

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

O.A. No.2096/1998

(10)

New Delhi this the 23rd day of October, 2000

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

Shri Satbir Singh (4449/DAP)
Ex. Constable
S/o Shri Chand Singh
R/o House No. 37/T,
Near DSP Office,
P.P. Jhirka, P.S. Gurgaon (Haryana)

-Applicant

(None Present)

Versus

1. Commissioner of Police, Delhi
Police Headquarters
I.P. Estate, New Delhi-110 002.
2. Senior Addl. Commissioner of Police
(AP&T & Vigilance), Delhi
Police Headquarters,
I.P. Estate, New Delhi-110 002
3. Deputy Commissioner of Police (4th Bn.)
DAP, Kingsway Camp,
Delhi.

-Respondents

(By Advocate: Shri Harvir Singh)

ORDER (Oral)

Shri V.K. Majotra, Member (A)

Punishment of dismissal for wilful and unauthorised absence for a period of 4 days, 4 hours and 30 minutes between 15.3.96 and 19.3.96 in combination with habitual absenteeism ^{is} _h on the basis that ^{is} _h absented himself as many as 16 times prior to the aforestated period has been assailed in this case. The punishment has been confirmed in the Appellate and Revisional orders. A departmental enquiry was initiated against the applicant who was a recruit Constable for unauthorised and wilful absence alongwith habitual absenteeism ^{having} _h absented himself as many as 16 times prior to the aforestated period.

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The charges framed against the applicant were held to be proved by the Enquiry Officer. The disciplinary authority imposed punishment of dismissal upon the applicant after consideration of the facts and evidence in the enquiry. Although the disciplinary authority supplied a copy of the findings of the Enquiry Officer to the applicant for reply, he did not submit any reply to the same as stated by him in his appeal itself. The applicant has submitted in the OA that the charge relating to his absence for 16 times is vague and indefinite and that he was not provided opportunity to defend himself in that regard. He has admitted that at the end of training his cousin expired and he had to go to his village and, therefore, he was marked absent. He has also stated that the previous absences have been regularised by the Asstt. Commissioner of Police/Training and, therefore, ~~can~~^b not be taken into account for punishing him. In their counter the respondents have stated that the applicant was furnished details of his absence at different times and he was given full opportunity of defence. According to them, his repeated absence right in the beginning of his career i.e. while he was under training reflected his attitude to duty that he was not a serious trainee and would ultimately not shape into a good police man. In a disciplined force habitual absence cannot be tolerated, particularly during the training period. In this view of the matter, the applicant was dismissed from service.

11

2. None has been appearing on behalf of the applicant since 3.8.2000. Even earlier on 18.2.99, none had appeared on his behalf before the Joint Registrar and on 16.10.2000 Shri Shyam Babu who used to be his counsel earlier on was asked whether he represented the applicant. He stated on 16.10.2000 ^{that} he was no longer the applicant's counsel and that he returned his brief to the applicant long back. Thus, we have proceeded to dispose of the matter under Rule-15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

3. Learned counsel of the respondents brought to our notice that the averment of the applicant that he had not been supplied details of his absence for 16 times prior to the present absence, was not correct. He mentioned that alongwith the summary of allegation, details of such periods as well as PWs who were to prove in the enquiry the related ^{document} were given to him. Therefore, there is no procedure ^{lacking} regarding non-supply of information of absence on previous occasions. Further more, the learned counsel stated that the applicant had not submitted any reply to the findings in the enquiry report which was made available to him by the DCP 4th Bn. Learned counsel submitted that since the applicant was under training and in a short span of one year he had absented himself on 17 occasions which is indeed a very serious matter warranting dismissal as such a person

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is not found to be fit in the discipline/force. On perusal of the record available in the case, we find merit in the contention of the learned counsel of the respondents and also find that the proper procedure had been followed in the departmental enquiry against the applicant for unauthorised absence on 17 occasions. Besides this, the applicant has admitted in his appeal that he had absented for 16 times which according to him were minor lapses. According to him, since he had been awarded punishment in respect of each absence in the past, they could not have been considered while awarding punishment of dismissal from service for absence on the 17 occasion which was only for 4 days. Rule-10 of Delhi Police (Punishment & Appeal) Rules, 1980 reads as follows:-

" The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank".

4. Even if the applicant had been awarded minor punishment for absence on 16 previous occasions but taken together, it changes the nature of the gravity of the charge and taking into account the totality of the circumstances even the major most punishment can also be awarded. As a matter of fact, the disciplinary authority in the impugned order dated 30.3.97 has specifically stated 'the defaulter failed to submit his representation against the

(12)

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findings of the Enquiry Officer despite giving him ample opportunities which clearly shows that he was nothing to say in his defence. He is a habitual absentee from the training centre for which he has been cautioned earlier and was told not to repeat such thing but in vain. Such person cannot move a good police officer who has no respect for his duties. The person who can absent for more than 16 times during the training itself it is not possible to think that he may improve. The misconduct of the defaulter is quite serious and he is completely unfit to retain in the police service'.

5. In view of the fact that the proper procedure has been followed in the departmental enquiry against the applicant and he was also allowed full opportunity of defence, we are not able to find fault with the impugned penalty orders to justify interference in the matter. The OA is, therefore, dismissed. No costs.

V.K. Majotra -

(V.K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

cc.