

(23)

Central Administrative Tribunal
Principal Bench

O.A. No. 2388 of 1998

New Delhi, dated this the 11th JULY, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Bijender Singh,
Ex-Const. No. 406/DAP,
S/o Shri Suraj Pal Singh Chauhan,
R/o H-10, 11 Type,
New Police Lines,
Kingway Camp,
Delhi-110009.

.. Applicant

(By Advocate: Shri Ajesh Luthra)

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001.
 2. The Commissioner of Police,
M.S.O. Building,
Police Headquarters,
I.P. Estate,
New Delhi.
 3. The Addl. Commissioner of Police,
Armed Police,
M.S.O. Building,
I.P. Estate,
New Delhi.
 4. The Dy. Commissioner of Police,
1st Bn./DAP,
Delhi.
- .. Respondents

(By Advocate: Shri George Paracken)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the Enquiry report dated 16.4.98 (annexure A-3); the disciplinary authority's order dated 27.5.98 (Annexure A-2) and the appellate authority's order dated 26.11.98 (Annexure A-1). He seeks reinstatement, with consequential benefits.

✓

2. A disciplinary proceeding was initiated against applicant vide order dated 25.11.97 (Annexure A-4) for wilful and unauthorised absence from duty from 7.3.97 to 20.3.97. In the aforesaid order, it was clearly stated that applicant had absented himself on 82 previous occasions, for which he had been punished or reprimanded but he had failed to mend his ways. A copy of applicant's previous absentee record was enclosed with the list of documents. By subsequent order dated 23.12.97 (Annexure A-6) some more absences were added to the allegations contained in order dated 25.11.97. The charge dated 7.3.98 (Annexure A-7), however, confined itself to the absence from 7.3.97 to 20.3.97 and applicant's previous absence on 82 different occasions.

3. Before the E.O. applicant inter alia took the plea that although the summary of allegations made mention of these past absences, they had not been exhibited and could not be proved against him. The E.O. in his findings rejected this contention and observed that as applicant's record of 82 previous absences was on the file, even if it was not exhibited, it could not be set aside.

4. The E.O. in his findings held that applicant's unauthorised absence from 7.3.97 to 20.3.97 and his being a habitual absentee was fully proved. ✓

25

3

5. A copy of the E.O's findings was furnished to applicant on 23.4.98 (Annexure A-3) for representation, if any.

6. After considering applicant's representation and giving him a personal hearing and after going through the materials in the D.E. file, the disciplinary authority agreeing with the E.O's findings, held applicant to be incapable of improving himself and unfit to be retained in service. Accordingly by impugned order dated 27.5.98 he ordered that applicant be dismissed from service, which order was upheld in appeal on 26.11.98, giving rise to the present O.A.

7. We have heard applicant's counsel Shri Luthra and respondents' counsel Shri Parackan. We have gone through the materials on record and considered the matter carefully.

8. The first ground taken is that the complete documents were not supplied as per list of documents. The list of documents include (i) DD Entry dated 7.3.97 marking applicant's absence from duty; (ii) DD Entry dated 20.3.97 marking his return to duty; (iii) A copy of applicant's previous absentee record; and (iv) a copy of absentee notice dated 18.3.97. Which particular document was not supplied to applicant has not been specified. Applicant has nowhere claimed that he did not absent himself from duty on 7.3.97 nor has he claimed that he did not rejoin duty on 20.3.97. He has also not

2

denied that he was absent from duty on 82 previous occasions for which he had been suitably punished/reprimanded. Even if for a moment it is assumed that a copy of the absentee notice dated 18.3.97 was not furnished to him, that does not disprove the fact that applicant had absented himself from duty from 7.3.97 to 20.3.97 or that he had absented himself on 82 previous occasions. Hence this argument fails.

