

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 8/1998

New Delhi this the 9th day of November, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Ex. Const. (Dvr.) Rai Singh No. 4939/DAP
S/O Rishal Singh,
R/O House No. RZ-482, Gali No.15,
Kailash Puri, Palam Colony,
Delhi. ... Applicant

(By Shri Sachin Chauhan, proxy for Shri shankar Raju,
Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi.
2. Sr. Addl. Commissioner of Police,
AP&T, Police Headquarters,
I.P.Estate, New Delhi.
3. Dy. Commissioner of Police,
5th Bn., DAP, Kingsway Camp,
Delhi. ... Respondents

(By Shri Harvir Singh, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Though several contentions have been raised in the present OA, it is enough to mention only one of them as the same is sufficient for the disposal of the present OA, namely, that in the disciplinary proceedings conducted against the applicant there has been a violation of provisions contained in rule 16(xi) of the Delhi Police (Punishment & Appeal) Rules, 1980. The said rule provides as under :

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"(xi) If it is considered necessary to award a punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules."

2. As far as the instant case is concerned, the disciplinary authority has finally found against the applicant as under :

....I hold observations of these witnesses as good and hold that the charge against the delinquent Const.(Dvr.) Rai Singh No.4939/DAP is proved beyond shadow of any doubt. Retention of such an indisciplined person in the police force is undesirable.

In the past he has been awarded 2 major and 2 minor penalties again for quarrelling under the influence of liquor. Such an incorrigible person deserves exemplary punishment. Therefore, I, D.T.BARDE, DY. COMMISSIONER OF POLICE, 5TH BN. DAP DISMISS Constable (Dvr.) Rai Singh No.4939/DAP from the force with immediate effect. The suspension period from 23.5.95 to 29.6.95 is treated as period not spent on duty for all intents and purposes."

3. Aforesaid order, it is clear, has taken into account the applicant's past adverse record. The same has been considered without the same having been made the basis of a specific charge against him. The said adverse record, therefore, could not have been taken ~~into consideration~~ ^{up as a ground} when the same did not form the basis of the charge framed against the applicant. It is, however, contended by Shri Harvir Singh, the learned counsel appearing on behalf of the respondents, that the disciplinary authority even prior to the consideration of the aforesaid previous adverse record had held that it was undesirable to retain an indisciplined person like the applicant in the police force; the disciplinary authority had thus, on the material other than the previous adverse record, decided to impose the impugned penalty of dismissal from service.

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4. In our judgment, there is no merit in the aforesaid contention. After the disciplinary authority had found that it was undesirable to retain the applicant in police force, two options were open to him - one, to impose a penalty of removal from service, and the other, to impose a penalty of dismissal from service. The disciplinary authority has ~~instead~~ taken into account the aforesaid previous bad record and has thereafter proceeded to impose the extreme penalty of dismissal from service in preference to the lesser penalty of removal from service. Thus, in terms of the aforesaid rule, he could not have done so without the aforesaid previous adverse record being a specific charge framed against the applicant. ^{The contention that} ~~the order of dismissal could, therefore, be justified even by ignoring the aforesaid previous adverse record~~ ^{cannot be accepted} In the circumstances, a reference to the aforesaid previous adverse record was ~~redundant. unjustified.~~

5. In view of the aforesaid, we find that the aforesaid order of penalty is liable to be set aside. Similarly, the order passed by the appellate authority on 18.2.1997 maintaining the aforesaid order of penalty and dismissing the appeal is also liable to be set aside. We order accordingly. The matter will now go back to the disciplinary authority who will either proceed to reconsider the question of imposition of penalty without taking into consideration the aforesaid previous adverse record, or, in the alternative, by framing an additional charge serving ^{by proceeding to} the same upon the applicant, and thereafter ~~proceed to~~



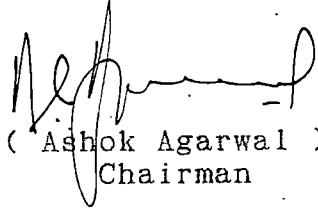
pass appropriate order of penalty, after affording the applicant a reasonable opportunity to show cause.



6. The OA is allowed in the aforestated terms. The disciplinary authority in terms of the present order will initiate the requisite proceedings within a period of three months from the date of the service of this order. In default, applicant will become entitled to be reinstated back in service. There shall be no order as to costs.



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



(Ashok Agarwal)
Chairman

/as/