

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.2244/94

New Delhi: August 31st, 1995.

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HON'BLE MR. S.R.ADIGE, MEMBER(A)

HON'BLE DR. A.VEDAVALLI, MEMBER(J)

Ex.Constable Raj Kumar No.86/DRP,
s/o Shri Rajvir Singh,
r/o Quarter No.O/45, Bari Mor Sarai,
New Delhi -110 006.Applicant,

By Advocate Shri Shanker Raju.

Versus

1. Deputy Commissioner of Police,
(Crime & Railways) Police Headquarters,
MSO,Building, IP Estate,
New Delhi.
2. Deputy Commissioner of Police,
Headquarters III, Police Headquarters,
MSO Building , IP Estate,
New DelhiRespondents.

By Advocate Shri Raj Singh.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A)

In this application Shri Raj Kumar, ex-Constable,
Delhi Police has impugned

- i) the disciplinary authority order dated
the 16th March, 1994 (Ann.1) dismissing him
from service;
 - ii) the Enquiry Officer's report dated 22.1.92
(~~Ann.2~~ + 28 of D.E. Record)
 - iii) the departmental inquiry order dated 13.8.90
(Ann.3)
 - iv) the summary of allegation as well as the
charge dated 16.5.91 (Ann.4 & 5); and
 - v) the appellate order dated 4.10.94 (Ann. 6)
2. Shortly stated, the applicant was suspended and
proceeded against departmentally on the charges that
- i) he behaved in an indisciplined manner with
SHO, Delhi on 5.6.90;
 - ii) he was mixed up with criminals and anti-social
elements;
 - iii) he refused to report for duty at P.P. Sarai
Rohilla in spite of being relieved to join

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there on 9.6.90 with directions to report for duty at Sarai Rohilla, and consequently was marked absent;

iv) Absentee notices were sent to him by post as well as police sources to his village home address but information was received back that he had not reached his village. Thereupon an ASI was deputed to him at his Delhi address but that was found locked and his neighbour intimated that his whereabouts were not known.

v) he absented himself from duty on three occasions for one day 3 hours and 34 minutes; 1 day 14 hours; and 12 days 16 hrs & 25 mts. respectively.

3. A perusal of the E.O.'s report dated 22.1.92 indicates that 7 persons ^{as prosecution} ~~in~~ witnesses were examined, who supported the charges (i); (ii); (iv) and (v). The applicant was asked to submit names of ^{defence} witnesses, but on 19.6.91 he gave in writing that he did not intend to ^{defence} adduce any defence evidence and submitted that he would submit his written ^{defence} statement on 24.6.91. Thereafter the applicant did not turn up to join the D.E. nor did he submit his ^{defence} ~~written~~ statement. He absented himself unauthorisedly from the police lines from 15.7.91, but despite two letters being sent to him at his home address he did not join the D.E. Furthermore he did not respond to the absentee notices sent by the office as well. In view of the continued absence of the applicant, orders were obtained by the E.O. to proceed ex parte who submitted his findings on 21.1.92 holding that the charges against the applicant were proved.

4. The Respondents state that a copy of the E.O.'s findings were sent to the applicant at his

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home address through a constable with a direction to submit his representation if any, against those ^{ing}finds, which was received by the applicant's father against proper receipt, as the applicant was not found at his home address. On 27.3.92 he sent an application that the E.O. had not obtained his defence statement and that the statement of his defence witnesses may be recorded and he may be permitted to submit his defence statement. After considering this application, he was directed to submit his representation against the E.O.'s findings vide letter dated 10.4.92 and after considering his representation dated 28.4.92 he was given an opportunity for personal hearing on 15.5.92 but he did not turn up. Thereafter despite four opportunities given to him, he did not appear for final hearing, but eventually appeared on 24.7.92 before the acting Dy. Commissioner of Police (Disciplinary Authority) who by his order of even date ordered the applicant's release from suspension and directed further action in the enquiry on assumption of charge by the regular Dy. Commissioner of Police. There is no denial to this recital of facts by the applicant in his rejoinder.

