CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 776 of 1995

THE HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN
THE HON'BLE SHRI P. T. THIRUVENGADAM, MEMBER (A)

Date of decision : 1.5.1995

1. Whether to be referred to Reporter ? Yes

2. Whether to be circulated to other Benches of the Tribunal? No

(S. C. Mathur)
Chairman

/as/

(3)

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New Delhi this the 1st day of May, 1995

HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN
HON'BLE SHRI P. T. THIRUVENGADAM, MEMBER(A)

Suresh Kumar,
Ex Constable son of
Kali Ram, resident of
Village & Post Office Rohat,
District Sonepat (Haryana). ... Applicant

(By Advocate Shri Shyam Babu)

Versus

1. The Deputy Commissioner of Police,
7th Bn, DAP, Malviya Nagar,
New Delhi.

2. Senior Addl. Commissioner of
Police (AP & T), Police Hqrs.,
I.P. Estate,
New Delhi - 110002. ... Respondents

ORDER (ORAL)

Shri Justice S. C. Mathur —

The applicant who was Constable Driver in the Delhi Police is aggrieved by the imposition of the punishment of dismissal from service.

2. In the disciplinary proceedings the applicant was charged with refusing to perform the duty of driving vehicle which was taking Police force to Jama Masjid. The applicant did not dispute the fact that he refused to drive the vehicle. His plea was that he was ill and was not in a position to perform that duty, and that he had sought posting at a stationary duty.

3. At the departmental trial, the prosecution examined two witnesses who deposed to the fact that the applicant deserted his duty. In the departmental

proceedings, the applicant preferred to stay away. He neither give his statement nor adduced any evidence in support of his plea that he was so ill as to be unable to discharge his duty.

4. On a consideration of the evidence of the two prosecution witnesses, the enquiry officer recorded finding of guilt. On the basis of that finding, the disciplinary authority after making certain additional observations imposed the punishment which was confirmed by the appellate authority.

5. In the present application, the punishment has been challenged on several grounds. The first challenge is that the finding of guilt has been recorded by the enquiry officer without undertaking the exercise of evaluation of the evidence on record. The learned counsel has read out before us extracts from the enquiry report for bringing home his submission that the enquiry officer has jumped to conclusions without appraising the evidence.

6. The enquiry officer has referred to the evidence of the two witnesses examined on behalf of the prosecution. One of the witnesses stated that he was working as Head Constable and on 28.1.1993 at 7.00 a.m. one Company of CRPF was ready to be transported for law and order duty in Government vehicle which was being driven by the applicant. The applicant started the bus but all of a sudden he came out of it after stopping the engine and refused to transport the force to Jama Masjid despite asking many times by Head Constable Sher Singh in the presence of Constable

Sudhir Kumar. He has further stated that the applicant left the P.T.S. Complex stating that he had to cut the sugar cane at his village and, therefore, he would not perform government duty. P.W. 2 Constable Sudhir Kumar has supported the P.W.1. After referring to the depositions of these two witnesses, the enquiry officer has recorded finding in the following terms :-

> "I have carefully gone through the record of D.E. proceedings and had evaluated the evidence oral and written from the P.W.s and came to the conclusion that the charge which is fully supported by the P.W.s stands proved without any shadow of doubt." (emphasised).

7. In the case on hand, there was no evidence from the side of the applicant against which the evidence of the prosecution was required to be evaluated and preference indicated. On its own merit, the two prosecution witnesses had not contradicted each other. Accordingly, the evaluation done by the enquiry officer in the present case cannot be faulted. In fact, the burden in the present case lay upon the applicant to substantiate his plea of having fallen so ill as to be unable to discharge his duty. The applicant stayed away from the proceedings and adduced no evidence against which the evidence of the prosecution could have been evaluated. On the facts of the present case, we are not satisfied that it is a case of non-evaluation of evidence and jumping to conclusions.

8. In support of his plea that evaluation of evidence is required and conclusions cannot be jumped to, the learned counsel has cited AIR 1985 SC 1121 :

(6)

Anil Kumar vs. Presiding Officer and Others.

Particular reliance has been placed upon the observations contained in paragraph 5 of the report. Their lordships have observed —

> "...It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant..." (emphasised).

This was a case in which there was evidence from both the sides and the enquiry officer was required to record his finding as to why he preferred the evidence of one party over the other. No such situation arises in the present case. This authority is, therefore, of no application to the facts of the present case.

9. The learned counsel has invited our attention to Rule 16 (ix) of the Delhi Police (Punishment and Appeal) Rules, 1980 to submit that evaluation of evidence is a statutory requirement under the said rule. We have no manner of doubt that wherever evidence has been brought on record it should be evaluated. In the present case, evaluation was to be of the evidence furnished by the two prosecution witnesses. The prosecution witnesses did not contradict each other. Accordingly, no occasion

arose for the enquiry officer to say anything more than that the charge stood established by their depositions.

