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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 51 of 1994

New Delhi, this 16th day of March, 1999.

HON'BLE MR. JUSTICE S. VENKATRAMAN, VICE CHAIRMAN (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Mohd. Saleem
S/o Mohd. Farookh
R/o H.No.207 Dhirpur
Nirankari Colony
Delhi-9. ... Applicant

By Advocate: Shri Shankar Raju

versus

1. Commissioner of Police Delhi
Delhi Police Headquarters
M.S.O. Building
I.P. Estate
New Delhi.
2. Additional Commissioner of Police
New Delhi Range, New Delhi
Delhi Police Headquarters
M.S.O. Building
I.P. Estate
New Delhi.
3. Additional Deputy Commissioner of Police
North East District, Delhi
P.S. Seelampur
Delhi. ... Respondents

By Advocate: Shri Amresh Mathur

O R D E R (ORAL)

HON'BLE MR. JUSTICE S. VENKATRAMAN, VC (J)

The applicant is aggrieved by the order of the disciplinary authority dated 5.8.1993 (Annexure A-5) finding him guilty of the charges framed against him and imposing punishment of dismissal from service as well as the order of the appellate authority dated 28.9.1993 (Annexure A-6). A charge memo was framed against the applicant with regard to his unauthorised absence on ten

occasions during the period from September 1989 to March 1990 as detailed in the charge memo. It is also stated that he was a habitual absentee and an incorrigible type of police officer. On the basis of the enquiry report, the disciplinary authority had passed an order dismissing the applicant from service and in that order he had referred to 31 instances of unauthorised absence by the applicant. The appeal preferred against that order having failed, the applicant had filed a revision petition. The revisional authority vide his order dated 21.6.1993 (Annexure A-4) set aside the punishment and reinstated the applicant in service and remanded the departmental enquiry proceedings to the disciplinary authority to take up the same from the stage of final order in the light of the discussions in that order. After the matter was remanded, the disciplinary authority had passed a fresh order dismissing the applicant from service again. The appeal preferred by the applicant against that order having been rejected by the appellate authority, he has now approached this Tribunal.

3. The main contention urged on behalf of the applicant is that though the revisional authority had set aside the earlier order of dismissal mainly on the ground that the disciplinary authority had referred to past instances of absenteeism even though it was not the subject matter of the charge and that if the disciplinary authority wanted to rely on those previous instances he should bring those instances on record by getting evidence adduced and give opportunity to the applicant to explain the other

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occasions of unauthorised absence and as that had not been done, the order of the disciplinary authority had to be quashed, that in spite of specific direction given by the revisional authority the disciplinary authority without adducing any evidence regarding the alleged previous misconduct and without bringing on record the service book, the disciplinary authority had relied on those instances to come to the conclusion that the applicant is a habitual absentee and that he was not entitled for any leniency and required to be weeded out from the force. He further contended that though this aspect was urged in the appeal, the appellate authority has not taken into consideration that aspect and he has also referred to the service record which was not at all brought on record during the enquiry.

4. The learned counsel for the respondents sought to support the orders made by the disciplinary authority by submitting that in the latest order, the disciplinary authority has not referred to the other twenty one instances of absence, that he has come to the conclusion that the applicant is a habitual absentee and is incorrigible on the basis of the ten instances which have been specified in the charge and that as such there is nothing irregular in the impugned orders.

5. Rule 10 of the Delhi Police (Punishment and Appeal) Rules, 1980 stipulates that the previous record of an officer against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment

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awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment should normally be reduction in rank. Rule 16 sub-rule (xi) of the aforesaid Rules stipulates that if it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules.

