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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2506/98

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

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

Ex. Const. Nain Singh, No.2199/N, S/O
Sh. Chatter Singh, Vill. & P.O.
Abupur, Moradnagar, Distt. Ghaziabad
(UP).

...Applicant.
(By Advocate: Sh. S.K.Gupta, learned counsel
through Sh. R.K.Shukla, learned proxy
counsel)

VERSUS

1. Govt. of N.C.T. of Delhi, through its Chief Secretary, 5, Sham Nath Marg, Delhi.
2. Commissioner of Police, Delhi Police Head Quarters, I.P.Estate, New Delhi.
3. Addl. Commissioner of Police, Delhi Northern-Range, Police Head Qrs. I.P.Estate, New Delhi.
4. Addl. Dy. Commissioner of Police, North District, Civil Lines, Delhi.
5. Gyan Singh (Enquiry Officer), through Addl. Dy. Commissioner of Police, North District, Civil Lines, Delhi.

...Respondents.

(By Advocate: Sh. Ashwani Bhardwaj, learned proxy
counsel)

O.R.D.E.R. (ORAL)

By Hon'ble Mrs. Lakshmi Swaminathan, Member (J):-

The applicant has impugned the penalty orders passed by the respondents removing him from service dated 30.9.97 (Annexure A-1) and rejection of his appeal vide order dated 20.2.98 (Annexure A-2).

2. The brief relevant facts of the case are that when the applicant was serving with the respondents as Constable, he was issued a charge-sheet on 26.8.97. The

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main allegation levelled against the applicant in the charge-sheet was that while he was detailed to perform Sentry duty at the office of DCP/North on 8.2.97 from 12 midnight to 6.00 AM. he did not turn up for duty. He was, therefore, marked absent vide D.D.No.60. They have further stated that the absentee notice which was sent through registered post was received back with the remarks of the Postman that "he refused to accept". They have also stated that he did not join duty and another absentee notice was sent to the applicant dated 26.3.97 at his native place by Sol. Messenger who served upon him. In the charge-sheet, it was further mentioned as follows:-

"Prior to this absence you have remained absent on 28 occasions for which you have been awarded PDs. Warning, LWP and censure but you did not improve yourself. Despite punishment and opportunities given to improve your conduct you continued to commit the same mistake. This proves that you are a habitual absentee."

A departmental enquiry was held against the applicant in the aforesaid charge which was held proved. The applicant has submitted that he had already submitted the medical certificates to the concerned authorities (Annexure A-4). Thereafter, the respondents passed the impugned order removing the applicant from service. The applicant has submitted that the impugned order dated 30.9.97 is in violation of the Rules 8 & 10 of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter called as the Rules). Hence, this OA, impugning the disciplinary authority's order as well as the appellate authority's order.

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3. Sh. S.K.Gupta, learned counsel for the applicant had been heard in the OA and this is a part-heard case. In pursuance of the Tribunal's order dated 25.8.2000, Sh. Ashwani Bhardwaj, learned proxy counsel has produced the relevant Departmental enquiry proceedings record. He has also submitted that the applicant had not raised any objection regarding not being given the details of the previous 28 occasions of absence for which he had been awarded different types of punishments, prior to the passing of the impugned penalty orders. Sh. R.K.Shukla, learned proxy counsel for applicant has sought an adjournment on the ground that Sh. S.K.Gupta, learned counsel, is unwell which we think is not necessary, taking into account the fact that Sh. S.K.Gupta, learned counsel had already been heard on the previous occasion when the case was listed and the case has been listed today as part-heard for perusal of the relevant DE proceedings record.

4. Sh. S.K.Gupta, learned counsel had submitted that the impugned removal order passed by the respondents is bad in law because they have taken into account extraneous matters, namely, the previous 28 absences of the applicant which was not a charge before the Enquiry Officer. This he had submitted, was in violation of the provisions of Rules 8 & 10 of the Rules. These averments have been controverted by the learned proxy counsel for the respondents.

5. On a perusal of the charge levelled against the applicant dated 26.8.97, it is noticed that reference has

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been made to the previous record of the applicant where he has remained absent on 28 occasions for which he had been awarded various punishments, including PDs, Warning, LWP and censure. This part of the charge has been reproduced in para 2 above. In the circumstances, we are unable to agree with the contention of the applicant that the respondents have taken into account his past absences in the impugned removal order which was not part of the charge dated 26.8.97. In this view of the matter, this plea of the applicant is rejected as it is not borne out by the records. Another main argument submitted by Sh. Gupta, learned counsel was that the applicant had not been given the details of the previous 28 absences from duty, which has been taken into account by the disciplinary authority in passing the penalty order. We have perused the Departmental enquiry proceedings file submitted by the respondents. We note that along with the summary of allegations, the respondents have given lists of witnesses and the documents they are relying upon, which includes a copy of the absentee notices issued vide OO numbers mentioned in the charge-sheet as well as a copy of previous absentee record of the applicant to which the applicant has appended his signatures on 7.9.97. There is also a list of 28 absences of the applicant giving details of the penalties awarded to him for such absences along with the reference numbers etc. which has also been received by the applicant. We also find force in the submissions made by the learned proxy counsel for the respondents with reference to para 2 (O) of the appeal filed by the applicant against the removal order dated 30.9.97. The

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applicant, while referring to the summary of allegation of 28 previous absences on his part, which has been relied upon by the respondents which he has stated, cannot be done by them as this would amount to double jeopardy, nowhere in this appeal, he has referred to the fact that he has not received the copies of these relevant documents pertaining to the absences. In the facts and circumstances of the case and from perusal of the documents in the relevant Departmental enquiry proceedings file, we are satisfied that the applicant has been informed the details of his previous absences from duty for which he has been punished and there is no infirmity in the charge levelled against him. Rule 10 of the Rules provides 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."

6. Having regard to the facts and circumstances of the case and the provisions of Rules 8 & 10 of the Rules, we are, therefore, unable to agree with the contentions of the applicant that there is any violation of the Rules in the charge-sheet or that the respondents have taken into account extraneous matters, justifying any interference in the matter. That apart, we have also carefully considered the other averments and submissions made on behalf of the applicant but do not find any merit in the same to set aside the impugned penalty orders in exercise of our power of judicial review in such matters.

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7. In the result for the reasons given above, we find no merit in this application and the OA is accordingly dismissed. No order as to costs.

S.A.T. Rizvi

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

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)

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