

Central Administrative Tribunal
Principal Bench

O.A. No. 1199 of 1994
M.A. No. 513 of 1999

63

New Delhi, dated this the 22nd August, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Jasbir Singh through
Mrs. Anita (Legal Repr., wife of the
deceased applicant),
R/o Village Dariya Pur,
Delhi.

.. Applicant

(By Advocate: Shri Shankar Raju)

Versus

1. Commissioner of Police, Delhi,
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
2. Addl. Commissioner of Police (SR),
Police Headquarters,
M.S.O. Building, New Delhi.
3. Addl. Dy. Commissioner of Police,
West District,
P.S. Rajouri Garden,
New Delhi.

.. Respondents

(By Advocate: Ram Kavar)

ORDER (Oral)

MR. S.R. ADIGE, VC (A)

Applicant impugns the Disciplinary Authority's order dated 9.6.93 (Annexure A-4) and the Appellate Authority's order dated 16.9.93 (Annexure A-5). He prays for reinstatement from the date of removal with all consequential benefits.

2. We have heard applicant's counsel Shri Shankar Raju and Respondents' counsel Shri Ram Kavar.

3. It has been stated before us that

(64)

applicant had unfortunately expired on 5.4.98 after filing this O.A. on 1.6.94. M.A. No. 513/99 was filed by applicant's widow on 12.2.99 seeking substitution as applicant's legal heir. A prayer was also made seeking condonation of delay in filing the aforesaid M.A. in which it has been stated that the fact of applicant Shri Jasbir Singh's death was brought to the notice of his counsel Shri Shankar Raju in December, 1998, when this case along with certain other cases was before a Full Bench of the Tribunal, upon which the M.A. seeking substitution of legal heir was filed on 12.2.99. It is stated that the delay in filing M.A. No. 513/99 as well as the petition for condonation of delay was neither malafide nor intentional.

3. We have ^{perused} ~~seen~~ Rule 18, C.A.T. Procedure Rules which requires the legal representative of the deceased party ^{to} ~~seeking~~ ^{to} ~~seeking~~ substitution within 90 days of the death of the applicant, provided that on good and sufficient reasons the Tribunal may permit the substitution of legal representative even beyond that date.

4. Applicant's counsel Shri Shankar Raju states that applicant's widow was not aware of the pendency of the O.A. because the same was pursued by late applicant's father and it is only when the death

2

(65)

of the applicant was brought to the notice of applicant's counsel, that upon his advice applicant's father asked her to file an M.A. seeking substitution as the legal heir. On the other hand respondents' counsel states that as applicant has since expired no useful purpose will be served by substituting applicant's legal heir and hearing this case. He relies upon the ruling in Suraj Bhan's case to support his arguments.

5. We note that the facts in Suraj Bhan's case (supra) are different in as much as it related to the Industrial Disputes Act. The present case before us relates to the dismissal of a Government employee which involves stigma cast upon him. Shri Shankar Raju states that this order of dismissal will debar applicant's legal heirs from seeking compassionate appointment besides other benefits. Under the circumstances, we hold that Suraj Bhan's case (supra) is distinguishable from the present case, and as this case involves dismissal of a Government employee who has since unfortunately expired there are no good grounds to deny the prayer for substitution even though it has been made well after the prescribed period of 90 days. Accordingly the prayer for substitution is allowed.

6. The main ground taken by Shri Shankar

2

66

Raju is that the disciplinary proceedings have been conducted in violation of Rule 16(ii) of Delhi Police (Punishment & Appeal) Rule in as much as the ~~the~~[?] previous bad record of applicant has been taken into consideration while imposing the punishment of dismissal from service although the same did not form the basis of a definite charge.

7. A perusal of the charge sheet (Annexure A-3) reveals that applicant's alleged wilful and authorised absence on four occasions between Septemeber, 1990 and December, 1990 forms the subject matter of the ~~charge~~^{charge} but in the Disciplinary Authority's impugned order a reference has been made to the past punishments inflicted upon applicant, and the fact that he was facing two other departmental enquiries for such unauthorised absences ~~absence~~[?] have also been mentioned.

8. In the Appellate Authority's order a reference has been madse to applicant's unauthorised absences on 55 previous occasions during a span of 10 years of service, but these previous absences and past punishments have not been made the subject matter of a specific charge against applicant.

9. Under similar circumstances a Coordinate Division Bench of the Tribunal vide its order dated

2

67

30.5.2000 in O.A. No. 2631/99 Ex-Head Constable Hawa Singh Vs. Union of India & Others had allowed the O.A., holding that the impugned order of dismissal from service could not be legally sustained. While doing so it noticed the Delhi High Court's order dated April, 2000 in Delhi Administration & Anr. Vs. Ex-Constable Yasin Khan, wherein while upholding the Tribunal's order in that case, the Delhi High Court observed that it was difficult to say as to what extent Shri Yasin Khan's previous conduct had influenced the disciplinary authority's mind while awarding the penalty of dismissal from service and, therefore, the awarding of penalty, based on previous conduct without it forming the subject matter of a specific charge had rightly been disallowed by the Tribunal. In our view the ratio of the aforesaid order dated 30.5.2000 is fully applicable to the facts and ^{circumstances} ~~instructions~~ of the present case.

10. In the result the O.A. succeeds and is allowed to the extent that the impugned orders of the Disciplinary Authority's dated 9.6.93 and of the Appellate Authority's order dated 16.9.93 are quashed and set aside. The matter is now remitted back to the Disciplinary Authority for passing of fresh penalty orders based only on the finding of unauthorised absence which forms the basis of the

2

(68)

charge framed against applicant and excluding the previous bad record of applicant, which did not form the subject matter of the charge against applicant. These directions should be implemented within three months from the date of receipt of a copy of this order. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

S. R. Adige

(S. R. Adige)
Vice Chairman (A)

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