

Central Administrative Tribunal, Principal Bench

Original Application No. 2337 of 1997

New Delhi, this the 7th day of August, 2000

(9)

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

Constable Mahinder Singh, No. 2414/ DAP, S/o
Sh. Bhawani, R/o Vill. Narela Road, Alipur,
Delhi. - Applicant

(By Advocate Shri Mohit Madan, proxy
counsel of Mrs. Avnish Ahlawat)

Versus

1. Union of India through Commissioner of Police, Delhi Police, Delhi.
2. Sr. Addl. Commissioner of Police (AP&T) Delhi.
3. Deputy Commissioner of Police, 3rd Bt. D.A.P., Delhi Police, New Delhi-110002 - Respondents

(By Advocate Mrs. Neelam Singh)

O R D E R (Oral)

By V.K. Majotra, Member (Admnv) -

A departmental enquiry was initiated against the applicant under the provisions of Rule 15 of Delhi Police (Punishment & Appeal), Rules, 1980 (hereinafter referred to as 'the Rules of 1980') on the allegation that he was found absent on 12 occasions between 2.7.1993 to 23.9.1994 for a total period of 3 months, 247 days, 5 hours and 55 minutes, without obtaining permission/ information of the competent authority wilfully/ unauthorizedly in violation of Standing Order No. 111 of 1988. It was further alleged that he had a previous absentee record when he had absented himself on 21 different occasions wilfully and unauthorizedly and several times punishments were awarded to him for such absence which had no effect on him. It was alleged that despite affording repeated chances, the applicant had not improved his habits establishing that he is a habitual absentee and incorrigible type of person

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unbecoming of a police officer attracting the provisions of Rule 10 of the Rules of 1980. In the enquiry the charges levelled against the applicant were found to have been proved. The disciplinary authority agreed with the findings of the enquiry officer, a copy of which was supplied to the applicant with the direction that he should make written submissions/ representations against it within a period of 15 days. The applicant chose not to make any submission/ representation against the findings of the enquiry officer. He was given another opportunity but he failed to avail himself of that opportunity also. He was asked to appear in orderly room of the the disciplinary authority on 28.2.1996 to narrate his defence, if any, orally. Again the applicant was found to be absent and he could not avail of this opportunity also. Holding that unauthorised absenteeism is one of the severest forms of indiscipline and one of the gravest misconduct which has the effect of lowering the discipline and efficiency of the police force, which is not in public interest, the applicant was held to be absolutely unfit for retention in Delhi Police and as a result was awarded punishment of removal from service with immediate effect and the period of absence was treated as not spent on duty for all intents and purposes vide order dated 12.4.1996. The applicant's appeal as well as his revision-petition were considered and rejected.

2. The applicant has challenged the the order of removal from service dated 12.4.1996 and the order passed in appeal on 25.9.1996; and sought directions to the respondents to reinstate him in service with all

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consequential benefits including pay and allowances etc.

3. According to the respondents the applicant had been afforded full opportunity of defence but he failed to avail himself of the same. He was indulged in unauthorised absence on several occasions and was in the habit of absenting himself frequently as was established from his past conduct for which he had been punished on several times but he failed to mend himself. The applicant has filed rejoinder as well.

4. We have heard the learned counsel and gone through the material available on record.

5. The learned counsel of the applicant stated that the applicant joined the police force on 7th August, 1991; he got married in January, 1993; between July 1993 and September, 1994 he had to absent on few occasions on account of family problems, wife's sickness, death of his child etc.; he was not provided opportunity to cross-examine the witnesses; he was also not allowed to engage defence assistant; and his past record should not have been taken into consideration as for that he had already been awarded minor punishments. The learned counsel of the applicant drew our attention to appellate order dated 27.8.1993 in the case of Ex. Constable Sukhbir Singh, who though earlier on had been awarded punishment of dismissal from service, on appeal was awarded a lesser severe punishment of reduction in pay for a limited period (Annexure-F). Similarly, in the case of Ex. Constable Chand Prakash who was also dismissed from service for unauthorised absence on several occasions, vide appellate order dated 8.3.1994, his pay was reduced by five stages for a period of five years. Similarly one Ex. Constable

