

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./T.A. No. 652 of 1997

Decided on: 12/1/98

Shri L.S. Brar

....Applicant(s)

(By Shri Shanker Raju

Advocate)

Versus

U.O.I. & Another

....Respondent(s)

(By Shri Rajinder Pandita

Advocate)

CORAM:

THE HON'BLE ~~SHRI~~ DR. JOSE P. VERGHESE, VICE CHAIRMAN(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? *yes*
2. Whether to be circulated to the other Benches of the Tribunal? *L*

K
(K. MUTHUKUMAR)
MEMBER (A)

8

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 652 of 1997

NEW DELHI THIS THE 12th DAY OF JANUARY, 1998

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN(J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri L.S. Brar
S/o Shri Gurdev Singh
R/o E-2 PS Kalkaji,
New Delhi.

..Applicant

By Advocate Shri Shanker Raju.

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110 011.

2. Commissioner of Police,
National Capital Territory of Delhi,
Indraprastha Estate,
Police Headquarters,
New Delhi-110 002.

..Respondents

By Advocate Shri ~~Rajinder~~ Pandita.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant challenges the order of his dismissal from service from Delhi Police following an ex-parte departmental enquiry held against him and also the declaration in the aforesaid order dated 23.5.1991, Annexure A-1. The charge against the applicant was that after the expiry of 120 days of Earned Leave granted to him between 26.9.1989 to 23.1.1990. He was due to resume his duty on 24.1.1990 but he did not report for duty and he absented himself unauthorisedly and without permission of the competent authority. His application sent on 13.2.1990 for extension of leave was not acceded to and

h

he was directed to resume duty at once. But even after this, he failed to report for duty and thus disobeyed the orders of the superior officer (of the competent authority). He also failed to respond to absentee notices sent to him at his official address as well as at the addresses given in the leave application. Accordingly, disciplinary proceedings were initiated against him and he was placed under suspension with effect from 17.4.1990. He was, however, reinstated without prejudice to the disciplinary proceedings pending against him. The applicant did not join the disciplinary proceedings despite several letters sent to him by special messenger at his departmental residence at Delhi and also at the address in Punjab given in his leave application. These letters were recieve back undelivered. The letters sent to his residential address by special messenger was also not served on him. His wife had refused to receive the letters and the applicant was not available at the residence at Delhi and as well as at the given address in Punjab. In order that the Departmental Enquiry proceedins were not further delayed, it was decided to proceed with the DE proceedings ex-parte and the necessary orders in this behalf were also issued to the applicant along with the summary of allegations and list of documents. These were sent by Registered Post both at the address given of Punjab as well as at the residence at Delhi but again these documents could not be served upon him. The Enquiry Officer held the applicant guilty of the charges held against him after examining all the prosecution witnesses

and other documents. A copy of the findings of the Enquiry Officer was also handed over through the wife of the applicant as he was not found available at the local address at Delhi inspite of frequent visits by the responsible officer of the respondents and the applicant was also asked to appear before the disciplinary authority and he was also requested to submit his reply in response to the findings. It is alleged that the applicant neither submitted his reply nor availed of the opportunity of personal hearing. Considering the conduct of the applicant to be highly reprehensible and against all the norms of responsible behaviour, the disciplinary authority came to the conclusion that the applicant was not at all fit to be retained in service. After carefully going through the findings submitted by the Enquiry Officer, he came to the conclusion that the applicant was not at all interested in service and taking into account his continued absence and non-submission of representation whatsoever despite ample opportunities given in this behalf, issued the impugned order of dismissal from service. The appeal against this order also failed. But in the meanwhile, he had filed O.A. No. 878 of 1992 and the same was disposed of by the Tribunal with the direction to the respondents to dispose of the appeal and pass a speaking order. Thereafter, he filed a Contempt Petition No. CCP 183 of 1993 and this petition was disposed of by the Tribunal by directing the respondents to give a personal hearing to the applicant and then pass a speaking order on his

representaion/appeal dated 16.7.1991. He made a detailed comprehensive representation. During the pendency of this, he had also filed O.A. No. 2271 of 1996 praying for quashing of the disciplinary proceedings pending against him. This was, however, dismissed as withdrawn by the Tribunal and in the meanwhile, the appellate authority rejected his appeal dated 11.11.1996, which is also under challenge in this application.

2. The main grounds taken by the applicant is that the entire departmental proceedings were held behind his back and the applicant has not been served with the papers relating to disciplinary proceedings nor was he served with the findings of the Enquiry Officer. He submits that the respondents had violated the provisions of Rule 18 of the Delhi Police (Punishment & Appeal) Rules, 1980 and the conduct of an ex-parte enquiry was most arbitrary. The other ground taken by him is that the disciplinary authority's order itself has regularised his period of absence from January, 1990 as leave without pay and he, therefore, contends that once the leave has been treated as leave without pay, there could be no question of treating this absence as unauthorised and he could not be punished for the same. The other ground taken by the applicant is that the extreme penalty of dismissal from service must be on account of very grave misconduct as provided in Rule 18(a) read with Rule 10 of the Delhi Police (Punishment & Appeal) Rules, 1980 and

h

12

the disciplinary authority has to apply his mind very closely to the nature of misconduct while awarding this extreme punishment. He contends that no such finding about the grave misconduct has been recorded by the disciplinary authority.

