

Central Administrative Tribunal
Principal Bench

O.A. No. 1373 of 1996

New Delhi, dated this the 24 APRIL 2001

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

Ex-Const. Rohtas Singh No. 10219/DAP,
S/o Shri Hari Singh,
R/o Vill. Ajaib Tehsil, Mahim,
Dist. Rohtak,
Haryana.

... Applicant

(By Advocate: Shri C.N. Sreekumar)

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Commissioner of Police,
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
3. Sr. Additional Commissioner
of Police (AP&T),
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi. ... Respondents

(By Advocate: Shri Rajinder Pandita)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the disciplinary authority's order dated 1.12.93 (Annexure A-1); the order on the appeal dated 20.10.94 (Annexure A-2); revisional authority's order dated 17.10.95 (Annexure A-4).

2. Applicant was proceeded against departmentally vide order dated 9.10.92 (Annexure A-6) on the allegation that he had remained wilfully and unauthorisedly absent from duty from 14.1.92 to

21.4.92 and earlier from 26.12.91 to 13.1.92. In that order dated 9.10.92 it was further stated that even earlier, applicant had remained wilfully and unauthorisedly absent from duty on 28 different occasions during his entire career which showed that he was a habitual absentee and an incorrigible type of person.

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3. The E.O. in his findings dated 6.8.93 held the charge as proved.

4. A copy of the E.O's findings was forwarded to applicant for representation, if any vide Memo dated 19.8.93 (Annexure A-5).

5. Applicant submitted his representation on 8.9.93. He was also given a personal hearing on 1.12.93 by the disciplinary authority, who thereupon after going through the materials on record, agreed with the E.O's findings and by impugned order dated 1.12.93 dismissed applicant from service.

6. A applicant filed an appeal on 27.1.94 which was rejected by order dated 20.10.94 as being time barred. His revision petition was also rejected by order dated 17.10.95 giving rise to the present O.A.

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7. The first ground taken is that the order of dismissal is illegal in the absence of any specific findings of gross misconduct. It is now well settled in the CAT, Full (Principal) Bench order dated 28.7.99 in O.A. No. 139/92 Virender Kumar Vs. Commissioner of Police & Others and connected cases, that the disciplinary authority is not required to record a specific finding that the delinquent is guilty of grave misconduct rendering him unfit for police service before passing the punishment of dismissal from service, in terms of Rule 8(a) Delhi Police (Punishment & Appeal) Rules and it is sufficient if the order indicates that the mandate of the statutory provisions were borne on mind by the disciplinary authority while passing the dismissal order. In the present case, a bare perusal of the disciplinary authority's order makes it abundantly clear that the aforesaid mandate was kept squarely in mind by the disciplinary authority. Hence this ground fails.

8. The next ground taken is that the order of dismissal was passed by an incompetent authority in as much as applicant at the relevant time was working in Security Branch and should have been awarded ^{the} (to) penalty by the DCP (Security). Respondents have denied this contention in the corresponding Para of their reply, pointing out that applicant was posted in Security Unit only temporarily for performing PSO duties, and DCP 9th Battalion has always been authorised to take disciplinary action against police personnel posted

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in 9th Battalion and temporarily performing duty in Security Unit. There is no denial to this specific assertion in any rejoinder filed by applicant. Hence this ground also fails.

9. The next ground taken is that the Disciplinary Authority's order is a non-speaking order. A perusal of the aforesaid order makes it clear that the disciplinary authority has agreed with the findings of the E.O. and rejected the applicant's pleas. This cannot be stated to be a non-speaking order. Hence this ground is also rejected.

10. The next ground taken is that the alleged suspension period as period not spent on duty is illegal as applicant was not placed on suspension. If applicant was not placed on suspension, he can have no grievance if in the impugned order it was mentioned that the suspension period would be treated as not spent on duty. This cannot be made a ground to challenge the disciplinary authority's order as a whole.

11. It has next been contended that the disciplinary authority had held applicant to be a habitual absentee and an incorrigible person on the basis of 28 previous absences, but according to the evidence, the record upto 1990 was destroyed and as such the same could not be proved and at the time of the D.E. the number of proved absences came only to 9 which had already been regularised by grant of

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leave due, and, therefore, this regularised period could not be taken into account while holding applicant to be a habitual absentee and/or an incorrigible person. The 26 absences relate to the period after 1990 and not before and hence the non-availability of the records upto 1990 does not make any difference. Furthermore, even if all these absences were regularised by grant of the appropriate leave due, it indicates habitual absenteeism of an incorrigible type.

12. The next ground taken is that the disciplinary authority travelled beyond the record of the enquiry and took extraneous factors to observe that applicant was an habitual absentee, but this ground has no merit, when the memo of allegations itself clearly alleges that applicant is a habitual absentee and an incorrigible type of person.

13. The next ground taken is that the conduct of the D.E. ex-parte was in violation of Rule 16(1) and 18 Delhi Police (P&A) Rules. The E.O's report makes clear the efforts made by respondents to get applicant to participate in the enquiry. Permission of the competent authority was also taken to proceed with the D.E. ex-parte in view of applicant's non-participation. Hence this ground also fails.

14. The next ground taken is that the disciplinary authority acted illegally by not considering applicant's medical record. Such a medical record may have been relevant. If applicant had filed a proper application for leave along with it. There is not a single averment to the

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effect that applicant submitted an application for leave for the relevant period. No Government employee much less an employee of a disciplined, uniformed force like the Police can claim leave as of right and choose to stay away from duty, without applying for leave, even if it is on account of illness.

15. The ground that the E.O's report is based on no evidence is quite baseless in view of applicant's absence even during the departmental proceedings compelling the E.O. to proceed ex-parte.

16. The challenge to the revision order on the ground of not being a speaking order is likewise rejected as the order is indeed a speaking order. We have already seen that it was not necessary for the concerned authorities to record a specific finding that the delinquent was guilty of grave misconduct and it is sufficient in the order indicates that the mandate of Rule 8(a) Delhi Police (P&A) Rules was borne in mind while passing the dismissal order. In the present case the revision authority's order amply demonstrates that the aforesaid mandate was kept squarely in mind while passing the order. Hence this ground also fails.

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15. In the result 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)

/GK/