5. Accepting the E.O.'s findings the Disciplinary Authority by his order dt. 27.8.92 imposed the penalty of dismissal from service, against which the applicant filed O.A. No. 2586 of 1992. After completion of pleadings this O.A. came up for hearing on 31.5.95 before a division bench consisting of Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman and one of us (Hon'ble Mr. S.R. Adige, Member (A)). Hon'ble Justice Shri Dhaon

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in his judgment recorded that the applicant had preferred an appeal against the impugned order which was stated to be still pending. However, as the Disciplinary Authority while imposing the impugned punishment had not confined himself to the charges, but had taken into account the entire service record of the applicant, in respect of which the applicant had been given no opportunity to defend himself, Hon'ble Justice Shri Dhaon held that Rule 16(xi) Delhi Police (P&A) Rules, 1980^{As Was Violated} and accordingly quashed the impugned dismissal order. Noting that the appeal against the dismissal order was still stated to be pending, the other Member on the Bench (Hon'ble Mr. S.R. Adige) held that the appeal should be disposed of in the first instance in the light of the provisions of Sec. 20 A.T. Act, and if, after exhausting the available statutory and departmental remedies, any grievance still survived, the applicant would be at liberty to approach the Tribunal afresh, if so advised. In view of the difference of opinion the case was referred to a third Member, Hon'ble Shri J.P. Sharma, Member (J), who after hearing both parties by his judgment dated 17.9.93 noted that the appeal had been disposed of on 27.8.92, and held as follows:-

"When the disciplinary authority in passing the punishment order has taken into account certain extraneous matter which was not the subject matter of charge, the impugned order of punishment has to go. But, since no fault has been found with the memorandum of charge-sheet, or the summary of allegations served on the applicant as well as the procedure adopted in the enquiry by the Enquiry Officer, the case has to go back to the disciplinary authority to apply his mind only to the

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the matters which were relevant and subject of the charge against the applicant and then pass a speaking order on the same. Regarding the payment of back wages also, it will be subject to the ultimate result of the order passed by the disciplinary authority on the basis of the summary of allegations as well as the charge served on the applicant.

7. In view of the above facts, I am of the opinion that the present application is not barred under section 20 of the A.T. Act, 1985 as the same was admitted on 1.10.92 without any reservation. I also subscribe to the view taken by the Hon'ble Judicial Member that the impugned order has to be quashed on account of breach of Rule 16(xi) of the Rules, committed by the disciplinary authority and that the applicant has to be reinstated in service, and placed in the same position as he was before the passing of the impugned order. However, on the point of payment of back wages, I hold that the same shall be governed by an ultimate decision to be arrived at by the disciplinary authority to which the case is remanded for passing a final order, taking into account the subject matter of the charge and restricting his decision only to the material which has come on record of the Enquiry Officer on the basis of evidence adduced by the parties before him. The disciplinary authority shall pass final order within a period of six months from the date of receipt of a copy of this judgment and also pass an order regarding the period from dismissal from service by the order dated 17.8.92 till the date of reinstatement, as said above, in compliance with this order. The matter be placed before the Division Bench for final orders."

In view of the majority opinion, the application was allowed in terms of Hon'ble Mr. J.P. Sharma's order dated 17.9.93.

6. Accordingly the applicant was reinstated in service vide order dated 4.11.93, without prejudice to the disciplinary proceedings pending against him, and the Disciplinary Authority passed the impugned orders on 16.3.94 dismissing the applicant from service with effect from the date of its issue, which was upheld in appeal vide impugned order dated 4.10.94, against which this

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O.A. has been filed.

7. We have heard Shri Shanker Raju for the applicant and Shri Raj Singh for the respondents. Shri Shanker Raju has also filed written submissions dated 4.8.95 in respect of the points he has argued, which are taken on record and are discussed in the following paragraphs.