10. The next submission of the learned counsel is that the principles mentioned in rule 8 of the aforesaid rules were not kept in view while imposing the impugned punishment. The submission is that under this rule the punishment of dismissal or removal from service can be imposed only when the alleged misconduct is of grave nature rendering the employee unfit for police service. This rule does require that the punishment of dismissal or removal from service will be awarded for the act of grave misconduct rendering the employee unfit for service, but it does not require the punishment order to record in so many words that the punishment is being imposed as the misconduct is grave and renders the official unfit for police service. If the punishment order reflects that the principles mentioned in rule 8 were kept in view, the order will not be vitiated for failure to contain specifically the words "grave misconduct rendering unfit for police service."

11. The submission made by the learned counsel stands negatived by the Full Bench decision of the Tribunal in Hari Ram vs. Delhi Administration & Ors., O.A. No. 1344/90 decided on 4.8.1993 (see Full Bench Judgments of Central Administrative Tribunals 1991-1994, published by Bahri Brothers Vol.III). In paragraph 10 of the judgment the following observation has been made :-

> "10. It was lastly urged by the learned counsel for the petitioner that the disciplinary authority has not applied its mind to the provisions of Rule 8(a) of the Delhi Police (Punishment & Appeal) Rules, 1980 which says that the punishment of dismissal of removal from service shall be awarded only for the act of grave misconduct rendering him unfit for the police service. The impugned order does indicate that the mandate of this statutory provision was borne in mind by the disciplinary authority. We say so for the reason that the disciplinary authority has in categorical terms recorded a finding to the effect that the petitioner is unworthy and unfit for retention in service. It is further recorded that the petitioner is a habitual absentee and in incorrigible type of constable the punishment of removal from service being the most appropriate punishment. Having regard to these findings we have no hesitation in holding that the disciplinary authority was satisfied that the petitioner was guilty of grave misconduct rendering him unworthy and unfit for retention in service."

In the case on hand also the disciplinary authority has recorded findings somewhat to the above effect. At one place, the disciplinary authority has stated, "The charge levelled against the defaulter Ct.(Dvr.) is quite serious. On 15.1.1993 he was asked to take force to P.S. Jama-Masjid. These were the days when serious riots took place in most parts of the country and Delhi too had its share. Late arrival or non arrival of the force at a place affects the morale of the force adversely which can result into any kinds of situation and can cause irreparable damage. Therefore, refusal to go on duty on such occasions cannot be taken lightly." This observation too indicates that the disciplinary authority was of the opinion that the misconduct of the applicant was grave in nature which rendered him unfit for police service.

12. Rule 10 of the aforesaid rules was also relied upon for submitting that the extreme punishment of dismissal or removal from service can be imposed only after recording finding of complete unfitness. This rule 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."

The expression "complete unfitness" in this rule has been used in different context. Under this tule, once this finding is recorded, the disciplinary authority has an obligation to pass an order of dismissal from service.

13. On the basis of rule 16 (xi) it was submitted that the previous bad record of the applicant was taken into consideration without making it subject matter of the charge. The provision relied upon reads thus —

> "If it is considered necessary to award a severe 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."

The bad record referred to in this clause, in our opinion, refers to the record which has not already been subject matter of an earlier disciplinary

proceeding. In the present case, the disciplinary authority has referred to two previous punishments. It is not the case of the applicant that those two previous punishments were awarded to him without any disciplinary proceedings. Obviously, the applicant had opportunity to contest the facts on the basis of which the previous punishments were awarded to him. Making those facts subject matter of charge would result in fresh disciplinary proceedings in respect of a charge which had already become final. We are, therefore, unable to accept the submission of the learned counsel that even established bad record was also required to be made subject matter of charge.

14. The last submission of the learned counsel was that the disciplinary authority has made observation for which there is no evidence on record. He has referred us to the following observation :-

> "After refusing to go on duty the Ct. rushed to hospital and managed to obtain medical rest....(emphasised).

The learned counsel submitted that neither of the two prosecution witnesses had stated that the applicant managed to obtain medical rest. It is on this basis that the learned counsel submitted that the observation is not based on evidence. It needs to be pointed out that it was the case of the applicant that he had fallen ill and had to rush to hospital. The finding of the disciplinary authority is in respect of the applicant's plea. This is the inference drawn by the disciplinary authority which is based on the material on existing on record. No statement by a

witness was required for this inference. This observation has in fact no effect on the finding of misconduct which had already been recorded earlier.

15. In view of the above, the application lacks merit and is hereby dismissed in limine.

(P. T. Thiruvengadam)
Member (A)

(S. C. Mathur)
Chairman

/as/