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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1603/94

New Delhi: December 15, 1994.

HON'BLE MR. J.P.SHARMA, MEMBER(J)

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

Ex. Constable Virender Singh, No.8865/DAP,
son of Shri Khazan Singh, aged about 53 years,
previously employed in Delhi Police,
r/o Village Phakana, P.S.Secunderabad,
Distt: Bullandshahr (UP)Applicant.

By Advocate Shri Shanker Raju.

Versus

1. The Lt. Governor of Delhi, NCT Delhi,
through Commissioner of Police,
Police Headquarters, MSO Building,
New Delhi.
2. The Dy. Commissioner of Police,
7th Bn. DAP Malviya Nagar,
New Delhi.Respondents.

By Advocate Shri Arun Bhardwaj.

JUDGMENT

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

In this application, Ex. Constable Virender Singh, Delhi Police has impugned the order dated 6.7.93(Annexure-A1) dismissing him from service, which has been upheld in appeal vide order dated 13.4.94 (Annexure-A2).

2. The applicant, who was enrolled as a Constable in the Armed Police under the then Punjab Police Rules in 1963, was proceeded against departmentally on the charge that upon being relieved of his duties from Central District on 28.10.91 to report in 7th Bn. DAP on 1.11.91 after availing three days' C.L. w.e.f. 29.10.91, the applicant failed to report for duty in 7th Bn. on 1.11.91 and was marked absent vide D.D. entry No.28 dated 10.4.92 of 7th Bn. DAP w.e.f. 1.11.91. An

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absentee notice dated 21.4.92 was sent at his home address directing him to report for duty atonce, failing which departmental action would be taken against him, but it had no effect. Another absentee notice was sent at his home address through a Constable but the applicant was not found at his residence. He resumed his duties only on 28.8.92 after remaining absent for a period of 302 days unauthorisedly which act amounted to gross negligence on his part. The charge also mentioned that he remained absent from his duties on as many as 15 occasions wilfully and unauthorisedly which showed that he was a habitual absentee. The Enquiry Officer in his findings held that the charge of wilful and unauthorised absence from duties for 302 days stood fully proved against the applicant. A copy of the Enquiry Officer's findings was served upon the applicant who submitted his written reply. The Disciplinary Authority considered the same and finding it unsatisfactory, imposed the punishment of dismissal from service with immediate effect vide impugned order dated 6.7.93, which was upheld in appeal vide order dated 13.4.94, against which this O.A. has been filed.

3. The first ground taken is that the impugned order of punishment is without jurisdiction, as it was passed by an authority incompetent to do so, being subordinate to the appointing authority of the applicant. It has been contended that the applicant was appointed as a Constable on 18.11.63 under the Punjab Police Rules by the then DIG of Police but was dismissed by the Deputy Commissioner of Police, who was not an authority of the rank of the appointing Authority, but rather a subordinate authority and hence Article 311(2) of the

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Constitution as well as Rule 6 of the Delhi Police (Punishment & Appeal) Rules 1980 and Sections 21 and 149 (2) (B) of the Delhi Police Act, 1978 have been violated. To support this ground a photocopy of a certificate in Form No.12.22(1), prescribed by the Punjab Police Act and signed by the Commandant/DAP, Delhi issued to the applicant, has been filed. It is, however, well settled that this certificate is not the appointment letter per se and merely certifies that the applicant having been appointed a member of Police Force, has been vested with the powers and privileges of a Police Officer. It has not been signed by the DIG of Police but by the Commandant/DAP, Delhi. Even if for a moment the applicant's argument is conceded that this certificate is in fact an appointment letter (although as pointed out above, it is well settled that it is not so), it is the authority who actually signed the same which is relevant, and ^{not the} who in law was the proper authority to make the appointment. This certificate has been signed by the Commandant/DAP, Delhi and as the applicant's services were terminated by the Dy. Commissioner of Police, who is not subordinate to the Commandant, it cannot be said that Article 311(2), or the provisions of the Delhi Police Act or its Rules have been violated.

4. The applicant has placed reliance on the Tribunal's (Division Bench) judgment dated 25.2.94 in O.A.No.7/89 Virender Gupta Vs. Delhi Administration & Ors in which a similar plea was taken, that the applicant was appointed by the DIG of Police, who was equivalent

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to the rank of Addl. Commissioner of Police. In that O.A. also, the certificate issued in Form No. 12.22(1) was put forward as an appointment order issued by the Superintendent of Police/Commandant for DIG of Police. In that judgment, it was held that as the punishment was imposed by the Dy. Commissioner of Police who was lower in the rank to the appointing authority i.e. Addl. Commissioner of Police, the order of termination was bad in law and Shri Virender Gupta was ordered to be reinstated. However, this very question was examined in the judgment of another Division Bench of this Tribunal decided on 1.9.93 in O.A.No.146/88 Ramjit Singh Vs. UOI, that Division Bench consisted of the Hon'ble former Chairman Mr. Justice V.S.Malimath and one of us (Mr.S.R.Adige, Member(A)). Delivering the judgment in that case, former Chairman Mr.Justice V.S.Malimath was pleased to note that the Hon'ble Supreme Court had occasion to examine the real character of the certificate in S.P.Ludhiana & another Vs. Dwarka Das etc- AIR 1978 SC 336 and ^{which is} held as follows:-

"4...Section 8 is also relevant for it expressly provides that every police officer appointed to the police force of the State (other than an officer mentioned in Section 4), shall receive on his appointment a certificate in the form annexed to the Act, by virtue of which he shall be vested with the powers, functions and privilege of a police officer. The certificate states that the police officer concerned has been appointed a member of the police force under the Act, and vested with the powers, functions and privileges of a police officer. The certificate is not therefore the order of appointment or enrolment, but subsequent to the appointment and the enrolment, even though it is a part

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of the process of appointment and enrolment, inasmuch as it certifies that the police officer has been vested with the necessary powers, functions and privileges of a police officer...."

