

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO. 79/1999

New Delhi, this the 16th day of February, 2001

HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Satender Singh,
S/o Sh. Sukhbir Singh,
R/o V & PO Dhanaura Silver Nagar,
PS Binoli, Distt: Meerut,
U.P. Applicant
(By Advocate : Shri Shyam Babu)

VERSUS

1. Hon'ble Lt. Governor,
Delhi,
Rajnivas,
Delhi
Sansad Marg,
2. Commissioner of Police,
Delhi,
Police Headquarters,
I.P. Estate,
New Delhi
3. Sr. Addl. Commissioner of Police,
(AP&T) now Joint Commissioner
of Police (AP&T)
Police Headquarters,
IP Estate, New Delhi
4. Dy. Commissioner of Police,
III Bn. DAP
Kingsway Camp,
Delhi Respondents
(By Advocate : Sh. Ashwini Bhardwaj, proxy
for Shri Rajan Sharma)

O R D E R

By S.A.T. Rizvi, Member (A) :

The applicant (Ex-Constable) has been proceeded against departmentally on the charge of unauthorised and wilful absences on six different occasions spread over to more than 92 days in all during 1993/1994. The disciplinary proceedings concluded in an order dated 26.2.1996 imposing a penalty of removal from service on the applicant. The aforesaid order has been up-held by

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the appellate authority, revisional authority and also at the stage of review by orders passed by the said authorities respectively on 10.10.1996, 20.6.1997 and 02.07.1998. The aforesaid orders including the order passed by the disciplinary authority, removing the applicant from service, have been impugned in this OA.

2. We have heard the learned counsel on either side and have also perused the material placed on record.

3. The first contention raised by the learned counsel appearing for the applicant is that in his findings/report, the enquiry officer has not discussed and analysed the evidence and has simply jumped to the conclusion that the charge against the applicant stood proved without giving his reasons in support thereof. We have perused the findings/report submitted by the enquiry officer and find ourselves wholly in agreement with the learned counsel in that the enquiry officer has, without discussing the evidence and without recording his reasons, simply stated thus -

"I have gone through the prosecution evidence and exhibited documents and I find that every time he wilfully absented without any justification. He had earlier also absented himself on 10 occasions and so it is proved that he is habitual absentee and despite repeated chances, he did not improve."

The enquiry officer as well as the disciplinary authority are supposed to exercise quasi-judicial function and it is absolutely necessary for these authorities as well as for the appellate authority and the others to reason out things before reaching a

2

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conclusion. This requires that the evidence available during the proceedings should be carefully analysed and evaluated before a conclusion regarding the guilt or otherwise of a charged official is reached. Nothing of this sort has been done by the enquiry officer in this case. The findings/report submitted by the E.O., therefore, stands vitiated. Consequently, the disciplinary authority's order too is vitiated.

4. The learned counsel appearing for the applicant has next contended that the charge in respect of the past absences of the applicant on 10 different occasions has not been properly formulated in the summary of allegations. The same has been mentioned in the summary of allegations in a vague manner without specifying the details of the aforesaid 10 occasions during which the applicant was found unauthorisedly and wilfully absent. For this reason also the proceedings stand vitiated. In support of his contention the learned counsel has drawn our attention to Rule 16 (xi) of the Delhi Police (Punishment & Appeal) Rules, 1980, which provides as follows:

"16 (xi) 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."

It would be seen that the previous bad record of a charged official is supposed to form the basis of a definite charge and the aforesaid provision is mandatory in nature. A definite charge will always,

2

according to us, reveal the dates of absence, the period of absence as well as the out-come of the action taken against the charged official on each occasion of unauthorised and wilful absence. Against such a requirement, the respondents have levelled the aforesaid charge in the following terms:-

"On the perusal of previous absentee record, it shows that you had absented on 10 occasions unauthorisedly and wilfully and the punishment, so awarded had no effect on you. You did not improve your habits despite giving repeated chances which establishes that you are a habitual absentee....."

Clearly the charge, in question, has not been properly framed and in the circumstances we find ourselves in agreement with the learned counsel that the proceedings stand vitiated on this account also.

5. The learned counsel appearing for the applicant had raised a couple of other contentions also, but in view of the conclusions reached by us in the preceding paragraphs we do not find it necessary to go into those other contentions.

6. According to the learned counsel appearing for the respondents ~~not~~ the charge of unauthorised and wilful action stands proved on the basis of record only and as such no other evidence is required to prove the charge of unauthorised and wilful absence. That being so, according to him, the enquiry officer has arrived at the conclusion of guilt on the part of the applicant in a proper manner. According to the learned counsel, the applicant has not filed any defence statement nor

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has produced any witness in his defence. In these circumstances, the applicant has been correctly punished with removal from service and by the same token the orders passed by the appellate authority, the revisional authority and the order passed in review are well considered orders and properly passed by the relevant authorities. We do not agree for the reasons already mentioned in paragraphs 3 and 4.

7. In the aforesaid circumstances, we find that the OA deserves to be allowed. Accordingly, we allow the OA and quash and set aside the aforesaid orders passed by the disciplinary authority and the other authorities. The applicant will be reinstated in service without any back wages from the date of removal upto the date of reinstatement. The respondents are given the liberty to proceed against the applicant, if so advised, again by framing a definite charge in respect of the past absences or alternatively proceed against him without including the above said charge. During the course of the proceedings so undertaken, the respondents will follow the principle of natural justice carefully and meticulously having regard to all the relevant rules and instructions on the subject.

8. The OA is disposed of in the aforesated terms.
No costs.

S. A. T. Rizvi
(S.A.T. RIZVI)
MEMBER (A)

Kuldip Singh
(KULDIP SINGH)
CHAIRMAN