

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.961/99

HON'BLE SHRI V.K.MAJOTRA, MEMBER(A)
HON'BLE SHRI SHANKER RAJU, MEMBER(J)

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

1. Jagdish Prasad
(6224/DAP) Ex. Constable
s/o Shri Jansi Ram
r/o Vill : Patanka Bas
PS: Rajgarh, PO:: Patan
Alwar, Rajasthan.

..Applicant.

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT Delhi through its
Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Commissioner of Police
Delhi,
Police Headquarters,
I.P. Estate,
New Delhi.
3. Addl. Commissioner of Police
(Armed Police)
Police Headquarters,
I.P. Estate,
New Delhi.
4. Dy. Commissioner of Police
Ist Bataillon, DAP
Kingsway Camp,
New Delhi.

...Respondents

(By advocate: Ms. Neelam Singh)

O R D E R (Oral)

Hon'ble Shri Shanker Raju, M(J):

The applicant, who is an Ex-Constable, had been proceeded against in a departmental enquiry on the allegation that on two occasions he wilfully and unauthorisedly absented himself from duty for a period of 5 months and 108 days. The disciplinary authority imposed a punishment of removal from service upon the the applicant. Thereafter, the applicant preferred an appeal against the order of removal which was rejected

so as the revision petition filed by the applicant. The applicant assails all these orders in the present OA. 9

2. The applicant had been served with a summary of allegations along with the list of documents and witnesses. In the summary of allegations apart from the absent of 5 months and 108 days, the previous bad record of the applicant on 12 occasions for which he was reprimanded had been relied upon to observe him to prove his habitual absence. In the list of absences, previous absentee record was also. Later on in the departmental enquiry PW-2, Constable Manoj Kumar, ASIP Branch proved the absence notices but the previous bad record of the applicant had not been exhibited or brought on record as reflected from the findings of the enquiry officer. Other witnesses had also not proved the previous bad record of the applicant in the departmental enquiry. The enquiry officer after discussing the evidence and the defence statement of the applicant proved his habitual absenteeism on the basis of his previous bad record of the applicant and came to a conclusion that the applicant is an habitual absentee. The disciplinary authority agreeing with the findings of the enquiry officer and also taking into consideration, the charge of habitual absenteeism, imposed the extreme punishment of removal from service upon the applicant and treated his absence period has not spent on duty. The appellate authority also took into reckoning the previous bad record of the applicant by referring to the previous punishment imposed upon him and came to the conclusion that the

applicant had been an incorrigible police officer on the basis of his continued misconduct. The revisional authority also relied upon the previous bad record of the applicant to come to the finding of the habitual absenteeism against the applicant.

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3. The applicant has taken several legal grounds to challenge the impugned orders and at the outset he stated that one of his legal grounds that the previous bad record of the applicant has not been proved in accordance with law and also keeping in view the provisions of Rule 16(11) of Delhi Police (Punishment and Appeal) Rules, 1980 (Rules for short), the applicant drew our attention to the finding of the enquiry officer as well as the list of witnesses annexed to summary of allegations to contend that PW-2, Constable Manoj Kumar who was working as Absentee Clerk in the ASIP branch had to prove the fact of habitual absenteeism of the applicant by proving absence in the past 12 occasions. We have perused the findings of the enquiry officer. In order to ascertain as to whether his previous bad record of the applicant had been proved against him during the course of the departmental enquiry. Testimony of PW-2, inter-alia, contains the proof of absence notices sent to the applicant at his native place and these absent notices have been exhibited as Ex.P.W-2/A and Ex. P.W-2/B. Testimony of other witnesses do not contain the fact of previous bad record of the applicant. Apart from this no other evidence had been adduced by the prosecution to frame the charge of habitual absentism and past record against the applicant. The enquiry officer without bringing on

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record the previous bad record of the applicant on 12 occasions in the past proved the same and observed him as habitual absentee. The applicant had been denied a reasonable opportunity in the form of cross-examination in absence of the previous bad record been brought in the departmental enquiry through the testimony of PW2, Constable Manoj Kumar. The learned counsel for the applicant also drew our attention to the Judgement of this Tribunal in OA No.1364/99, dated 11.1.2001 and contended that in similar circumstances where the evidence regarding the previous bad record had not been brought on record in the departmental enquiry, the Tribunal was pleased to set-aside the order and remanded the case back on the ground that under 16(11) ibid if the previous bad record has to be reckoned while imposing the severe punishment to a police officer then the said record should be made a specific charge and a reasonable opportunity should be afforded to police official to defend it. The learned counsel for the respondents produced the departmental enquiry file for our perusal and contended that as the previous bad record was not relied upon to punish the applicant and as the punishment imposed upon the applicant was on the ground of remaining absence of 5 months and 108 days and as well the extract of the previous bad record had already been supplied to the applicant no prejudice was caused to the applicant with regard to the previous bad record. It has been further contended that the previous absence record is only considered to judge the incorrigibility of a police officer.

