainable.

9. Though the Tribunal is precluded from reapprising the evidence and to act as an appellate authority over the conclusion arrived at by the telephone to the departmental authorities to arrive at a conclusion different from what has been arrived at by the disciplinary authority but yet in a judicial review the Tribunal ^{has} has all competence to see whether there is some evidence to support the charge and whether the finding is perverse or such conclusion cannot pass the test of an ordinary reasonable prudent person. In this conspectus, we have perused the evidence recorded during the course of departmental enquiry to see whether the charge of alleged extending of threat by the applicant through someone to Inspector H.C. Joshi is proved or not or any evidence has been recorded on this charge to justify the finding of the enquiry officer. PW-I HC Harinder Singh is only a formal witness. PW-2 HC Jagbir Singh has also proved record. The most relevant witness PW3, HC Harish Chandra Joshi has stated in chief that the applicant rang up at his residence and threatened him and his family. On cross-examination it has been admitted by the witness that he had not been threatened directly and the voice of defaulter constable Yashpal could not be identified as well as also not recognised him physically or by voice. The enquiry officer while giving the findings of guilt on this and observed as follows:-

The const. defaulter has contended that he has no brother namely Madan Bhaiya. His village Pardhan has also certified that defaulter const. has no brother namely Madan Bhaiya and there is no other person of this name in the village. Further defaulter const. has contended that Sh.H.C. Joshi has also admitted in his statement not to be threatened directly by defaulter.

16

Moreover Nips. Joshi has also admitted in his statement that the voice of defaulter does not seem like threatening person. It may be possible that any other person rang up at the residence of Insp. H.C. Joshi who had grudge against const. defaulter to keep in trouble the defaulter constable. However, it is worth to mention that Insp. H.C. Joshi & family was threatened by someone on mediator of defaulter constable.

10. In this conspectus he had held him^h guilty of threatening the family of Inspector H.C. Joshi. We are of the considered view that the conclusion arrived at by the enquiry officer is solely rested on suspicion surmises and conjectures and without proving the fact that someone who had threatened the Inspector is closely or even remotely connected to the applicant had given this finding which is not legally sustainable. In this view of ours, as far as the charge of threatening is concerned, we hold that the same has not been legally proved and there is no evidence to connect applicant with the charge.

11. In the result, OA is allowed and the impugned order of punishment dt. 11.12.96 and appellate order 13.2.97 as well as revisional order 22.4.98 are quashed and set aside. We, however, remand the case back to the disciplinary authority for passing a fresh order only on the charge of remaining absent^h from his duty unauthorisedly for a period of 13 days after affording a reasonable opportunity to the applicant. As regards the question of consequential benefits is concerned, the same would be decided by the disciplinary authority after passing the fresh order in accordance with the law, rules and instructions. No costs.

S. Rajm
(Shanker Raju)
Member(J)

Vk Majotra
(V.K. Majotra)
Member(A)

KEDAR