6. Reading Rule 10 and 16 (xi), it follows that if the department wants to rely on the previous record of the officer to prove his continued misconduct indicating his incorrigibility entailing the severe punishment of dismissal from service, then a separate charge should be framed in respect of such previous bad record and the delinquent should be given an opportunity to defend himself as required by rules. In the instant case, the charge does not refer to any previous instances of unauthorised absence. It is because of this circumstance, the earlier order of the disciplinary authority imposing the penalty of dismissal from service taking into consideration the other instances of unauthorised absence, was set aside by the revisional authority. The revisional authority in his order has observed as hereunder:

"The disciplinary authority while passing the final order, has mentioned 31 instances of his absence ad-seritum in a

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manner which shows that he is being punished for all the 31 instances of absence rather than the ten instances for which he had been charged by the E.O. This had been done by the disciplinary authority without adopting the provision laid down in rule 16 (x) of Delhi Police (Punishment & Appeal) Rules, 1980., in which it is clearly mentioned that if, in the opinion of the disciplinary authority, some important evidence having a bearing on the charge has not been recorded or brought on the file, he may record the evidence himself or send back the enquiry to the same or some other enquiry officer, according to the circumstances of the case, for such evidence to be duly recorded. This procedure was not adopted and the petitioner had not been afforded opportunity to lead defence to explain the remaining occasions of unauthorised absence."

7. Though the revisional authority has referred to Rule 16 (x) actually Rule 16 (xi) is the one which should have been applied. Be that as it may, the fact remains that the revisional authority gave a specific direction that if the disciplinary authority wanted to rely on the other instances of unauthorised absence, he should record evidence by himself or send back the enquiry to the same or

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other enquiry officer for such evidence to be recorded. He has also pointed out that it was necessary to afford an opportunity to the applicant to lead defence evidence explaining the other occasions of unauthorised absence. Strangely, the disciplinary authority has not chosen to record any evidence of the earlier occasions of unauthorised absence and has tried to circumvent the direction given by the revisional authority by referring only to the ten instances of unauthorised absence at the commencement of the order and did not specifically refer to the other instances of unauthorised absence. However, in the later portion of the order he has referred to the previous misconduct as hereunder:

"He remained under suspension on several occasions during short spell of his service and was also punished but in vain and had no effect on him. The ACRs recorded also reflect his habit of absenteeism, and he had no will to improve himself. Besides the people like him put all arrangements out of gear because they are found absent when needed mostly at the times of crises. Such type of undependable/undesirable police officer can render no good to the department. The defaulter had already been given several opportunities to improve himself, and thus he is not entitled for any more

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leniency, except weeding out him from the force, as the incorrigibility and absence from duty unauthorisedly is not tolerable in the disciplined force."

8. The above order passed by the disciplinary authority shows that he has relied on the earlier occasions during which the applicant is stated to have been kept under suspension and also punished. He has also referred to the entry in the ACR without the ACR being brought on record or any other document showing the previous punishment given to the applicant being put in evidence. By this method the disciplinary authority has flouted the directions of the revisional authority and has again passed the same order of dismissal from service.

9. When the above aspect was highlighted in the appeal preferred by the applicant, the appellate authority has not at all taken note of the violation of the directions given by the revisional authority committed by the disciplinary authority, as well as the requirement of Rule 16 (xi) of the Delhi Police (Punishment and Appeal) Rules. On the other hand, he has also adopted the same method and has referred to the service record of the applicant to conclude that he had absented several times earlier even though the service record was not brought on evidence in the enquiry. In fact, the service record does not form part of the disciplinary records, which are now produced before us. It is thus, seen that the impugned orders whereby the applicant has been imposed the ultimate punishment of dismissal from service have been passed

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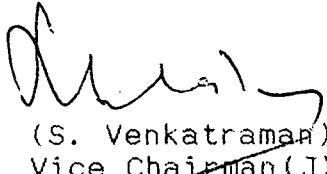
without complying with the provisions of Rule 16 (xi) of the aforesaid Rules as well as the expressed directions given by the revisional authority. In the circumstances, the impugned orders cannot be sustained.

10. For the above reasons, this application is allowed and the impugned orders are quashed. The applicant shall be reinstated in service forthwith. The liberty is given to the respondents to continue the proceedings from the stage where the illegalities occurred by following the appropriate procedure and pass appropriate orders. The respondents shall also pass order regarding the manner in which the period of absence from the date of dismissal from service to the date of reinstatement has to be regulated.

No costs.


(K. Muthukumar)
Member (A)

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(S. Venkatraman)
Vice Chairman (J)