The judgment in Ramjit Singh's case had gone on to state that the certificate was not an order of appointment and it cannot have the effect of converting the order of appointment issued by the Suptd. of Police into one issued by the DIG merely because Rule 12.22 of Chapter 12 of the Rules requires that the certificate should be signed and issued by the appoint^{ing}~~ment~~ authority. That judgment further went on to note that the fact that the certificate was not actually signed by the DIG, was not disputed and it was, therefore, clear that the certificate relied upon by that applicant, was not one which could be regarded as having been issued strictly adhering the statutory mandate. That judgment further went to note that what was relevant for the purpose of Article 311 (1) of the Constitution, was not who in law was the proper authority to make the appointment, but who actually made the appointment. As the authority who actually appointed that applicant was the Suptd. of Police and that applicant was dismissed by the Dy. Commissioner of Police who corresponds to the Suptd. of Police, it could not be said that Article 311 (2) of the Constitution had been violated. We note that Virender Gupta's case, relied upon by the applicant, contains no discussion of the Hon'ble Supreme Court's judgment in Dwarka Das's case (Supra). On the other hand, Ramjit Singh's case (Supra) relies heavily on the Hon'ble Supreme Court's judgment in Dwarka Das' case

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where the real character of the certificate issued under Rule 12.22(1) of the Punjab Police Rules has been examined. With respect, we are bound to follow the ratio in Ramjit Singh's case (Supra) and under the circumstances, the applicant's contention that Article 311(2) of the Constitution has been violated in this case, fails.

5. The next ground taken is that the extreme punishment of dismissal under Rule 8(a) Delhi Public (Punishment & Appeal) Rules can be awarded only for grave misconduct rendering the applicant completely unfit for service, for which it is mandatory for the Disciplinary Authority to record a finding of grave misconduct and also a finding of complete unfitness for service. Reliance has been placed on the decision of a Division Bench of this Tribunal in O.A.No.802/90 Dalip Singh Vs. L.G. Delhi & others, decided on 23.9.94. However, another Division Bench of the Tribunal in their judgment dated 14.11.94 in O.A.No.209/90 Randhir Singh Vs. Delhi Administration & others, had occasion to examine this very matter in the light of the decision dated 4.8.88 of the Full Bench of the Tribunal in O.A.No.1344/90 Hari Ram Vs. Delhi Administration, ^{and} held that if the tenor of the punishment order reflected that the mandate of Rule 8(a) was borne in mind while deciding the nature of punishment, that would be sufficient compliance of Rule 8(a) and a positive finding in writing was not required. The Full Bench decision would prevail over that of the Division Bench. Here, we note that the Disciplinary Authority had noted in his order that he had seen the applicant's entire record including

the fact that he had a history of punishments, which makes it clear that he had applied his mind before imposing the punishment of dismissal. This ground therefore also fails.

6. The next ground taken is that the applicant had not wilfully absented but was compelled to remain absent on account of severe illness of his wife, intimation of which was given by him to the authority from time to time, by way of medical certificates, which was not an act so severe as to warrant the extreme punishment of dismissal. Even if the applicant had to remain absent from duties, on account of the illness of his wife, he has failed to establish why he did not apply for leave for the purpose. It needs hardly any reiteration that leave of absence from duty cannot be claimed as of right and as a member of the disciplined force, it was expected of the applicant to file a proper application for leave and await orders upon it, before absenting himself from duties. The period of absence is also not of a short duration but is as much as of 302 days, during the course of which surely it should have been possible for him to apply for leave. As regards the quantum of punishment, it is well settled in UOI Vs. Parma Nanda - AIR 1989 SC 1185 that if the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty, unless it is malafide is certainly not a matter for the Tribunal to concern with, and manifestly the applicant has failed to establish

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that the respondents acted in a malafide manner.
Hence this ground also fails.

7. The next ground taken is that the Disciplinary Authority took into account the previous conduct of the applicant in his order dismissing the applicant, but the same has not been included in the specific charge. This ground is incorrect, because the fact that the applicant remained absent from duties as many as on 15 occasions, has specifically been mentioned in the charge.

8. In the result, the applicant has failed to make out any legal grounds on which interference with the impugned orders would be warranted. This application, is therefore dismissed. However, having regard to the fact that the applicant has put in 30 years of service prior to the order of dismissal, and his dismissal will deny him all retiral benefits, if he files a petition for sympathetic reconsideration of the order of punishment imposed upon him, and the respondents having regard to the circumstances of the case, are inclined to consider the same sympathetically, nothing contained in this judgment will prevent them from doing so.

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

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

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