

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O. A. NO. 1530/98

New Delhi, this the 25th day of August, 2000

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

Chandbir Singh (1968/DAP), S/O Sh.
Bikram Singh Rama, R/O Vill. Behzadka,
P.O. Pilona, PS, Felaweda, Distt.
Meerut, (UP)

.....Applicant

(By Advocate: Sh. Shyam Babu)

Versus

1. Joint Commissioner of Police
(Intelligence) Delhi, Delhi
Headquarters, I.P.Estate, New
Delhi.
2. Dy. Commissioner of Police
(Special Cell) Special Branch,
Delhi, PS Lodhi Colony, New Delhi
- 110 003.

.....Respondents

(By Advocate: Ms. Neelam Singh)

O R D E R

Hon'ble Mr. S.A.T. Rizvi, Member (A):

The applicant, Sh. Chandbir Singh, a Constable in Delhi Police, has filed this OA, challenging the orders dated 25.7.97 (Annexure-A) and dated 21.10.97 (Annexure-B) respectively passed by the respondent No.2 and the Joint Commissioner of Police (Intelligence), Delhi, Police Headquarters, New Delhi. Vide order dated 25.7.97, the applicant has been punished, inter alia, with removal from service and the appeal filed by him against this order, has been rejected by the Sr. Addl. Commissioner of Police (Intelligence) vide their order dated 21.10.97.

- 2) The facts of the case in brief are that the applicant had been working as a Constable in the 2nd Bn.

when he was temporarily posted to the Special Cell in December, 1996 and thereafter transferred in March, 1997 to the West Distt. of Delhi Police. On 9.4.97, departmental action was initiated against him by the respondent No.2, who, according to the applicant, was not the disciplinary authority in respect of the applicant at the relevant time. The applicant's contention is that he was only temporarily posted to work in the Special Cell and that such an arrangement could not mean that he was placed under the disciplinary control of the Dy. Commissioner Special Cell. However, charges were framed by the Enquiry Officer against the applicant on 19.5.97 and the charge-sheet contained, inter alia, vague and indefinite charges thereby contravening the provisions of Rule 16 (xii) of the Delhi Police (Punishment & Appeal) Rules, 1980. In his enquiry report dated 13.6.97, the E.O. held that the charges against the applicant stood proved. Thereafter, after completing the necessary formalities, the applicant was punished by the respondent No.2 vide order dated 25.7.97 already referred to above. By virtue of this order, the applicant was removed from service and, at the same time, the period of his absence, including a period of 90 days, was treated as not spent on duty. The applicant preferred an appeal against the said punishment order but the Appellate Authority rejected the appeal vide order dated 21.10.97, also referred to above. The applicant has mentioned that, as on 9.4.97, when disciplinary action was initiated against him, he was posted in the 2nd Bn. and was drawing his pay from that Bn. and was also, at the same time, on the roll call of that Bn. He has also taken the plea that he

stood transferred to West Distt. of Delhi Police in March, 1997 and, therefore, could not have been tried departmentally by the respondent No.2. He has referred to the provisions of Rule 14 (i) of Delhi Police (P & A) Rules, 1980 to argue that the departmental action could be initiated only by the authority competent to do so and, in his case, the respondent No.2 was not the competent authority, as already stated. Based on this argument, the applicant has gone on to say that since the initiation of the departmental action against him on 9.4.97 was itself without jurisdiction, the subsequent proceedings undertaken against him also stood vitiated. He has also challenged the appointment of the E.O. by an authority who was not the disciplinary authority in his case, and, in this context, has referred to the provisions of Rules 16 (1) of Delhi Police (P & A) Rules, 1980. In the same context, the applicant has referred to the circular dated 31.5.94, issued by the Delhi Police in pursuance of Rule 14 (iv) of Delhi Police (P & A) Rules, 1980, in which it has been clearly brought out that, in the case of transfer, the competent authority in disciplinary matters would be the authority under whose care the transferred employee has been placed in consequence of the order of transfer. In relation to the period of the applicant's absence lasting 90 days, the applicant has pointed out that no specific charge was framed against him with respect to the said period of absence and, consequently, the applicant was not given any opportunity to meet this particular charge during the course of the departmental proceedings. His plea is that since the punishment order dated 25.7.97 has taken into

account, the aforesaid period of absence lasting 90 days, the said order stood vitiated on the ground of illegality and also as being against the principles of natural justice. He has also referred to the provisions of Rule 8 (a) and 10 of Delhi Police (P & A) Rules, 1980 to say that the opinion required to be made by the disciplinary authority in accordance with the provisions of these rules, was not quite made and on this ground also, the punishment order dated 25.7.97 stood vitiated. According to the applicant, his previous record could not be taken into account in the departmental proceedings without first framing a definite charge in that respect, and since this has not been done, the proceedings taken up against him contravened the provisions of Rules 16 (xii) of Delhi Police Rules, 1980. He has also challenged the opinion formed by the Appellate Authority to the effect that no medical certificates were submitted by him and, according to the applicant, forming of such an opinion was without evidence on record. According to him, the Appellate Authority has rejected his appeal for reasons which are perfunctory in nature and the said order is, therefore, liable to be set aside. It is also his contention that the punishment of removal from service imposed upon him, is arbitrary and utterly perverse and is also disproportionate to misconduct.

