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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 976/95

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T.A. No.

DATE OF DECISION 30.9.99

Ex. Const. Raj Kumar

....Petitioner

Mrs. Sumedha Sharma

....Advocate for the
Petitioner(s)

VERSUS

Lt. Governor through
Commissioner of Police,
PHQ, I.P. Estate, N/Delhi and Ors

....Respondent

Sh. Jog Singh, learned counsel through Advocate for
proxy counsel Sh. Anil Singhal Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri S.P. Biswas, Member (A)

1. To be referred to the Reporter or not
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 976/95

New Delhi this the 30 th day of September, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.P. Biswas, Member(A).

Ex. Const. Raj Kumar,
S/o Shri Dilbag Singh,
R/o 23, House No. 8,
Indira Vikas Colony,
Kingsway Campt,
Delhi. Applicant.

By Advocate Mrs. Sumedha Sharma.

Versus

1. Lt. Governor,
through
Commissioner of Police,
PHQ, IP Estate,
New Delhi.
2. Dy. Commissioner of Police,
IV Bn. DAP, New Police Lines,
Kingsway Camp,
Delhi-9.
3. Sr. Additional Commissioner of Police,
(AP&T) PHQ, IP Estate,
New Delhi. Respondents.

By Advocate Shri Anil Singhal, proxy for Shri
Jog Singh.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 9.9.1994 removing him from service and the rejection of his appeal by the appellate authority by order dated 13.1.1995.

2. The brief facts of the case are that the applicant was recruited as Constable (Driver) in Delhi Police on 20.12.1985. The applicant was charged on the ground that while he was posted in 4th Bn.D.A.P., he was detailed for arrangement duty with Govt. Vehicle No. (Bus) DEP-5021 in New Delhi Distt. on 21.12.1993. The allegation was that he

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took away the vehicle to some unknown place after dropping the force at Police Station, Tughlak Road and on the next day the vehicle was found in front of Barrack No. 12 at New Police Lines, DAP. On these allegations, the departmental inquiry was held against the applicant. The Inquiry Officer had found the charges framed against the applicant proved. The disciplinary authority has stated that after going through the departmental file and other relevant records and hearing the applicant, he was of the view that the defaulter seems to be incorrigible as earlier also he was warned/punished for indiscipline. He has further stated that in this case also he felt that the applicant had left his place of duty along with the vehicle (Bus) No. DEP-5021 without informing any one and the whole force had to face a lot of problems in absence of vehicle. The disciplinary authority, therefore, felt that retention of such persons give wrong signal to others to indulge in serious indiscipline and accordingly he dismissed the applicant from service.

3. Two main grounds have been taken by Mrs. Sumedha Sharma, learned counsel for the applicant, in assailing the validity of the orders of the disciplinary authority and appellate authority. The first ground she has taken is that the order passed on 9.9.1994 by an officer belonging to 4th Bn. DAP is by an incompetent officer as she claims that the applicant, at the relevant time, that is on 21.12.1993 when the incident for which he had been charged occurred, was posted in the 8th Bn. DAP. The second ground taken by the learned counsel for the applicant is that the disciplinary authority as well as the appellate authority have taken into account the punishment awarded to the applicant earlier without any mention or details being given

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in the chargesheet. The learned counsel has further submitted that as mentioned in the applicant's appeal, there was no major punishment awarded against the applicant in his 9 years of service previously but there was only a minor punishment of censure which has been taken into account by the disciplinary authority. The disciplinary authority has stated, inter alia, in the impugned order that the defaulter seems to be incorrigible as earlier also he was warned/punished for indiscipline. Learned counsel has relied on Rule 16(xi) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as 'the 1980 Rules'). She has submitted that if the respondents wanted to refer to the earlier punishment given to the applicant in this proceeding, they should have followed the provisions of Rule 16(xi) of the 1980 Rules and made the previous bad record part of the charge against him so that he could have defended himself which they have failed to do. Apart from this, she has also submitted that in any case the previous punishment being only a minor punishment of censure, could not have been held against the applicant to impose the extreme punishment of dismissal from service.

4. The respondents in their reply have controverted the above and we have also heard Shri Anil Singhal, learned proxy counsel. Learned proxy counsel has submitted that the proceedings have been held in accordance with the Rules. On the first ground, he has submitted that under Rule 6 of the 1980 Rules, the punishment of dismissal may be awarded by an officer of the rank of appointing authority or above. His contention is that as the Deputy Commissioner of Police (DCP) is the appointing authority and it is immaterial whether it is DCP of 8th Bn. or 4th Bn. DAP. He has further submitted that as undoubtedly the incident in question for which the

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applicant had been charge-sheeted had occurred while he was posted in 4th Bn., even though he might have been on a temporary posting along with the vehicle - Bus DEP 5021, the punishment of dismissal has been awarded by the competent authority i.e. DCP 4th Bn. DAP and as such there is no infirmity on this ground.

