

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

17

O.A. NO. 1050/1998

New Delhi, this the 20th day of December, 2000

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Ex.Constable Inderjeet Singh,
S/o Shri Ram Gopal, aged 42 years,
R/o Vill & P.O. Jharoda Kalan,
P.S. Najaf Garh, South West Distt,
New Delhi
Previously employed in Delhi Police
(By Advocate : Shri Shankar Raju)

.... Applicant

VERSUS

1. Union of India,
Through its Secretary
Ministry of Home Affairs,
North Block, New Delhi
2. Sr. Addl. Commissioner of Police,
A.P. & T, Police Headquarters,
I.P. Estate,
New Delhi
3. Dy Commissioner of Police,
1st Bn., D.A.P.,
Kingsway Camp,
Delhi
..... Respondents
(By Advocate : Shri Rajinder Pandita)

O R D E R

Shri S.A.T. Rizvi :

On the charge of unauthorised absence combined with mis-behaviour with a fellow Constable and the use of filthy/unparliamentary language under the influence of liquor, the Applicant (Ex-Constable) has been formally charged in the following terms:-

"I, Insp. Hem Chand, E.O. charge you Const. Inderjeet Singh No. 6011/DAP. While posted in 'A' Coy C.P. Reserve (New Police Lines) you were found, absent, when C.P. Reserve called for duty at 9.45 P.M. on 24.4.96, vide DD No.61 A dated 24.4.96. After 15 minutes of absence you reported of Roznamcha and

2

18

misbehaved with Const. Jagbir Singh No. 636/DAP the Roznamcha Munshi, about marking your absent. You also tore page No.62 of Roznamcha and used filthy/unparliamentary language and abused in the presence of Const. Ravinder Singh No. 6152/DAP and Const. Sahdev Singh No. 556/DAP and you were reported to be under the influence of liquor and when you were to be sent for medical examination, you ran away to avoid medical examination as such you had absented yourself for a period of 5 days, 17 hours and 35 minutes from the duty of C.P. Reserve willfully/unauthorisedly and without permission of competent authorities. As per your service record it is found that during past you had absented yourself on 28 occasions and were awarded warnings/LWPs/PDs/Censures and 4 major punishments etc.

The above act on your part amounts to gross misconduct, negligence, carelessness and dereliction in the discharge of your official duty which renders you liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rule 1980."

2. In the ensuing disciplinary proceedings, the applicant was found guilty of the charge and has been dismissed from service by the order of the Disciplinary Authority dated 5.12.1996. The aforesaid order was carried in appeal. The Appellate Authority, on finding that the punishment awarded to the applicant is justified and commensurate with the gravity of mis-conduct, has rejected his appeal vide order dated 28th September, 1997. The applicant has impugned both these orders together with the findings of the Enquiry Officer dated 16.10.1996.

3. The learned counsel appearing in support of the OA has, at the outset, contended that, on a Preliminary Inquiry being made by Inspector R.S. Dahiya, commissioning of a cognizable offence was disclosed, but prior permission of the Addl. Commissioner of Police in terms of Rule 15 (2) of the Delhi Police (Punishment & Appeal) Rules 1980 was not obtained. The learned counsel has next proceeded to claim that the defence of the

dh

19

applicant has been seriously prejudiced due to non-supply of a copy of the preliminary enquiry report prepared by the aforesaid Inspector Dahiya. He has gone on to claim further that the defence of the applicant has also been prejudiced additionally due to non-supply of copies of the statements of Constables Ravinder Singh and Sahdev Singh recorded during the course of preliminary enquiry together with the statements made by S.I. Mahinder Singh, Inspector Khazan Singh and H.C. Bopal Singh during the same enquiry. A copy of the injury sheet allegedly prepared by SI Mahinder Singh has also not been supplied to the applicant. The applicant's specific allegation is that Const. Jagbir Singh has falsely implicated him. The applicant's contention is that in point of act he had never gone to the CP/Reserve for duty as he was advised bed rest by the Doctor working in Govt. Dispensary, and that as per the Doctor's advice he remained on sick leave from 24.4.1996 to 30.4.1996. The applicant has also alleged that the Enquiry Officer has cross examined his defence witnesses without being competent to do so. He has further alleged that his previous absences having already been decided in the past should not have been made part of the summary of allegations or the charge served on him. However, if it was found necessary to do so, the exact details of the past mis-behaviours should have been supplied. In regard to the charge of tearing off of a page from the Daily Diary, the applicant has stated that SI Mahinder Singh has admitted that when he lodged a subsequent DD No. 62-A, the original DD Register was in tact, and on this basis he alleges that the aforesaid Const. Jagbir Singh himself tore the page from the DD Register and has falsely implicated the applicant. According to the

2

20

applicant S.I. Mahinder Singh had lodged the D.D, in question, on the basis of hear say. The applicant has further gone on to say that he had informed the Control Room on 24.4.1996 about his illness, but a report to this effect was not recorded. His application for medical rest was, according to the applicant, forwarded to the competent authority.

