

9

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1807/1997

New Delhi this the 24th day of October, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI M. P. SINGH, MEMBER (A)

Sube Singh
S/o Shri Chandgi Ram
R/O Village Kapashera
P.S. Najafgarh
Delhi.

... Applicant

(By Advocate Shri Shyam Babu)

-versus-

1. Addl. Commissioner of Police (Operation)
Police Headquarters
I.P. Estate
New Delhi.

2. Addl. Dy. Commissioner of Police
Police Control Room
Police Head Quarters, I.P. Estate
New Delhi.

... Respondents

(By Advocate Ms. Neelam Singh)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Applicant who at the relevant time was engaged as a Head Constable was chargesheeted for his unauthorised absence. By way of defence, applicant had contended that he was constrained to remain absent on account of his illness. Enquiry officer on an appraisal of the evidence adduced has found the aforesaid charge proved. The disciplinary authority has accepted the finding of the enquiry officer and by an order passed on 23.8.1996 proceeded to impose a penalty of dismissal from service upon the applicant. Applicant thereafter preferred an appeal against the order of dismissal on 19.9.1996 before the appellate authority. Since no decision thereon had been taken for a considerable period, applicant has instituted

J. A.

the present OA on 4.8.1997. As far as the aforesaid appeal is concerned on the showing of the respondents, the same was pending even on 5.1.1998 when their counter was filed. It is not clarified whether the said appeal has been decided even till date. Present application, in the circumstances, cannot be held to be untenable on the ground that the same is premature.

2. As far as the order of the disciplinary authority is concerned, we find that the same takes into account extraneous material which did not form a part and parcel of the disciplinary proceedings conducted against him. The disciplinary authority in his order has observed as follows:-

"The doctor of M.C. Unani Dispensary, Najafgarh gave in writing during the enquiry completed by the E.O. that defaulter is fit to give his statement. Thus it is clear that he was avoiding the D.E. proceedings. On perusal of his service record it is evident that he is a habitual absentee and an incorrigible type of driver and beyond any scope of improvement..."

3. Enquiry officer, ^{also} it is clear from his report that after applicant has submitted his defence in respect of his illness and after he has submitted a medical certificate issued by the Doctor of M.C. Unani Dispensary, Najafgarh, ^{had} visited the said Doctor and has obtained his statement. The said Doctor was not examined in the enquiry and his statement was also not produced. Similarly, applicant was not furnished with a copy of the statement nor was the Doctor offered for cross examination. Aforesaid piece of evidence, in the circumstances, could not and ought

22.11.97

not to have been taken into account by the enquiry officer for holding the charge proved against the applicant. Aforesaid is not the only infirmity to be found in the enquiry. The report of the enquiry officer shows that he has conducted a secret enquiry and it was found that the applicant was busy in construction of buildings and seldom remained present at his house and kept wandering here and there and that is why he was not willing to join the enquiry proceedings. The enquiry officer, it is clear, has thus undertaken a secret enquiry and has based the aforesaid findings in the said enquiry. This he has done even though applicant has not been given notice of the same.

4. Like was the case with the disciplinary authority, the enquiry officer also has taken into account the opinion of the Doctor which he has obtained in respect of the claim of the applicant in respect of his being unwell. In his report, this is what he has stated:-

"From the secret enquiry it is found that he is busy in the construction of buildings and seldom remain present at his house and keeps wandering here and there. This is why he is not willing to join enquiry."

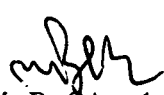
Aforesaid ^{material} ~~stance~~ relied upon by the enquiry officer without giving notice of the same to the applicant, in the circumstances, we find is wholly unjustified. As far as the disciplinary authority is concerned, though there is no reference to the secret enquiry conducted by the enquiry officer regarding applicant being busy in the construction of buildings, the disciplinary

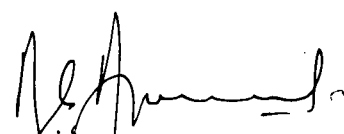
22.1

authority has undoubtedly taken into account the opinion of the Doctor in respect of the fitness of the applicant to join the enquiry. This he should not have taken into account without giving notice to the applicant. The order of the disciplinary authority, in the circumstances, suffers from the vice of violation of the principles of natural justice. The same is accordingly liable to be quashed and set aside.

5. For the foregoing reasons, the impugned order passed by the disciplinary authority on 23.8.1996 at Annexure -A is quashed and set aside. Applicant will now be entitled to be reinstated back in service though without backwages. He will, however, be entitled to other consequential benefits.

6. Present OA in the circumstances is allowed in the aforesaid terms. No costs.


(M.P. Singh)
Member (A)


(Ashok Agarwal)
Chairman

sns