3. The applicant also denied that he had ever evaded the service of the letters alleged to have been sent to him. He alleges that the address stated to have been shown in the letters is actually wrong Delhi address. While he was residing in E-2 Police Colony, the respondents have sent the notices and other papers to Quarter No.1 in the Police Colony. In reply to the contention of the respondents that the documents were pasted at the door of the relevant address, the applicant submits that there is no evidence of these having been pasted as there was no third party witness to this effect, as is required in such cases.

4. In the counter-reply, respondents have detailed several attempts made by them for transmission of summary of allegations and other documents to the applicant at the known address at Punjab as well as the address at Delhi. Finding that he was avoiding the joining of the disciplinary proceedings, it was decided that the ex-parte proceedings would be conducted and the said order for conducting ex-parte proceedings was also sent to the applicant along with the copy of summary of allegations and list of documents. The findings of the

h

Enquiry Officer were considered by the disciplinary authority. Keeping in view the indifferent attitude of the applicant, the disciplinary authority came to the conclusion that the applicant was not at all interested in service and that his continuous absence and as well as non-submission of his representation despite several opportunities given to him, only strengthened the view of his disinterest to continue in service. Under these extenuating circumstances, the penalty of dismissal from service was imposed on the applicant and the said order was also pasted on the main door of the residence of the applicant as, whereabouts of the Inspector were also not known. The respondents in their averments also admitted that the applicant was reinstated from suspension without prejudice to the disciplinary proceedings pending against him by the order dated 11.6.1990.

5. We have heard the learned counsel for the parties and have perused the record.

6. In the impugned order of punishment imposed by the disciplinary authority, the applicant was dismissed from service from the date of issue of that order, i.e., 25.5.1991 and his period of absence from 24.1.1990 till the date of issue of this order was to be treated as leave without pay and his suspension period was also to be decided later on. It is, however, seen from the order issued by the appellate authority vide order dated 26.2.1993 at Annexure A-3, that it was stated that when

14.

his reinstatement from suspension was communicated to the given address at Punjab, the same was received back undelivered. He was also not available at any of the given address both at Punjab and at Delhi. The applicant in his petition has contented that he has continuously performed his duty till May, 1991. In the counter-reply, however, this was denied by the respondents in reply to para 4.4. In the detailed and speaking order of the appellate authority dated 11.11.1996 which was issued after the disposal of the CCP 183 of 1993 in O.A. No. 878 of 1992 by the Tribunal, it was stated that the applicant resumed duty for a short spell between 6.11.90 and 21.1.1991. There is, however, no such averments in the counter-reply of the respondents. If the applicant had not received the reinstatement order, it is not clear how he could have resumed duty later on. If the applicant had actually resumed duty for a short period as stated in the aforesaid appellate order, it is not clear why and how he could not have been served with the summary of allegations and why he could not have been asked to join disciplinary proceedings at that stage. Besides, if this temporary resumption of duty during this period, as per the orders of the appellate authority, was correct, then the impugned punishment order treating the absence from 24.1.1990 till the date of issue of the order, i.e., 23.5.1991 as leave without pay would not be correct. The action taken by the respondents on his resumption of duty for a short period, for the purpose of

h

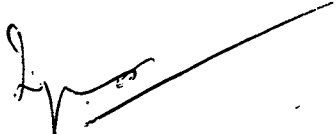
the pending disciplinary proceedings is also not clear. In the circumstances, we cannot come to the conclusion that the holding of ex-parte departmental proceedings was totally unavoidable in the facts and circumstances of the case.


7. In the light of this and in the interest of justice we feel that this application can be disposed of with the direction to the respondents to conduct the departmental proceedings de novo. We, therefore, remit the matter to the disciplinary authority with a direction to conduct de novo departmental proceedings in accordance with the prescribed procedure within a period of three months from the date of receipt of a copy of this order. The applicant is also directed to participate in the proceedings fully, for the expeditious conclusion of the enquiry. The impugned orders are quashed and the applicant may be reinstated in service. It is, however, open to the respondents to consider whether he should be allowed to be on duty or placed under suspension pending conclusion of the disciplinary proceedings. After the conclusion of the proceedings, the respondents are directed to issue final orders in the disciplinary case and also appropriate orders in regard to the treatment of the period from the date of dismissal to the date of reinstatement, according to rules within 15 days from the

16.
P
P
9.

date of completion of departmental proceedings.

8. The application is disposed of on the above lines. No order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(DR. JOSE P. VERGHESE)
VICE CHAIRMAN

Rakesh
O
O