9. The second ground taken is that the evidence of only two PWs was recorded in applicant's presence, while the evidence of PWs 3 & 4 were recorded in his absence, because he was not given permission to leave duty to attend ^{the} D.E. Respondents in the corresponding para of their reply state that PW-3 was examined in applicant's presence and he affixed his signature on the statement of PW-3 which proves that he was present when the statement was recorded by the E.O. This specific assertion of applicant putting his signature to the statement of PW-3 has not been denied by him in rejoinder. As regards PW-4 respondents state that applicant did not attend the D.E. proceeding on 29.1.98 on which date the statement of PW-4 was recorded. Even if the statement of PW-4 is disregarded, it is not applicant's case that he was present on duty from 7.3.97 to 20.3.97 or that he had not absented himself on 82 previous occasions. Hence this ground does not avail applicant.

2

10. The next ground taken is that none of the witnesses had deposed about applicant's previous bad record. No witness is required to depose on a particular charge if the records speak for the matter, and in the present case, applicant's incorrigibility was proved on the basis of his absences on 82 previous occasions which he nowhere denied, although it was made a specific aspect of the charge. Hence this ground also fails.

11. The next ground taken is that as per provisions of Rule 16(x) Delhi Police (Punishment & Appeal) Rules, the previous bad record of applicant should have been formed the basis of a definite charge against the delinquent and he should have been given the opportunity to defend himself against the same if it were necessary to award a severe penalty by taking into account his previous bad record. We have already seen that applicant's absences on 82 previous occasions for which he was reprimanded, or awarded punishment ^{in form} ~~from~~ a definite charge, and it was open to applicant to defend himself against the same, by denying during the D.E. any or all the previous absences, but he did not do so. Hence this ground fails.

12. It is next contended that the evidence of the DWs was not considered by the E.O. This contention is incorrect, because the E.O. in his report has dismissed the statements of the DWs,

holding it to be a weak defence as they had merely stated that applicant had absented himself only to his wife's illness. Hence this ground also fails.

13. It has next been contended that there is no evidence in the D.E. to prove that applicant was a habitual absentee but this again is incorrect, because applicant has not denied his absences on previous occasions as mentioned in the charge.

14. It has next been contended that in terms of Rule 8(a) Delhi Police (Punishment & Appeal) Rules there is no specific finding that applicant is guilty of grave misconduct rendering him completely unfit for service and there is no specific finding of incorrigibility. It is now well settled that if the disciplinary authority has kept in view the provisions of Rule 8(a) while imposing the penalty of dismissal, mere non-mention of the specific words that the delinquent is guilty of grave misconduct rendering him completely unfit for service is not sufficient to warrant intervention. In State of U.P. Vs. Ashok Kumar Singh 1996 (32) ATC 239 the Hon'ble Supreme Court has held that absence of a police constable on several occasions was wrongly held by the High Court to be not such a grave misconduct as to warrant removal. Furthermore the appellate authority's order speaks of applicant's incorrigibility. Hence this ground also fails.

15. The other grounds taken, namely absence of reasonable opportunity to applicant for hearing; arbitrariness in the appellate order; perversity in the E.O's report etc. have no merit as is clear from the foregoing discussion.

16. During the course of hearing, applicant's counsel relied upon the Tribunal's order dated 11.11.2001 in O.A. No. 1664/99 Ex-Const. Gopal Singh Vs. Union of India & Others. In that case, the Tribunal intervened and set aside the impugned order because that applicant's previous bad record was not brought on record as material or evidence against applicant during the course of the D.e. In our view that order dated 11.1.2001 does not assist the present applicant. His absence on 82 previous occasions are a specific item of the memo of allegations and the charge, ^{which} ~~where~~ applicant has not denied. A copy of applicant's previous absentee record is amongst the list of documents appended with the memo of allegations. As these 82 previous absences form part of the memo of allegations as well as the charge, it was open to applicant to have denied any or all of them, or demanded production of the details of the same during the D.E., but he did not do so. It is, ^{now} ~~however~~, not open to him to contend that he did not get opportunity to defend himself against the charge of 82 previous absences.

17. In the result the Tribunal's order dated 11.1.2001 in Gopal Singh's case (supra) does not assist applicant and the O.A. warrants no interference. It is dismissed. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

S.R. Adige

(S.R. Adige)
Vice Chairman (A)

karthik