

8-

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2084/2000

Tuesday, this the 7th day of August, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Ex. Constable Ranbir Singh No.10262/DAP
S/O Shri Ran Singh, aged 35 years
Previously employed in Delhi Police
R/O Village-Isheri, Distt-Bahadur Garh,
Haryana.

..Applicant

(By Advocates: Shri Sachin Chauhan & Shri Rajeev Kumar)

Versus

1. Union of India
Through its Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Addl. Commissioner of Police
Armed Police
New Police Lines, Kingsway Camp
Delhi.
3. Dy. Commissioner of Police
9th Bn, DAP,
Pitam Pura,
Delhi.

..Respondents

(By Advocate: Shri Amit Rathi for Shri Devesh Singh)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, M (A):-

On the charge of unauthorized absence from duty w.e.f. 22.8.1996, the applicant who was a Constable in Delhi Police has been removed from service by disciplinary authority's order dated 1.4.1999 (Annexure A-1). On being carried in appeal, the appellate authority has upheld the aforesaid order by his own order of 30.9.1999. Both these orders have been impugned by the applicant in the present OA.

2. The short point raised by the learned counsel appearing in support of the OA is that while passing the

-9-

(2)

order in appeal, the appellate authority has taken extraneous matter into consideration which would vitiate the order passed by the said authority.

3. A perusal of the charge shows that the applicant was departmentally tried on the single charge of unauthorized absence from duty w.e.f. 22.8.1996. The disciplinary authority has accordingly proceeded to consider the matter on the basis of the aforesaid single charge and has imposed the punishment of removal from service. The appellate authority, however, has taken into consideration not only the various pleas raised by the applicant in his appeal and the order passed by the disciplinary authority but has also found occasion to observe as follows in his order dated 30.9.1999:-

"Punctuality of the appellant as seen from the record is poor. In the past, the appellant has absented on 57 different occasions and awarded various punishments..."

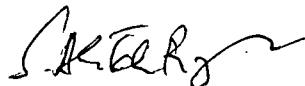
4. From what the appellate authority has observed as above, we are convinced that the past record of the applicant in terms of his absence on 57 different occasions has weighed with the appellate authority in arriving at his decision in the matter. Since the aforesaid matter did not form part of the charge levelled against the applicant by the respondent-authority, the applicant ^{& evidently} ~~absolutely~~ did not have the opportunity to state his case against the allegations of absence on 57 different occasions. In the circumstances, it is clear to us that the principle of natural justice has been observed in breach by the appellate authority by relying on the aforesaid extraneous matter.

o

(3)

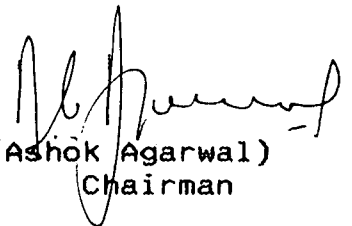
5. The learned counsel for the applicant has in support of his contention that the aforesaid extraneous matter is sufficient to annul the appellate authority's order, placed reliance on the decision of this Tribunal in OA-2189/99 decided on 23.1.2001. We have perused the aforesaid order and find that in that case also, it was the appellate authority who had taken into account the extraneous matter of previous absences of the applicant. The Tribunal had accordingly in that case annulled the order passed by the appellate authority with a direction to the same authority to re-consider the matter and pass a fresh order, if so advised, after excluding the charge of the past absences of the applicant. On consideration, we find that the present OA can and deserves to be decided in similar terms. We, therefore, proceed to set aside the orders passed by the appellate authority and direct him to re-consider the matter after excluding the charge of 57 previous absences and pass a fresh order. We direct the respondents to re-consider as above and pass a speaking/reasoned order within a maximum period of two months from the date of receipt of a copy of this order.

6. The present OA is disposed of in the aforestated terms without any order as to costs.



(S.A.T. Rizvi)
Member (A)

/sunil/



(Ashok Agarwal)
Chairman