

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2139/2000
M.A. NO. 2548/2000

New Delhi this the 12th day of March, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

Ex. Head Constable (Driver) Rohtas Singh
No. 4030/PCR
S/o Shri Tulsi Ram
R/o K-5, Kewal Park Extension
Azad Park, Delhi-33.

... Applicant

(By Shri Sachin Chauhan, Advocate)

vs.

1. Union of India
Through its Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. The Commissioner of Police
Delhi
Police Head Quarters, I.P.Estate
M.S.O. Building,
New Delhi.
3. The Joint Commissioner of Police
Operations
Police Head Quarters, I.P.Estate
M.S.O. Building
New Delhi.
4. The Additional Dy. Commissioner of Police
Police Control Room
Sarai Rohilla
Delhi.

..... Respondents

(By Smt. Sumedha Sharma, Advocate)

O R D E R

Justice V.S. Aggarwal:-
MA No. 2548/2000

We are satisfied with the grounds mentioned in
MA No. 2548/2000 seeking condonation of delay in
filing OA No. 2139/2000. The MA is granted.

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2. The applicant Rohtas Singh was a Head Constable in Delhi Police. The inquiry officer had charged the applicant in the disciplinary proceedings as under:-

"I, Vimal Kumar, Insp. New Delhi Zone, PCR charge you H.C. (Driver) Rohtash Singh, No. 4030/PCR (PIS No. 28810454) under the provision of Delhi Police (Punishment and Appeal) Rules, 1980 for your grave misconduct that of unbecoming a member of disciplined force that you were relieved from M.T. PCR to New Delhi Zone, PCR vide D.D. No. 41 dated 28.2.97 in pursuance of order No. 5548-57/SIP (PC-I)/PCR dated 26.2.97 with the direction to report for duty in New Delhi Zone, PCR. You were supposed to report for duty by 1.3.97 but neither you reported for duty nor sent any information about your whereabouts. You were thus marked absent w.e.f. 28.2.97 vide D.D. No. 26 N.D. Zone, PCR dated 11.6.97. Two absentee notices vide Nos. 509/AC/NDZ/PCR dated 11.6.97 and 523/AC/NDZ/PCR dated 18.6.97 were sent at your residential address of Village Dhaka, P.S. Mukherzi Nagar, Delhi through special messengers. Although the absentee notice dated 18.6.97 was served upon your nephew Shri Arjun Chauhan. You made your arrival report from absence vide D.D. No. 18 dated 8.8.97 after absenting yourself for a period of 162 days, 4 hours and 5 minutes violating the instructions contained in C.C.S. Leave Rules 1972 as well as S.O. No. 111/88.

I further charge you HC (Dvr.) Rohtas Singh, No. 4030/PCR that a scrutiny of your previous record also reveals that you are a habitual absentee and absented yourself on 3 occasions earlier un-authorisedly for which you were awarded L.W.P. twice and in your last un-authorised absence you were dealt with departmentally and your pay was reduced by one stage vide order No. 9742-60/HAP (P-II) PCR dated 9.4.97 but you could not improve yourself even then too."

The report of the inquiry officer has indicated

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that the charge levelled against the applicant stood proved. The disciplinary authority keeping in view the totality of facts dismissed the applicant from service and the operative part of the order reads:-

"It is strange that he is residing in Bhawana and getting treatment at Najafgarh M.C.D. dispensary which is far off from his place but he could not attend his office with his application of leave with medical certificates. It indicates that he was not actually so seriously sick and was able to move around and was in a position to obtain leaves but he deliberately avoided to appear before the competent authority. Thus he violated rules prescribed on the subject and absented wilfully and unauthorisedly for a long period. His past record indicates that he is a habitual absentee and two departmental enquiries have already been held against him for unauthorised absence but he failed to mend himself. As such I find him guilty of the charge and therefore order that HC(Dvr.) Rohtash Singh No.4030/PCR is hereby dismissed from the force with immediate effect. His absence period from 28.2.97 to 13.7.97 is decided as Dies non on the principle of 'No work No Pay' and his suspension period from 14.7.97 to the issue of this order is decided as period 'Not Spent on Duty for all intents and purposes."

The applicant preferred an appeal and the Joint Commissioner of Police after hearing the applicant dismissed the appeal and recorded:-

"From a perusal of his service record, it is found that the Appellant had been awarded in 1991 the punishment of "Censure" for unauthorised absence. Again in 1997 he was awarded the punishment of Reduction in pay by one stage from Rs.1500/- per month to Rs.1470/- per month for one year for his unauthorised absence. On both these occasions he had been placed under suspension for unauthorised absence but was re-instated by showing leniency. However,



the Appellant has again absented himself in 1997 and has been charged with having been a habitual absentee and the charge has been proved."

3. By virtue of the present application, the applicant, Head Constable Rohtas Singh seeks quashing of the orders passed by the disciplinary authority as well as of the appellate authority.

4. On an earlier occasion, the order passed by the appellate authority was quashed by this Tribunal in view of a decision of this Tribunal in the case of Sube Singh v. Union of India in OA No. 1751/2000. It was directed that the appellate authority should re-consider and pass a fresh order. This decision of the Tribunal dated 12.9.2001 had been set aside by the Delhi High Court in Civil Writ Petition No. 2527/2002 rendered on 27.5.2002 and in this back-drop, the matter has been relisted and we have heard the learned counsel for the parties.

