

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 170 of 1994

New Delhi this the 25th day of January, 1994

**Mr. Justice S.K. Dhaon, Vice-Chairman**  
**Mr. B.N. Dhoundiyal, Member**

Shri Devinder Kumar  
R/o Village Nakloi P.O. Vidhlan  
Distt. Sonapat (Haryana). ...Petitioner

By Advocate Shri Shanker Raju

Versus

1. Lt. Governor,  
N.C.T. D. through  
Additional Commissioner of Police,  
(Northern Range),  
Police Headquarters,  
M.S.O. Building,  
I.P. Estate,  
New Delhi.
2. Dy. Commissioner of Police,  
North West District,  
Ashok Vihar,  
Delhi. ...Respondents

**ORDER (ORAL)**

**Mr. Justice S.K. Dhaon, Vice-Chairman**

The petitioner, a Constable in the Delhi Police was subjected to disciplinary proceedings. A summary of allegation was given to him. An inquiry officer was appointed, who also framed charges. He submitted his report. The disciplinary authority passed an order of dismissal. The appellate authority has confirmed the order of the disciplinary authority. The orders passed by the disciplinary authority and the appellate authority are being impugned in the present application.

2. The summary of allegation, in brief, is that the petitioner remained absent for a period of 56 days 22 hours and 10 minutes unauthorisedly. It also states that the past record of the petitioner shows that he is a habitual absentee and was marked absent on 17 occasions and numerous minor punishments had been given to him, It is stated at the end

that the petitioner is a habitual absentee and incorrigible type of a Constable and has thus rendered himself liable to be dealt with departmentally under Section 21 of the Delhi Police Act.

3. The inquiry officer framed charges, as required by the relevant rules. He mentioned that the past record of the petitioner shows that he is a habitual absentee as he was absent from duty on 29 times, as discernible from his previous record. The charge is: "your absence for a period of 56 days 22 hours and 10 minutes shows that you are careless and negligent in discharge of your duty. You are also habitual absentee which has been proved from record on 29 occasions. These acts render you liable for action under Section 21 of the Delhi Police Act".

4. The inquiry officer has recorded that, in substance, the petitioner pleaded guilty of the charge and prayed for mercy. He has also recorded a salient fact, namely, the petitioner did not cross-examine any witness although he was given an opportunity to do so. He came to the conclusion that the charge was brought home to the petitioner. The inquiry officer passed a detailed order. He has referred specifically to the testimony of the various witnesses examined before him. The disciplinary authority has agreed with the findings of the inquiry officer, as already indicated. He states in his order that he has carefully gone through the file of the departmental proceedings, statement of PWs and findings of the inquiry officer, that the petitioner could not produce any defence witness and even did not submit his representation against the findings of the inquiry officer which shows that he has nothing to say in his defence. The petitioner, according to the disciplinary authority, submitted his defence statement during the departmental enquiry stating therein that he had a step mother due to which quarrels took place in his home and due to constant mental

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tension he fell sick and was unable to attend to his duties. This plea has been repelled by the punishing authority on the ground that the petitioner neither submitted any medical certificate nor informed the department. He even did not seek any leave or permission from the competent authority. He then records the finding that the petitioner is a habitual absentee and an incorrigible type of a person. Such a person is not fit to be retained in a disciplined force.

5. The appellate authority while endorsing the findings of the disciplinary authority, has recorded a categorical finding that the petitioner's conduct amounted to the gravest misconduct and he fully merited the punishment of dismissal.

6. In support of this application, it is contended that:-

(i) Copies of the documents were not supplied to the petitioner alongwith the summary of allegations, as required by Rule 16.

(ii) The petitioner was not given a right to cross-examine the witnesses.

(iii) The charges have not been proved.

We shall deal with these items seriatim.

Regarding Item No.(i)

It is not the requirement of the rule that it should be recited in the summary of allegations that the copies of the documents are being given to a delinquent servant. The only requirement is that the summary of allegations should be accompanied by the copies of the documents on which the department proposed to rely in the departmental proceedings. Learned counsel for the petitioner has very fairly stated at the Bar that the petitioner

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did not make any complaint to the inquiry officer, that he had not been supplied with the copies of the documents. He, however, urges that since it is not recited in the summary of allegations that the copies of the documents were attached thereto, there has been a non-compliance of Rule 16. We are unable to accept this submission. In his memorandum of appeal, the petitioner had taken the specific plea that he was not supplied with the copies of the documents. This grievance has been dealt by the appellate authority in paragraph 2 of its order. The appellate authority records that the contention of the petitioner on this score <sup>was given all the relevant documents</sup> is totally without any basis. The petitioner <sup>he</sup> /as mentioned in the memo/ was specifically asked whether he required any other documents in his defence.

Regarding Item No. (ii)

We have already stated that the inquiry officer has recorded in his order the fact that the petitioner did not cross-examine any witness though an opportunity was given to him. Learned counsel has stressed that while dealing with the testimony of PW-1, the inquiry officer has not stated the fact that the petitioner has not cross-examined <sup>in the case of other PWs,</sup> the above PW whereas / such a fact has been stated. Nothing will turn upon the omission of the inquiry officer as he has already recorded a fact that the petitioner did not cross-examine any of the PWs. Counsel next urged that the petitioner was not given a reasonable opportunity to cross-examine the witnesses in so far as <sup>he</sup> he was not supplied with the copies of the statements recorded by the inquiry officer. This is a novel argument to advance. It is a matter of common knowledge that even in a competent court of law, the deposition of a

witness is recorded in the presence of the accused or a party and the party is called upon to cross-examine the witness then and there. Such a party or accused may, if so likes, take notes while the deposition is being recorded. The recording of the deposition by the presiding officer concerned, is a separate transaction. The learned counsel has next urged that the petitioner was seriously prejudiced as the deposition of witnesses were recorded in English. It is not the case of the petitioner that the witnesses had deposed in English. It follows that the witnesses had deposed in Hindi. The appellate authority has dealt with this aspect. In paragraph 2 he has noted the grievance of the petitioner that the copies of the statements of P.Ws. were not furnished to him by the inquiry officer.

He repels this contention by saying that copy of the statement of witness is not required to be furnished to the defaulter by the inquiry officer. Defaulter is free to take notes of the statements which are recorded in his presence.

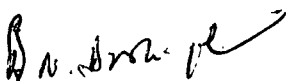
Regarding Item No.(iii)


We have already indicated that the inquiry officer passed a detailed order, the punishing authority agreed with the reasoning of the inquiry officer and \_\_\_\_\_ the appellate authority too has endorsed the view point of the punishing authority. We are satisfied that, on the whole, the charges have been brought home to the petitioner. Even otherwise, we are not sitting as a court of appeal in these proceedings and, therefore, it is not in our jurisdiction to reappraise the evidence led before the inquiry officer. We may note that the rule of evidence, which is followed, is the preponderance of probabilities. Nothing has been

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brought to our notice to indicate that the inquiry officer acted arbitrarily or irrationally in appraising the evidence which was before him.

6. This application fails and it is dismissed summarily.

  
(B.N. DHOUNDIYAL)  
MEMBER (A)  
25.01.1994

  
(S.K. DHAON)  
VICE CHAIRMAN  
25.01.1994

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