

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.978/99

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

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

Ex. Const. (DVR.) Jagat Singh
S/o Shri Juglal,
R/o Vill. & P.O. Kundli,
P.S. Rai, Distt. Sonapat,
Haryana.

...Applicant.

(By advocate: Shri Ajesh Luthra)

Versus

1. Union of India,
Through Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001.
2. The Commissioner of Police,
Police Head Quarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
3. The Joint Commissioner of Police,
(Operation), Police Head Quarters,
I.P. Estate,
New Delhi.
4. The Addl. Deputy Commissioner of Police
(Police Control Room)
Police Head Quarters,
I.P. Estate,
New Delhi.

...Respondents

(By advocate: Ms. Neelam Singh)

O R D E R (Oral)

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

The applicant, who was working as Constable in Delhi Police had been proceeded against in a departmental enquiry on the charge that on 14.11.1996 he was directed by SI Mohinder Singh, L.O./New Delhi Distt., to perform his duty for which he had refused by referring to his medical record and sought for medical rest. The facts were brought to the notice of ACP, Headquarter, who had directed the applicant to be produced before him and again he refused and also

abused the senior officers. On the basis of finding of enquiry officer holding the applicant guilty, the disciplinary authority vide an order dated 17.1.1998, dismissed the applicant from service and treated the period of his suspension w.e.f. 14.11.1996 and 23.12.1996 as not spent on duty. The appellate authority on appeal filed by the applicant, also maintained the order of dismissal by referring to the previous bad record of the applicant vide an order dated 4.6.1998. Both these orders are assailed in this OA.

2. The applicant firstly contended that the summary of allegations as well as the charge framed against the applicant are indefinite/vague and lacked in material particulars. According to the applicant's counsel, one of the charge alleged against the applicant is of abusing his seniors and the exact abusing words have not been reproduced either in the charge or in the summary of allegations. The learned counsel further contended that in absence of the exact words reproduced in the charge, the applicant had been deprived of a reasonable opportunity to defend the said part of charge and this violates the principles of natural justice. The counsel also placed reliance of Rule 16(4) of Delhi Police (Punishment and Appeal) Rules, 1980 to state that the charges to be framed on the basis of the evidence recorded in support of summary of allegations. The applicant in this conspectus stated that when the exact words were not reproduced in the summary of allegations or brought as an evidence through the witnesses there could not be question of specific charge framed against him.

Holding the applicant guilty of this charge would be against the principle of natural justice and as he has been deprived a due notice of this charge would be unfair and wholly unjust to hold him guilty. The learned counsel for the respondents took strong exception to the contentions of the learned counsel for the applicant and stated that though the exact words of abusing language had not been stated either in the summary of allegations or in the charge framed but drawing our attention to testimony of PW2, the learned counsel for the respondents stated that the fact this, witness stated that the applicant abused him is sufficient to show that it was an abusing language. The learned counsel for the applicant further contended that in the absence of exact words of abusing language either stated in the charge or in the enquiry, would vitiate the punishment and the severe punishment of dismissal will not be legally sustainable. To support this contention, he relied upon the ratio of the Hon'ble Apex Court in Ram Krishan Vs. Union of India & Others, 1995 SCC (L&S) 1357 wherein on the similar allegations of abusing a senior official, the Hon'ble Apex Court observed that "when the nature of the abusing language used by the appellant has not been stated the imposition of punishment of dismissal would be harsh and disproportionate to the charged officer." We are in agreement with the contention of the learned counsel for the applicant and bound by the ratio of Hon'ble Apex Court Supra.

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3. Apart from it, from the record, we find that the disciplinary authority while imposing the extreme punishment of the dismissal upon the applicant had but reliance on the charge of using abusing language by the applicant which according to the disciplinary authority was a serious misconduct. The appellate authority also while rejecting the appeal stated the fact that the applicant had taken this specific legal plea before him and referred to the ratio of the apex court supra, observed as under:

"iv) According to the Appellant the enquiry is vitiated since the allegations were about use of abusive language and his having disobeyed the directions but exact abusing language was not described in the summary of allegations or charge. He quoted the judgement of Supreme Court in the case of Ram Kishan Vs. Union of India, 1995 Vol-II/SC/SLJ Page 283 in SLP No.8325 of 1995 decided on 1.9.1995. This plea has no force as it is not compulsory to reproduce the unparliamentary words which the Appellant used. The statement of PWS is sufficient to prove the guilt. There is no relevance of the case quoted by him."