8. The first ground taken is that the appellate order is illegal as it was passed by an interested person. It is submitted that the appellate authority Shri R. Tiwari had ordered the D.E. against the applicant and had approved the charges against him and as such could not apply his independent mind to the contentions of the applicant. This ground was never raised by the applicant at the time the appellate authority passed his orders dated 4.11.92 on the first round or indeed when he passed his orders dated 3.10.94 on the second round, and cannot be raised at this belated stage. Even on merits this ground has no force ^{because} at no stage has bias, or lack of objectivity been alleged by the applicant against the appellate authority. It has not even been taken as a ground in the O.A., and if asserted, should have been specifically pleaded as one of the grounds, and the appellate authority made a party to enable him to file his reply. Hence this ground fails.

9. The second ground taken is that the exparte inquiry ordered is illegal as the applicant had sent a letter on 11.6.90 to the department requesting for leave in which he had given his address as 3/204, Krishna Nagar Devi-pura, Bulandshahr (UP) and despite knowledge of the aforesaid address,

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the department sent absentee notices to some other address at his native place. It is also contended that the applicant had been sending all postal communications along with his leave application attached with Medical Certificate regarding his own and his wife's illness, and the Enquiry Officer should not have conducted the proceedings *ex parte*. This ground also lacks merit, because the D.E. was ordered on 13.8.90 and the charges were served upon the applicant. It was thus the responsibility of the applicant to co-operate in the inquiry but he did not do so; so much so that when asked to produce defence witness, he gave in writing on 19.6.91 that he did not want to produce any of them and submitted that he would furnish his defence statement on 24.6.91 but he did not do that either and absented himself from 15.7.91, compelling the E.O. to proceed *ex parte* and submit his findings on 22.1.92. It is only after receipt of the E.O.'s report was taken by the applicant's father on 5.3.92 at his home address, the applicant not being found there, that the applicant represented on 27.3.92 for recording statements of his defence witnesses and accepting his defence statement. The applicant has failed to explain satisfactorily what prevented him from producing his defence witness and/ or filing his defence statement between 15.7.91 and 22.1.92, i.e. a period of more than 6 months. There are no materials to indicate that during this entire period the applicant was physically so incapacitated or to be unable to produce his defence witnesses or file his defence statement before the E.O., or to appear personally before

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the E.O. and seek further extension of time, This ground therefore fails.

10. The next ground taken in that Rule 10 Delhi Police (P & A) Rules allows the delinquent subsequently to appear in the D.E., inspect the departmental file and take note of the proceedings conducted in his absence, which was not done in this case. ^{We note} The applicant requested the Disciplinary Authority to allow him to give his defence statement, much after the E.O. had submitted his findings. Rule 18 cannot be interpreted to mean that the departmental enquiry has to be kept pending indefinitely till the delinquent at a time of his own choosing ^{decides} ~~cases~~ to file his defence statement. Sufficient opportunity was given to the applicant to file his defence statement before the E.O., which he did not avail of. Even thereafter, he was allowed to represent against the E.O. findings and his representation dated 10.4.92 was duly considered and he was also given the opportunity of a personal hearing. Hence it cannot be said that the applicant was not given a fair hearing. ^{and} ~~Hence~~ this ground also fails.

11. The next ground taken is that the applicant had submitted his medical certificates at the time of joining his duties and also subsequently sent it to the E.O. as well as the Disciplinary Authority which were not considered. A perusal of the materials in support of the applicant's illness nowhere indicates that he or his wife were physically so incapacitated that it prevented him from filing his defence statement, or producing his defence witnesses during

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the period from 15.7.91 to 22.1.92 or even approaching the E.O. even once during this entire period seeking extension of time. It may further be mentioned here that a perusal of the D.E. record reveals that none of the medical certificates filed by the applicant regarding his or his wife's alleged illness relate to the period 15.8.91 to 22.1.92. Hence the question of discussing the medical certificates or subjecting the applicant to a second medical examination does not arise, and the judgment dated 20.9.93 in O.A.No.1077/93 does not help the applicant. Hence this ground also fails .

12. The next ground taken is that the appellate authority acted illegally in not going into the proportionality of the punishment. The appellate order is a detailed and speaking order. The appellate authority was in full agreement with the Disciplinary Authority's order and has stated so in his order. That being the position, there was no question of the appellate authority recording ^{an} independent ⁱⁿ finding on the quantum of punishment. This ground therefore is wholly without merit, and the rulings cited by the applicant viz. SBI Vs. S.K. Endo -1994 (27)ATC 149; 1995 (1) SLJ 261 ; UOI Vs. G.R. Sharma 1995 SCC(Labour & Service) 290; and 1995 (1) ATJ 20 which were delivered in the ⁱⁿ conspectu of the facts and circumstances of those cases, do not help the applicant in this case.