3) The respondents, in their counter reply, have stated that the applicant was correctly proceeded against on 9.4.97 as he was then under the disciplinary control of the Special Cell and accordingly the disciplinary proceedings undertaken against him were legally in order.

They have brought out the details of all the different occasions, 8 in all, on which, the applicant absented himself from work in an unauthorised manner, adding that the applicant is a habitual absentee, looking at his previous record of unauthorised absence on 19 different occasions. The respondents have also pointed out that the applicant flouted superiors orders on 14.3.97, when he failed to take summons to Patiala House Court in respect of certain police officials. (This is, however, an allegation denied by the applicant in his OA). According to the respondents, the fact of habitual absenteeism, borne out by his previous absence on 19 different occasions, was rightly brought out in the charge sheet and the same could not be said to be vague and the applicant could avail of the opportunity given to him during the course of the departmental proceedings to defend himself against this particular charge. In respect of applicant's transfer in March to West Distt. of Delhi Police, the respondents have pointed out that since the applicant remained absent from duty from 20.3.97 right upto 18.6.97, he could not be relieved and, therefore, remained under the disciplinary authority of the D.C.P. Special Cell. The respondents have, however, admitted that the charge of the applicant's unauthorised absence lasting 90 days, was not included in the charge sheet in consequence of which, the applicant has been finally punished. They have, however, denied violation of the Rules referred to by the applicant forming part of the Delhi Police (P & A) Rules, 1980 in any respect.

4) In his rejoinder, the applicant has reiterated the fact of his temporary posting in the Special Cell to point out that the DCP, Special Cell was not competent to punish him. The plea of vague and indefinite charge has been repeated by the applicant together with the plea that he has been wrongly and illegally punished on the charge of unauthorised absence lasting 90 days on the ground already taken in the OA. 13

5) We have heard the learned counsel for both the parties and have perused the records. On the question of jurisdiction, we are not quite convinced that the DCP, Special Cell did not have jurisdiction to try the applicant in the departmental proceedings only because the applicant was placed under his charge on a temporary basis. The fact that the applicant could not be relieved to take up his new assignment in the West Distt. of Delhi Police as he remained absent during the relevant period also, goes to show that the applicant remained under the disciplinary control of the DCP, Special Cell during the relevant period. The respondents have mentioned that the applicant, who joined in February, 1993, had the unusual courage to remain absent as many as 24 times during the short period of just 4 years he had been in service till then. We are, therefore, convinced that the applicant does not deserve any sympathy. One single fact, however, stands out which compels us to take a liberal view in this case and that relates to the question of taking into account the unauthorised absence of the applicant lasting 90 days at the time of punishing the applicant, although no specific charge had been

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framed against him in respect of that period of unauthorised absence. We have also felt that if the absence of the applicant on 19 different occasions was required to be mentioned in the charge sheet, it would have been better and, in accordance with the principles of natural justice, to provide details of these 19 occasions to enable the applicant to defend himself against this charge also properly and effectively. We, therefore, conclude that by not doing so and also by not specifically charging the applicant in respect of unauthorised leave lasting 90 days, the respondents have fell into error which affected the course of justice.

6) We would like to decide this case accordingly by quashing the orders dated 25.7.97 and 21.10.97 with a direction to the respondents to try the applicant afresh by means of disciplinary proceedings and while doing so, the two charges, namely, those relating to his absence on 19 different occasions and his unauthorised absence lasting 90 days, should be duly and properly included in the charge sheet to be served on the applicant. If the applicant stands removed from service, he shall be reinstated and proceeded against departmentally afresh, as directed. A decision in respect of the period of the applicant's absence shall be taken by the respondents in accordance with the rules and instructions on the subject. We do not consider it necessary at this stage to pass any order with regard to the consequential benefits, if any, following the re-instatement of the applicant for fresh trial as directed. We would rather

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leave it to the respondents to take a decision in this regard according to the relevant rules.

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7) We do not, in the circumstances of the case, consider it necessary to decide the other questions raised by the applicant in his OA. We cannot, however, help adding an observation to the effect that the issue of disciplinary control should be re-examined by the respondents so as to obtain competent orders on the question of exercise of disciplinary control by those authorities under whom Police-men may happen to work on a temporary basis. On our part, we see no problem in treating even such authorities as competent for the purpose of exercise of disciplinary control subject to appropriate guidelines and would like to answer the corresponding issue raised by the applicant accordingly.

8) In the result, the OA succeeds and the impugned orders in question are quashed and set aside with direction to the respondents as in paragraph 6 above alongwith our observation noted in the above paragraph.

No order as to costs.

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(S.A.T. Rizvi)
Member (A)

Kuldip Singh
(Kuldip Singh)
Member (J)

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