5. Regarding the second ground, the learned proxy counsel has submitted that the competent authorities are entitled to see his entire past record and finding that he is an incorrigible type of person, they have awarded the punishment of dismissal from service and there is no violation of the principles of natural justice.

6. We have carefully considered the submissions made by the learned counsel for the parties.

7. On the first ground taken by the learned counsel for the applicant, we note that the punishment order has been passed by the DCP 4th Bn. DAP. Admittedly, the applicant has been transferred along with Bus No. DEP 5021 temporarily to the 4th Bn. and the incident which took place on 21.12.1993 for which he was charged happened while he was driving the Bus and transporting members of the 4th Bn. We are not impressed by the arguments of the learned proxy counsel for the respondents that any DCP could have passed the punishment of dismissal against the applicant. In this case, nothing has been placed on record by the respondents to refute the contention of the learned counsel for the applicant that at the relevant time the applicant continued on the strength of the 8th Bn. and has only been transferred to the 4th Bn. temporarily. Apart from this, no joining report showing that the applicant joined the 4th Bn. is also

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available on record. The documents submitted by the learned counsel for the respondents which are dated 7.9.1999 (copy placed on record) only show that the applicant had been sent as a replacement Constable Driver to perform duties in the 4th Bn. sometime in the last week of July, 1993. In the facts and circumstances of the case, we are of the view that while the DCP of 4th Bn. could have made the necessary inquiries he should have sent the relevant papers and file to the DCP, 8th Bn. for passing the punishment order who is the disciplinary authority, as admittedly the applicant continued on the strength of the 8th Bn and also received his salary from them.

8. Regarding the second ground urged by the learned counsel for the applicant, we also find substance in the same. Rule 16(xi) of the 1980 Rules reads as follows:

"16. Procedure in departmental enquiries - The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where prima facie the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer:

(i) to (x) x x x x x

(xi) 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".

9. In the charge-sheet issued against the applicant (copy placed on record), there is no mention of any past misconduct or punishment awarded to him. Apart from this, we see from the ground taken in the appeal filed by the applicant that he had submitted that there is no major punishment in his nine years of service. He has submitted that there was only one minor punishment of censure which has been taken into account by the disciplinary authority in

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giving him the punishment of dismissal from service. As the previous record of service, including the punishment of censure awarded to the applicant has not been made part of the charge against him, nor had he been given an opportunity to defend himself, the respondents have clearly acted in violation of Rule 16(xi) of the 1980 Rules. The appellate authority has also referred to the previous record of the applicant and he has stated that it does not speak good for him and has apparently agreed with the observations of the disciplinary authority that he is incorrigible, which is based on the past record. In the facts and circumstances of the case, the fact that the competent authorities have taken into account the past record of the applicant without giving him an opportunity to defend himself, as required under the Rules, would no doubt cause him prejudice. It is clear from the orders of the disciplinary authority and appellate authority that they have decided to award him the severe punishment of dismissal from service not only taking into account the incident that occurred on 21.12.1993 for which the departmental proceedings have been held, but also based on his past record which led them to come to the conclusion that he is incorrigible and indisciplined.

10. The applicant has stated categorically in his appeal dated 7.10.1994 that there is no major punishment which has been awarded against him in his 9 years of service and there was only a minor punishment of censure that has been given to him. However, taking into account the previous record, the competent authority came to the conclusion that he is incorrigible as earlier also he was warned/punished for indiscipline. Therefore, on these facts, it is seen that the punishment of dismissal against the applicant appears to be

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disproportionate, particularly having regard to the fact that the applicant himself states that there was only a minor punishment of censure which was awarded to him previously.

11. For the reasons given above, the application succeeds and is allowed as follows:

- (i) The disciplinary authority's order dated 9.9.1994 and the appellate authority's order dated 13.1.1995 are quashed and set aside;
- (ii) The respondents are directed to reinstate the applicant as Constable Driver in the 8th Bn. and he shall be deemed to be continued on suspension;
- (iii) Respondent No. 2 may send the relevant file to DCP 8th Bn. who may pass appropriate penalty order in accordance with the rules and instructions; As mentioned above, as the inquiry had proceeded till the impugned final order was passed, without reference to the applicant's previous bad record, the disciplinary authority shall not refer to the same while passing his order and keep in view the observations given above;
- (iv) The competent authority shall also pass appropriate orders regarding the periods spent under suspension;
- (v) The above action shall be taken within a period of three months from the date of receipt of a copy of this order.

No order as to costs.

Rasomos
(S.P. Biswas)
Member(A).
SRD

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)