13. The next ground taken is that there is no resjudicata in the present case, as the enquiry proceedings and other orders were not adjudicated upon on merits, but on technical reasons. Even

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if for a moment, this argument of the applicant is accepted, there are enough materials on record, both in terms of statements of witnesses as well as D.D. entries and other documents to establish charges (i), (iii), (iv) and (v) against the applicant. The defence of the applicant is that he had asked for an O R to the DCP on 3.6.90 for grant of E.L. on account of the critical illness of his wife but the SHO deliberately refused to forward his application and after waiting for 4-5 days, (as no OR is given directly), as his wife's condition had deteriorated, he had no option but to proceed to his place and he sent a detailed communication on 11.6.90 which was duly acknowledged by the respondents, but no communication (i.e. refusal of leave), was ever communicated to him, and during his period of absence he was residing neither at his official quarters nor at his native place, but was served notices at the wrong address. This defence does not bear scrutiny at all. The applicant was a disciplined member of a uniformed force and his action in leaving his place of duty and proceeding to his place in what he calls "compelling circumstances" is clearly an indisciplined act. No govt. servant, much less a member of a disciplined, uniformed force is permitted to leave H.Q. without permission and assume that leave will be granted to him. Leave cannot be anticipated or claimed as of right, and can be availed of only after it has been sanctioned by the Competent Authority. Even if

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the applicant's contention is accepted that his application for E.L. was not forwarded by the SHO and his prayer to place his grievances before the DCP directly was not acceded to, the proper course for the applicant was, to make an effort to approach the authority next superior to the SHO and place his grievances before him, and not breach discipline by leaving H.Q. without permission. Merely because he sent a detailed communication on 11.6.90 does not absolve him of the charge of indiscipline. In his representation dated 28.4.92 the applicant has stated that upon reaching his place he found his wife actually in a serious condition which required his presence there to look after her and his three year old child, because he had not informed his parents of her condition, and in any case they were too old and unwell to look after her. In other words on grounds of family circumstances, the applicant of his own admission absented himself from duty from 11.6.90 onwards and had not reported for duty till 13.8.90, the date of issue of the D.E. and was running absent continuously even thereafter. The applicant claims that he sent an application with Medical Certificate to the DCP for E.L. for 30 days and after his wife's illness, he himself had an attack of appendicitis and was advised bed rest, but the Disciplinary Authority has correctly held that this argument is not legally tenable. As stated above, leave it not a right but a privilege and no govt. servant much

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less a police officer can be permitted to stay away unauthorisedly from H.Q. month after month because he claims that he or his wife is ill or because of family circumstances, and claim that his absence should be treated as legitimate merely because he sent some medical certificates and applications for leave. There is also enough evidence to bring ^{home} ~~home~~ the other charges of misbehaviour with the SHO; failure to comply with the transfer order; and wilful absence on three subsequent occasions, which clearly amounts to misconduct.

14. It is now ^{well settled} ~~settled~~ that the Tribunal which exercises jurisdiction ^{akin to} ~~after~~ to that of the High Court, has to limit itself to ensuring that the decision making process has been correctly followed and not to go into the correctness of the decision itself. In other words it has to ensure that the charged officer has received a fair trial and a proper hearing, and the decision is not one that is arbitrary, perverse, malafide or ^{based} ~~based~~ on no evidence. The foregoing discussion makes it ^{abundantly} ~~clear~~ that the applicant was given a fair trial, and every reasonable opportunity of being heard. It is also not a case where there is no evidence against the applicant, or the ^{impugned} ~~impugned~~ orders are arbitrary, malafide or perverse. In the result, the impugned orders warrant ^{no} ~~no~~ interference. This application fails and is dismissed. No costs.

A. Veda Valli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
MEMBER (A)

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