5. The application has been contested. It has been pointed that the applicant had been relieved from MT/Police Control Room on 28.2.1997 with a direction to report for duty to New Delhi Zone Police Control Room. The applicant was supposed to report for duty on 29.2.1997. Neither, he reported for duty nor he had sent any intimation about his whereabouts. Two absentee notices were

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sent at his residential address through special messenger. They were served upon his nephew. On scrutiny of his previous record also, it transpires that he was an habitual absentee. He absented on three occasions unauthorizedly and was awarded leave without pay twice and on the third occasion, he was dealt with departmentally. He did not improve himself. A departmental enquiry was entrusted to the inquiry officer. The applicant's claim that he was seriously unwell was not accepted. It is denied that there is any illegality in the order so passed.

6. The learned counsel for the applicant assails the order alleging that in the first instance in terms of the Delhi Police (Punishment and Appeal) Rules, 1980, there is no finding recorded that it was a grave misconduct rendering the applicant unfit for police service and, therefore, the order in question cannot be sustained. Our attention has been drawn towards Rule 8(a) of the abovesaid Rules which refers to punishment of dismissal/ removal from service for acts of grave misconduct. The said Rule reads:-

"8. Principles for inflicting penalties:-

(a) Dismissal/Removal- The punishment of dismissal or removal from service shall be awarded for the act of grave misconduct



rendering him unfit for police service."

In this connection, Rule 10 of the said Rules also cannot be ignored which provides that previous record of an officer against whom charges have been proved, if there is continued misconduct indicating incorrigibility and unfitness for police service, the punishment shall ordinarily be of dismissal from service.

7. It is a trite law that it is the pith and substance that matters and not the form. Mental process of arriving at a conclusion can always be seen by the tenor of the order. In that back-drop, it need not be stated in so many words that it was a grave misconduct rendering the person unfit for police service. If these words are missing from the order, it can be seen from the nature of the assertions and the findings that have been arrived at.

8. In the present case in hand, the order passed by the disciplinary authority clearly indicated that the disciplinary authority had kept in view, the conduct of the applicant that he is a habitual absentee and has not cared to mend his ways. It is obvious that it was felt that he is an incorrigible type of official and that the act complained of was grave. This particular plea, therefore, for the purposes of the present order must fail.



9. In that event, it was urged that the charge that had been framed against the applicant was vague and consequently prejudice is caused to the applicant. The learned counsel relied upon Rule 16 (xi) of the Rules in support of his argument reads:-

"16. Procedure in departmental enquiries- The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where prima facie the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer.

(xi) 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."

10. We have already reproduced above, the charge that had been framed in the present case. The applicant had been told about his absence from duty and the absentee notices that were issued to him. He is stated to have absented himself for 162 days 4 hours and 5 minutes. Regarding the previous record also, his attention was drawn to the fact that he was a habitual absentee and he absented himself on three earlier occasions unauthorizedly and about the punishment that was awarded to him when his pay was reduced by one stage vide order of 9.4.1997. It is obvious that the facts as such were conveyed to the applicant. No prejudice,

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therefore, is caused because the applicant was aware of the alleged dereliction of duty on his part. When the basic facts are conveyed, we find no reasons to conclude that in the peculiar facts, the argument as such can subsist.

11. Otherwise also, the Supreme Court in the case of **State Bank of Patiala & Ors. v. S.K. Sharma**, JT 1996(3) SC 722 has gone into this controversy. It was held

"4(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee."

Herein, when the facts were conveyed as already noted above, no prejudice is caused and the plea necessarily must fail.

12. The last submission in this regard highlighted by the learned counsel was that while imposing the penalty, extraneous facts have been taken into consideration and, therefore, the order as such must be set aside. The learned counsel has drawn our attention to a decision of this Tribunal in the case of **Ex. Constable Vinod Kumar v. Commissioner of Police & Ors.** in OA No. 680/2002

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decided on 1.11.2002. In the cited case, there was no mention or finding about the medical certificate. Keeping in view that the finding was to have a bearing on the nature of the default, the order was quashed and the matter remitted for a fresh decision. In the present case before us, the said fact had been looked into by the departmental authorities and, therefore, the decision in the case of Vinod Kumar (supra) will have no application in the facts of the present case.

13. The other decision referred to of this Tribunal is dated 16.11.2000 in the case **Constable Satish Kumar v. Union of India & ors.** in OA No.139/1998. Therein certain past conduct which was not part of the charge had been taken into consideration. Herein, the facts are different. The past misconduct of the applicant is very much a part of the charge.

14. However, it was urged that the disciplinary authority vide the impugned order refers to a departmental enquiries that had taken place against the applicant and that despite that he had not mended his ways. According to the learned counsel, this is not a part of the charge. The charge clearly indicates that on three occasions, the applicant had absented himself and



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on two occasions, it was ordered that it would be leave without pay and on the third occasion his salary was reduced by one stage. It is only a matter of description where the difference lies. The past conduct had been taken into consideration merely in a substantial form as is indicated in the charge.

15. So far as the decision of the appellate authority is concerned, there is a reference to one censure granted in the year 1991. This was indeed not a part of the charge but it does ^{not} affect the ultimate decision. It is obvious from the nature of the order and the answer would be in the negative. This is for the reason that censure by itself is not strictly a punishment except for certain limited period. Otherwise also, it has little bearing on the nature of the punishment awarded because the appellate authority finally records about the ^{past} punishment of reduction in his pay and his total absence for a long period in the year 1997 and in that back-drop, it was held that the charge stood proved. When the abovesaid fact has not ultimately affected the final decision, there is little ground for accepting the said argument.

16. Resultantly, the present application being without merit must fail and is dismissed. No

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costs.

V.K.Majotra

(V.K. Majotra)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

/sns/