

Central Administrative Tribunal, Principal Bench

Original Application No. 136 of 1997

New Delhi, this the 26th day of June, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman  
Hon'ble Mr. V.K. Majotra, Member (Admnv)

Ex-Constable Mohinder Singh No.1764/T, (PIS No.28881443), S/o Shri Lala Ram, R/o Village Alimudeen Pur, P.O. & P.S., Parukh Nagar, District Gurgaon, Haryana.  
(By Advocate Shri B.S. Oberoi)

- Applicant

Versus

1. Govt. of National Capital Territory of Delhi, Through Commissioner of Police, MSO Building, I.P.Estate, New Delhi.
2. Additional Commissioner of Police, Security and Traffic, MSO Building, I.P.Estate, New Delhi.
3. Deputy Commissioner of Police (Traffic) Police HQrs, I.P.Estate, Delhi.  
(By Advocate Shri Ajay Gupta)

- Respondents

O R D E R (Oral)

By Justice Ashok Agarwal, Chairman.-

We have heard the learned counsel appearing for the contending parties and we find that the disciplinary authority while imposing the extreme penalty of dismissal from service on the ground of unauthorised absence has taken into account the earlier record of the applicant of unauthorised absence where, on earlier occasions, the applicant had been punished for his unauthorised absence. Aforesaid earlier record of unauthorised absence, however, was not made the basis of the charge framed against him. The same has, however, been used for the purpose of imposing the extreme penalty of dismissal from service by observing that the applicant has proved to be an incorrigible type of a Constable. Rule 16(xi) of Delhi Police (Punishment & Appeal) Rules, 1980 provides as under:-


"If it is considered necessary to award a severe punishment to the defaulting officer by taking

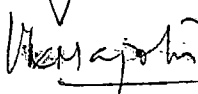
into consideration his previous bad record in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules." (8)

2. In the present case it is clear that there is a flagrant breach of aforesaid rule. Whereas previous bad record of the applicant has been taken into account the same has not been made the basis of a definite charge framed against him. The applicant has, therefore, not been given notice that his previous record is going to be used against him. He has thus not been offered an opportunity to meet the same.

3. In the circumstances aforesaid order of penalty deserves to be quashed and set aside. We order accordingly. The respondents in the circumstances will now be required to either pass a fresh order of penalty by ignoring aforesaid previous bad record or continue the disciplinary proceedings after framing <sup>an</sup> additional charge in respect of aforesaid previous bad record; offer the applicant a reasonable opportunity to meet the same; and thereafter proceed to pass an appropriate order of penalty against the applicant. Either of these courses should be resorted to within a period of three months from the date of the service of this order.

4. The present OA is partly allowed in aforestated term. No costs.

  
(Ashok Agarwal)  
Chairman

  
(V.K. Majotra)  
Member (Admnv)