Narender Kumar was removed from service for unauthorised absence of 420 days. His punishment was also reduced to reduction of pay by three stages for a period of three years in appellate order dated 21.4.1991 (Annexure-H). He has further relied upon order dated 22.3.1994 in OA 1347/89 in the matter of Constable Shamsher Singh where the applicant had absented himself unauthorizedly on 20 ^{and} occasions ~~as~~ was imposed the penalty of dismissal from service. Placing reliance on the ratio in the case of State Bank of India Vs. Samarendra Kishore Endow & others, JT 1994 SC (1) 217, it was held that in the circumstances of the case the punishment of dismissal from service was harsh and the appellate authority was asked to pass a speaking order reconsidering the quantum of punishment of dismissal from service.

6. The learned counsel of the applicant referred to a decision of the Hon'ble Supreme Court in Bhagat Ram Vs. State of H.P., AIR 1983 SC 454, and a decision of Punjab & Haryana High Court in Punjab State and another Vs. Balwant Singh Ex. Constable, 1989 (4) SLR 105. In the former case the delinquent was a class-IV employee who was not asked whether he wanted also to be represented by a defence assistant, it was held by the Supreme Court that proceedings in such a case in view of the provisions of Articles 226 and 311 would be vitiated. The learned counsel of the applicant stated that in the present case the applicant was only a matriculate belonging to scheduled caste. He does not understand the technicalities and intricacies of complicated departmental enquiry under the rules. His case should also be treated to have been vitiated as he was not given an opportunity to be represented by a defence

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assistant. In the latter case, though the petitioner along with another constable who participated in the misconduct of drinking and firing was dismissed, similarly situated co-delinquents were reinstated. The impugned order of punishment was held to be void and the State-appellant provided liberty to proceed against the plaintiff in accordance with the rules afresh.

7. Although the ratio in the matter of Ex. Constable Balwant Singh is not strictly applicable to the facts and circumstances of the case, those in the remaining four matters are certainly applicable to the facts of the present case. In the three cases at Annexures F, G & H on appeal the authorities had reinstated the concerned Constables in service after imposing punishment of forfeiture of service on the ground that the punishment of dismissal/ removal would be too harsh.

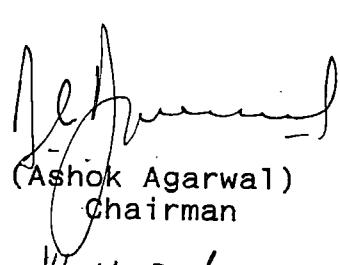
8. The learned counsel of the respondents denied various averments of the applicant and contended that the applicant had been afforded full opportunity of defence. Unauthorised absence of the applicant on earlier occasions was good enough to hold that the applicant was habitual absentee and incorrigible.

9. In our view although it was obligatory on the part of the enquiry officer to provide an opportunity to the applicant to engage a defence assistant, that was not done. The respondents had also not provided details of unauthorised absence of the applicant on earlier 21 occasions but his absence in the past was taken into consideration to establish that he was a habitual absentee and incorrigible in his conduct.

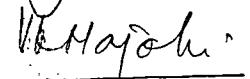
10. Having regard to the educational and social

backwardness of the applicant; non-availability of an opportunity to engage defence assistant; illness of the wife; and death of his son during the days of his alleged absence, the present is the case with extenuating circumstances where the applicant appears to have been more sinned against then sinning. Although it is not within the scope and ambit of the Tribunal to go into the question of quantum of punishment but here is a case where our judicial ~~conscience~~ ^{evenly} finds that the punishment was irrational, defying the logic and moral standards. The applicant is ~~a~~ similarly situated employee as those in Annexures-F,G & H who had been afforded a lenient treatment and their punishments of dismissal/ removal were reduced.

11. In view of the above facts and circumstances, the order passed by the appellate authority dated 25.9.1996 is set aside and the case is remanded to him to reconsider the case as regards the quantum of punishment keeping in view the above observations, within a period of three months of the date of communication of this order. The OA is disposed of in the above terms, however, with no order as to costs.


(Ashok Agarwal)

Chairman


(V.K. Majotra)

Member (Admnv)

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