4. In our considered view the observation of the appellate authority is absolutely contrary to the ratio laid down by this apex court which mandates the exact abusing words to be stated by the department. In our view, in order to meet the charges, the respondents are legally bound to issue a definite summary of allegation and also to incorporate the exact words of abusing language otherwise the delinquent Police Officer would not be able to defend properly. The Hon'ble Apex Court in Ram Krishan supra has also keeping in view of the gravity of the imputation observed that when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated

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and the circumstances surrounding the event that led to the use of abusing language and no strait-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service and each case has to be considered on its own facts. As the exact words are not reproduced, we held that the applicant has been greatly prejudiced in defending the charge. As the applicant has also been charged for not reporting for duty, along with the charge of abusing language it is not possible to dissect these charges as the same are cumulatively and conjunctively took into consideration by the disciplinary authority to award the extreme punishment of dismissal upon the applicant. 19

5. It has been further contended by the learned counsel for the applicant that the extreme punishment of dismissal awarded to him by the disciplinary authority is contrary to Rule 8(a) and 10 of the Delhi Police Rules *ibid*. According to the applicant in order to sustain extreme punishment of dismissal or removal, the disciplinary authority has to keep in mind the fact of a grave misconduct and incorrigibility of a police official rendering him completely unfit in the police service.

6. The learned counsel for the applicant relies ratio of the Full Bench of this Tribunal in *Virender Kumar and Ors. Vs. Commissioner of Police, Delhi and Others* in OA 139/92 and connected OAs decided on 28.7.1999 and stated that the Full Bench of this Tribunal has clearly laid down that the disciplinary authority is not required to record a

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specific finding of the delinquent official being guilty of grave misconduct rendering him unfit for police service before passing the punishment of dismissal or removal from service in terms of Rule 8(a) of the Delhi Police Rules but it must be indicated that the mandate of this statutory provision was borne in mind by the disciplinary authority while passing the order of removal or dismissal from the service. According to the ratio of the aforesaid Full Bench, the punishment of dismissal could not be awarded in a case where the previous conduct of an officer does not show incorrigibility and unfitness on account of his continued misconduct. The applicant while placing reliance on this Full Bench decision supra brought to our notice the decision rendered in OA 1779/94 by contending that in that case the applicant was charge sheeted for mischief and refusal to perform duty and was ultimately found to have committed serious misconduct rendering his retention in the service as highly detrimental and further contended in that conspectus the requirement of Rule 8(a) was fulfilled. Referring to the present case, it is stated that the disciplinary authority while imposing the extreme punishment of dismissal simply observed that the refusal to appear before the ACP and use of abusive language by the applicant is a very serious misconduct. In this conspectus it is stated that the requirement and mandate of Rule 8(a) and 10 is not complied with. The learned counsel for the respondents, on the other hand, defended the order by stating that the applicant had been charged for a grave misconduct, and the disciplinary authority while referring to the serious misconduct had already taken

into account the requirement of Rule 8(a) and 10 *ibid* and complied the same. As we have observed above, the charge of using abusing language could not be proved by the department in absence of bringing on record the exact words in the charge, imposition of punishment was only on the charge of refusal to appear before a police officer. In the circumstances, the applicant had demonstrated the department that he had been continuously ailing and advised lighter duties, the applicant's request for not assigning him a continuous duty for two shifts and despite production of medical report should not be construed as a refusal to perform to duty. It was rather a request to the department not to assign the duty. Whatsoever may be the disciplinary authority in view of the fact that the use of abusive language was considered to be a serious misconduct against the applicant and the same was made the basis of the extreme punishment of dismissal the order of disciplinary authority would not be sustainable only on the ground of refusal to perform duty in mitigating circumstances and the question of penalty should have to be reconsidered in conformity with Rule 8(a) and 10 by the disciplinary authority in view of the observations made us above.

7. Apart from it, we also find, from the order of appellate authority, that while maintaining the extreme punishment of dismissal the objection of the applicant regarding the exact words to be stated with reference to the abusive language had not been taken into consideration and also while sustaining the order of the disciplinary authority took into reckoning the previous bad record of the applicant,

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i.e., essentially earlier four occasions on similar misconduct without putting the same to the applicant. Although Rule 16(xi) of Rules ibid provides for incorporation of the previous record in the charge, only if it is considered by the disciplinary authority. As the appellate authority had considered the previous bad record which is a material in addition to what has been relied upon by the disciplinary authority in the departmental enquiry, a duty is casted upon such authority to give reasonable opportunity to the applicant to defend the same.

8. In our view the order of the appellate authority is also not sustainable in the eyes of law.

9. Having regard to the above discussion, we set-aside the order of dismissal dated 17.1.1998 as well as the appellate order dated 4.6.1998. However the case is remanded back to the disciplinary authority to pass afresh order of penalty keeping in view of the observations made above and excluding the extreme punishment of dismissal or removal as the Hon'ble Apex Court in Ram Krishan's case supra observed that punishment of dismissal without specifying the exact words used as an abusing language penalty of dismissal should not be commensurated. Although we have no jurisdiction to substitute the punishment but the above stated punishment has pricked our causionence. The respondents thereafter decide the intervening period of dismissal as per the rules and instructions on the subject.

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10. The aforesaid directions should be complied with within a period of three months from the date of receipt of a copy of this order. The OA is disposed of with the above directions. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

V.K. Majotra
(V.K. MAJOTRA)
MEMBER(A)

/RAO/