4. We have heard the learned counsel on either side and have primarily with the help of learned counsel appearing for the applicant perused the report/findings of the enquiry officer and have also perused a few other papers produced before us by the learned counsel for the applicant, which have been taken on record. We have also heard the learned counsel appearing for the respondents insofar as the main contentions raised by the applicant are concerned.

5. In support of his contention that prior approval of the Addl. Commissioner of Police was required in this case, the learned counsel for the applicant has not placed before us any material to show that the applicant had committed a cognizable offence because of which the aforesaid prior permission under Rule 15 (2) aforesaid was required. According to the respondents, there was no need to obtain the prior approval/permission of the Addl. Commissioner of Police. We find that the learned counsel for the applicant has not pressed his argument on this point with any amount of seriousness. The plea, in question, is, therefore, rejected.

2

21

6. A careful perusal of the charge reveals that the applicant was found guilty of absence when the CP/Reserve called him for duty at 9.45 P.M. on 24/4/1996 and that after 15 minutes of the aforesaid absence, the applicant reported at Roznamcha and mis-behaved with Const. Jagbir Singh (Roznamcha Munshi) for having been marked him absent. He is also charged with tearing off of page No. 62 of the Roznamcha Register and of using filthy/unparliamentary language and abuse in the presence of Consts. Ravinder Singh and Sahdev Singh under the influence of liquor. He is also charged with having run away when preparations were being made to send him for medical examination, to come back only after 5 days, 17 hours and 35 minutes of wilful/unauthorised absence. He is also charged with 28 past absences when he was awarded warnings, LWPs, PDs and Censures and four major punishments.

7. For our purpose, we have, with the assistance of the learned counsel appearing for the applicant, perused with special care the evidence rendered during the enquiry by the three eye witnesses of the incident involving the applicant. These are Const. Jagbir Singh (Roznamcha Munshi) and Constables Ravinder Singh and Sahdev Singh. We find that all the three have clearly and unambiguously stated the facts in support of the aforesaid charge. The delinquent official has cross-examined these witnesses, but nothing of any help to the applicant has come out of the cross-examination.

8. In regard to the charge of non-supply of documents, we have first noted that as asserted by the learned counsel for the respondents, a preliminary

22

22

enquiry was, in fact, never made, and, therefore, the question of supply of a copy of the said report along with the statements forming part of that report would not arise. Accordingly, the allegations made in this regard cannot be sustained.

9. A perusal of the list of witnesses and documents enclosed with the summary of allegations served on the applicant shows that as many as 9 witnesses have been listed therein and the gist of evidence to be given by each has also been indicated. The list of documents supplied shows 8 different documents supplied to the applicant including the statements of Const. Jagbir Singh dated 25.4.1996, who, according to the applicant, has implicated him falsely. A copy of the previous record of the applicant was also supplied to him along with the statement of H.C. Bhopal Singh also dated 25.4.2996. A copy of the statement submitted by Inspector Dahiya has also been supplied to the applicant. It seems that it is this statement of Inspector Dahiya together with the statements of HC Bhopal Singh and Const. Jagbir Singh, which have been mis-taken by the applicant as forming part of preliminary enquiry report. We thus find that the applicant has been supplied with whatever was available with the respondents and, therefore, the question of prejudice being caused to him due to non-supply of any documents cannot arise.

