

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 2172/2000

New Delhi: this the 3rd day of October, 2001.

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

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Smt. Premwati,
W/o Late Sh. Bhoop Singh,
R/o Vill. Hiran Kudna,
PO Nangloi,
Delhi.
2. Master Jasvir, (aged 17)
S/o Late Sh. Bhoop Singh,
Vill. Hiran Kudna,
P.O. Nangloi,
Delhi.
3. Km. Monica, (aged 16)
D/o Late Sh. Bhoop Singh
R/o Vill. Hiran Kudna,
PO Nangloi,
Delhi.
4. Master Rakesh (aged 15),
S/o Late Sh. Bhoop Singh,
R/o Vill. Hiran Kudna,
PO. Nangloi,
Delhi.

.... Applicants.

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT Delhi
through
Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Commissioner of Police,
Delhi, Police Headquarters,
I.P. Estate,
New Delhi.
3. Sr. Addl. Commissioner of Police,
(AP & T),
Police Headquarters,
I.P. Estate,
New Delhi.
4. Dy. Commissioner of Police,
8th Battalion,
PTS Malviya Nagar,
New Delhi.

.... Respondents.

(By Advocate: Shri Ajay Gupta).

ORDER

S.R.Adige, VC(A):

Applicant's legal heirs impugn the enquiry report (Annexure-G), the disciplinary authority's order dated 9.11.95 (Annexure-A); the appellate order dated 21.3.96 (Annexure-B) and the revisional order dated 28.4.2000 (Annexure-C) and the order dated 29.8.2000 (Annexure-D). They seek all consequential benefits which applicant would have been entitled to in accordance with law.

2. The question whether applicant's legal heirs can file such an OA and make such a claim, is answered in the affirmative, in the light of the Hon'ble Supreme Court's ruling in Sudha Srivastava Vs. CAG India JT 1995(9) SC 358.

3. Applicant was proceeded against departmentally vide order dated 23.6.94 (Annexure-F) on the allegation of unauthorised absence from duty from 2.7.93 to 3.8.93; 4.8.93 to 13.10.93; and again from 13.10.93 onwards till the date the DE was instituted on 23.6.94. The memo of allegations also stated that applicant's previous record showed that he was an incorrigible and habitual absentee and had absented himself in the past on as many as 60 occasions.

4. On the basis of the aforesaid allegations the Enquiry Officer commenced the DE. A copy of the Enquiry Officer's report (Annexure-G) reveals that while applicant's previous record and his absence from 13.10.93 onwards formed a part of the summary of allegations, when it came to the framing of the charge which is contained in the Enquiry Officer's report, both these items of applicant's alleged misconduct were excluded

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from the charge.

5. The Enquiry Officer in his report held the charge to be proved, and also held applicant to be a habitual absentee.

6. The disciplinary authority in his impugned order dated 9.11.95 agreed with the findings of the Enquiry Officer and in addition ~~for~~ ^{to} the spells of unauthorised absence from duty which formed part of the charge, held applicant guilty of unauthorised absence from duty from 13.10.93 to 20.6.94 (246 days 16 hrs. 20 minutes) which did not form part of the charge, and his incorrigibility and his habitual absenteeism in terms of his past absences on 60 occasions, which also did not form part of the charge. Accordingly by aforesaid order dated 9.11.95 the disciplinary authority dismissed applicant from service.

7. Applicant's appeal was rejected by order dated 21.3.96 and his revision petition was rejected by order dated 28.4.2000. His mercy petition was rejected by order dated 29.8.2000 giving rise to the present OA.

8. We have heard both sides.

9. Applicants' counsel has advanced 2 grounds. Firstly he has contended that the Medical Officer who had certified applicant's sickness which had compelled him to remain absent from duty was not examined, and the medical certificates furnished by him were not properly considered. Secondly he has stated that applicants alleged absence from 13.10.93 to 20.6.94 numbering over 246 days, as also his previous absences on 60 occasions did not form part of the charge, but despite that

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the respondents had taken the same also into consideration while imposing the penalty of dismissal, which was violative of Rule 16(xi) Delhi Police (P&A) Rules.

10. In so far as the alleged non-consideration of applicant's medical certificates and non-examination of the Medical Officer is concerned, it is well settled that applicant could not have legitimately absented himself from duty without properly applying for leave. Medical certificates can at best only support applicant's claim to have been ill, but cannot be a substitute for a proper leave application. No leave can be claimed as of right by a Govt. employee much less one belonging to a uniformed force such as the police force, and indeed if applicant was so ill as to prevent him from discharging his duties, he should have made a proper application for leave, attaching therewith copies of the medical certificates. Indeed we note that applicant failed to present himself before the Civil Surgeon, Rajpur for medical opinion despite explicit instruction to do so. Hence this ground fails.

11. There is however merit in the second ground advanced by applicants' counsel. Rule 16(xi) Delhi Police (P & A) Rules provides that if it is considered necessary to award a severe punishment to the defaulter by taking into consideration his previous bad record, the same shall form the basis of a definite charge against him, and he shall be given opportunity to defend himself as required by rules. In the instant case neither was applicant's absence of over 246 days from 13.10.93 to 20.6.94, nor his previous bad record made the basis of a definite charge against him. It is true that both these items figured in the memo of

allegations, but ultimately it is the charge which applicant is required to answer in a DE, and a perusal of the charge, as contained in the Enquiry Officer's report, makes it clear that neither applicant's absence for over 246 days from 13.10.93 to 20.6.94, nor his previous bad record found mention in the body of the charge. Nothing has been shown by respondents to establish that applicant's absence of over 246 days from 13.10.93 to 20.6.94 and/or his previous bad record formed part of the charge, and the same was communicated to applicant.

12. Under similar circumstances a Coordinate Division Bench of the Tribunal vide its order dated 30.5.2000 in OA No. 2631/99 Ex. Head Constable Hawa Singh Vs. UOI & Ors. had allowed the OA, holding that the impugned order of dismissal from service could not be legally sustained. While doing so it noticed the Delhi High Court's order dated April, 2000 in Delhi Administration & Anr. Vs. Ex. Constable Yasin Khan, wherein while upholding the Tribunal's order in that case, the Delhi High Court observed that it was difficult to say as to what extent Shri Yasin Khan's previous conduct had influenced the disciplinary authority's mind while awarding the penalty of dismissal from service and, therefore, the awarding of penalty, based on previous conduct without it forming the subject matter of a specific charge had rightly been disallowed by the Tribunal. In our view the ratio of the aforesaid order dated 30.5.2000 is fully applicable to the facts and circumstances of the present case.

13. In the result the OA succeeds and is allowed to the extent that the impugned orders of the Disciplinary

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Authority dated 9.11.95; appellate authority's order dated 31.3.96; revisional order dated 28.4.2000 and the order dated 29.8.2000 are quashed and set aside. The matter is now remitted back to the Disciplinary Authority for passing of fresh penalty orders based only on the finding of unauthorised absence which forms the basis of the charge framed against applicant and excluding the absence of 246 days from 13.10.93 to 20.6.94 and the previous bad record of applicant which did not form the subject matter of the charge against applicant. These directions should be implemented within 3 months from the date of receipt of a copy of this order. No costs.

A Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A)

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