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4. While perusing the departmental enquiry record, we have perused the testimony of PW2, Constable Manoj Kumar where he had proved the absentee notices issued to the applicant and exhibited the same as Ex.P.W.-2/A and Ex.P.W.2/B. We find a definite and glaring interpolation in the statement of Constable Manoj Kumar whereby it has been added "It is stated that I had exhibited the previous absent record of Constable Jagdish Prasad from Sl. No.1 to 12 as exhibited PW2/C. The said insertion of this statement of fact in the evidence of PW2 is firstly of small letters and is added with a different ink. Apart from it, the signatures of the witness had already been appended in the statement and thereafter while adjusting the signatures the line adding the previous bad record had been latter on inserted in the testimony of PW2. The aforesaid insertion to our mind is absolutely fabricated/forged and interpolated later on to justify their action by the respondents. In this view of ours, we are satisfied on two grounds. Firstly, in the enquiry report, PW2's testimony had not referred to exhibit-PW2/C and this exhibit had not at all been mentioned by the enquiry officer anywhere in his findings. Secondly, the applicant in his appeal against the order of removal had taken a specific ground mentioned at Sl. No.(iii) stating that there is a violation of Rule 16(11) of Delhi Police (Punishment & Appeal) Rules as the previous extract of record though mentioned in the list of documents had never been served upon him and also the same had also not been exhibited during the course of departmental enquiry. The appellate authority while rejecting the appeal of the applicant had not at all

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mentioned about this specific legal plea of the applicant in the contentions of the applicant mentioned therein and the same was neither adjudicated/considered nor rejected. In our considered view when the applicant had taken this specific objection in his appeal, the respondents with a view to counter the same, fabricated and later on inserted the fact of previous bad record and exhibited it as PW2/C. In our view had this evidence come earlier in the testimony of PW2 as defended by the respondents the same would have figured in the testimony of PW2 as well as in the finding. The enquiry officer could have relied upon it while coming to the conclusion that the applicant was a habitual absentee. In our view, the aforesaid interpolation is a serious lapse on the part of the respondents and is deprecated and we take a serious note of this.

5. We are fortified by the view taken by the Tribunal in OA No.1364/99 supra. Rule 16(xi) ibid which is a substantive provision is to be meticulously complied with while taking into consideration the previous bad record of a police officer. Not only the previous record should be made a specific part of the charge but against which a police officer should be afforded a reasonable opportunity to defend himself. Unless the previous bad record is put to a police officer in the form of evidence brought on record in the departmental enquiry, the applicant should not be punished by taking this previous bad record. This is precisely what happened in the present case. In absence of the evidence of previous bad record proved or brought on record by any witness and also in

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absence of being exhibited the applicant had not been afforded a proper notice of the same and accordingly he could not effectively defend this piece of evidence against him in the departmental enquiry.

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6. Latter on, the enquiry officer while coming to the conclusion of guilt against the applicant, proved this charge of habitual absenteeism on the basis of previous bad record of the applicant on 12 occasions. Furthermore, the findings of the enquiry officer are also agreed upon by the disciplinary authority and there he imposed the extreme punishment of removal upon the applicant taking into account the previous bad record as per Rule 16(xi) ibid. The consideration of previous bad record had not stopped at the level of disciplinary authority but the same was also taken into consideration by the appellate as well as revisional authority.

7. In view of the fact that the previous bad record was the basis for extreme punishment against the applicant and rejection of his departmental appeal and revision petition, the same could not have been validly taken into consideration without applying the provisions of Rule 16(xi) ibid. Having regard to the discussion made above, we are of the considered view that the impugned orders are not legally sustainable on this illegality alone.

8. As regards our observations pertaining to the interpolation of record by the respondents in the testimony of evidence of PW-2 by inserting the

previous bad record, we take a very serious note and direct the respondents to enquire in this matter and fix the responsibility of erring official. As in the peculiar facts and circumstances of the case, where the applicant had been punished on the basis of the interpolation and fabrication made by the respondents, we would not like to give respondents an opportunity to correct themselves by remanding this case back to them.

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9. In the result, this OA is allowed. The impugned orders of removal dated 9.3.1998, 5.8.1998 and 11.2.1999 are quashed and set aside. The respondents are directed to reinstate the applicant forthwith in service with all consequential benefits but without any backwages. As the respondents have been found to have fabricated the record to justify their action we impose a cost of Rs.5000/- (Rupees Five Thousand Only) on the respondents to be paid to the applicant. The respondents are directed to comply with these directions within a period of two months from the date of receipt of a copy of this order.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/

V.K. Majotra

(V.K. MAJOTRA)
MEMBER(A)