10. During the course of enquiry, the applicant had, by an application dated 22.7.1996, requested the enquiry officer for supply any number of documents. His plea is that among these, a copy of the injury sheet prepared after medical examination of the applicant would have

2

(23)

been of particular relevance in his defence along with a copy of the torn page No.62 of the DD Register. Both

these documents have not been supplied to him. On a perusal of the aforesaid letter, we find that in most cases the applicant has asked for a copy of the statement, if any recorded during the preliminary enquiry (emphasis supplied). It would seem that the applicant was never quite sure as to who has been examined during the alleged preliminary enquiry and who has not been so examined, and that is why he has asked for copies of the statements, if any recorded. The respondents' case is that first of all no preliminary enquiry was ever made and secondly copies of the statements of Inspector Dahiya and HC Bhopal Singh and Const. Jagbir Singh of dated 25.4.1996 have already been supplied to the applicant, and that nothing is left to be supplied to the applicant. According to the respondents, the applicant had slipped away immediately after the event and, in any case, before he could be sent for medical examination. This fact is duly supported by the evidence rendered by the aforesaid three eye witnesses. No injury sheet could, therefore, be prepared and accordingly the question of supplying a copy thereof would not arise. In the aforesaid request letter of 22.7.1996 the applicant has asked for a copy of the injury sheet, if prepared by SI Mohinder Singh (emphasis supplied). This shows that the applicant himself was not sure whether any injury sheet was ever prepared.

11. During the course of arguments, the learned counsel for the applicant has sought to make capital out of the event of tearing off of page No. 62 of the DD Register. To support his argument, the learned counsel

an

2A

has produced a copy of the detailed statement of PW-6 (SI Mahinder Singh). From this statement, we find that in his cross examination, this witness says that when he recorded DD No. 62 on 24.4.1996, page No. 62 of the DD Register had not been torn off. This statement made in the cross-examination cannot assist the applicant inasmuch as the aforesaid witness had recorded DD No. 62-A about the applicant's absence and not DD No. 62 referred to in the aforesaid cross-examination. At best, in our view, there is some confusion in the evidence about the actual numbers of the DD pages written on this occasion and/or the page which might have been torn off. From a copy of DD No. 61-A dated 24.4.1996 recorded by Const. Jagbir Singh filed by the learned counsel for the applicant, it would appear that at 9.45 PM on 24.4.1996, the applicant was found absent and this fact agrees with the prosecutions' allegations. However, the prosecutions' case is that after having been found absent at 9.45 PM, the applicant came on the scene only 15 minutes later and mis-behaved with fellow Constables in the manner charged by the respondents. In order to appreciate the position in this regard further, we have perused the order passed by the Disciplinary Authority in this case. In his order, the Disciplinary Authority clearly says that the aforesaid SI Mahinder Singh (PW-6) made entry in DD at Page 62-A dated 24/4/1996 according to which the defaulter Const. (applicant) was present on duty and had mis-behaved, caused brawl and created ugly scene at the Roznamcha Roll. The same S.I. has further mentioned in the said entry that when explanation of the applicant was called for he ran away. The aforesaid DD entry (No.62-A) is in the hand writing of the aforesaid SI Mahinder Singh. In view of this, the statement made

2

(25)

by this SI (PW-6) different from what he has recorded in writing cannot be relied upon. In view of this, no reliance can be placed on the statement of this witness (PW-6) made in cross-examination in regard to the fact of tearing off of page 62 of the DD Register. In result, we find that even though there might be an iota of doubt about the fact that of tearing off of a page from the DD Register, there is no manner of doubt about the mis-behaviour of the applicant under the influence of liquor. Going by the pre-ponderance of probabilities, according to us, the charge of tearing off of a page from the DD Register also stands proved. For these very reasons we find ourselves one with the Disciplinary Authority in holding that the medical certificate cited in applicant's defence is likely to have been managed. Furthermore, the prescription attached do not disclose the advice of bed rest as alleged. The Doctor has simply advised rest. Also there is no fitness certificate from the same Doctor, at least none was placed before us. The alleged animosity with Const. Jagbir Singh who is supposed to have falsely implicated the applicant has also not been proved. An E.O. is duly empowered under the relevant Rules to put questions to witnesses to clear ambiguities and to test their veracity and so there is nothing wrong if the E.O in this case did so. The documents connected with his previous absences etc. were duly supplied to him.

12. Thus, in a nut-shell, the applicant is left with no defences and the charge levelled against him, we find, has been correctly found to have been proved. In the circumstances, we cannot interfere with the orders passed by the Disciplinary Authority or the Appellate Authority.

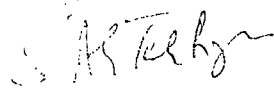
2

26

13. For the reasons mentioned in the preceding paragraphs, the present OA is dismissed without any order as to costs.

2


(ASHOK AGARWAL)
CHAIRMAN


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

(pkr)