CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.240/2000

Hon'ble Shri S.A.T.Rizvi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

(13)

New Delhi, this the 30th day of March, 2001

Ex. Const. Jakhruddin No.1767A
s/o Illiyas
r/o Village Manauta Tehsil Ferozepur
Jhirka, Dist. Gurgaon
(Haryana). ... Applicant
(By Advocate: Mrs. Avinash Ahlawat with Shri Mohit Madan)

Vs.

1. The Lt. Governor
Govt. of NCT of Delhi
through Commissioner of Police
Delhi Police
Police Headquarter
New Delhi.

2. The Addl. Comnr. of Police (OPS)
Delhi Police
Police Headquarter
New Delhi.

3. The Dy. Comnr. of Police
(IGI Airport)
New Delhi. .. Respondents
(By Advocate: Shri Harvir Singh, proxy of Shri Ajesh Luthra and Shri Lakhi Ram, Departmental Representative)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant is a Constable in Delhi Police, has assailed an order dated 6.12.1997 whereby after the departmental enquiry on the ground of wilful absence he had been dismissed from service and the period of absence had been treated as dies-non by Deputy Commissioner of Police. The aforesaid order was carried in an appeal and the appellate authority vide an order dated 23.4.1998 maintained the punishment and an order was also passed by the revisional authority confirming the punishment on 11.2.1999. All these above orders have been assailed by the applicant in this OA.

2. The applicant had been issued four show cause notices for treating his absent periods as leave without pay by the disciplinary authority on different dates. According to the applicant he submitted his replies to the same and thereafter the disciplinary authority vide an order dated 13.11.1996 had withdrawn the show cause notices of minor penalty of censure and leave without pay on administrative grounds and thereafter a departmental enquiry was ordered on 14.11.1996 on the ground of remaining absent on five occasions wilfully and unauthorisedly and also taken into reckoning the past record of the applicant to allege a grave misconduct. During the course of the departmental enquiry, the applicant cross-examined the defence witnesses and thereafter an ex-parte proceedings were approved by the disciplinary authority as the applicant had been absenting himself. Thereafter as he had failed to produce his defence witnesses and defence statement, the enquiry officer through his finding dated 20.10.1997 held the applicant guilty of the charge. The disciplinary authority had sent finding to the applicant and despite receiving the same he had not filed any representation against it. At last the disciplinary authority on the basis of incorrigibility of the applicant and his wilful and unauthorised absence dismissed him from the service. The appeal and the revision preferred against the order of punishment have also been rejected. The applicant in his OA had challenged the impugned orders on various legal pleas.

3. We have carefully considered the rival contentions of the parties and perused the material on record including the departmental record furnished by the respondents. The first ground taken by the applicant is that the disciplinary authority had issued show cause notices to the applicant on the absence alleged against him by proposing a minor penalty of censure and treating the period without pay. To which he had filed his reply annexing all the documents, to show his innocence, including the medical record. It is further contended that these show cause notices have been withdrawn on administrative grounds vide order dated 13.11.1996 and thereafter a departmental enquiry had been ordered on 14.11.1996. Taking resort to DGP&T's letter No.114/324/78-Disc.II, dated 5.7.1979, which is reproduced as under:

> "(9) Reasons for cancellation of original charge-sheet to be mentioned if for issuing a fresh charge-sheet. - It is clarified that once the proceedings initiated under Rule 14 or Rule 16 of the CCA (CCA) Rules, 1965, are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the Delinquent Officers unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings that when the intention is to issue a subsequent fresh charge-sheet, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges the same was based on."

4. It is further contended that the disciplinary authority had withdrawn the minor penalty charge sheet without cancelling the same and without

stating any reasons. It is further contended that there is no indication in this order as to the issuance of a a subsequent charge sheet appropriate to nature of charges.

16

5. The learned counsel for the applicant has also drawn our attention to Rule 26 of Delhi Police (Appointment & Recruitment) Rules, 1980 and contended that in absence of any rule, on a service condition, the orders applicable to other Central Government servants issued by the Government of India from time to time would be applicable. In this back ground, it is stated that the instructions of DoPT is very much applicable to the present case and as neither any reasons have been recorded nor the intention had been shown to issue the subsequent charge sheet, the present departmental enquiry and the order passed therein are not legally sustainable. On the other hand, the respondents in their counter reply had not stated any reasons as to issuance of an order of departmental enquiry without cancelling the minor penalty charge sheet issued to the applicant, except making an averment that the same has been withdrawn on administrative grounds. There is no justification for withdrawing the charge sheet. In absence of any justified explanation tendered by the respondents, we have perused the departmental enquiry record. Therein, we find that the applicant had been issued show cause notices for minor penalty by the disciplinary authority incorporating the period of absence which had been alleged against the applicant in the order passed in the departmental enquiry. We

find from an order passed by the disciplinary authority on 13.10.1996 on a note sheet wherein it has been recorded that despite pendency of four show cause notices on minor penalty one more absence has been recorded against the applicant and keeping in view of his previous absentee record which makes him habitual absent and the fact that he had been absenting unauthorisidly w.e.f. 16.9.1996 and also that he had not filed reply to the show cause notices, it will be proper to order a departmental enquiry incorporating all his absences. Thereafter, the present departmental enquiry has been ordered.

6. In the ratio laid down by the Honb'ble Apex Court in State of Andhra Pradesh Vs. N.Radhakrishan, 1998(4) SCC 154 it has been held that the issue of a fresh charge memo without cancelling the earlier one would only amount to an irregularity and not an illegality. In fact, in the present case the departmental enquiry has been ordered to include the other absences and also the previous absents as past record of the applicant. The applicant had been accorded a reasonable opportunity to produce his defence in the enquiry. As the applicant despite reminder was prolonging the finalisation of the show cause notice, it was decided to deal him departmentally for a major penalty taking in view, his incorrigibility and continued unauthorised absence w.e.f. 16.9.1996. As in the departmental enquiry the applicant is entitled to have an ample opportunity to defend himself in comparison to in a minor penalty charge sheet, we find no prejudice has been caused to

18

the applicant by withdrawal of a minor penalty charge sheet and initiation of departmental enquiry. The administrative grounds though are not detailed in the orders there is no indication to issue a subsequent charge sheet but having regard to the ratio laid down by the Hon'ble Apex Court in N.Radhakrishan's case supra this being an irregularity would not vitiate the order of punishment. Hence the contention of the learned counsel for the applicant is rejected.

7. Another ground of the applicant is that there is no evidence on record to show that the applicant had been issued absentee notices or any message had been sent to him to join his duty. The applicant contended that this is a case of 'no evidence'. On the other hand, the respondents in their reply contended that the applicant had absented for 133 days on six occasions and had also absented earlier on 16 occasions during a short service span of nine years. It is further contended that the applicant had also been absenting himself w.e.f 4.11.1997. It is contended that the applicant had been validly informed and was sent absentee notices to which he had not responded. He had neither informed the department about the alleged illness nor sent the medical records. We have perused the file of the departmental enquiry and find that the applicant was served with the absenting notices but he had not responded to the same. Apart from it the leave cannot be claimed as a matter of right as provided under Rule 19 of the CCS (Leave) Rules, 1972. The proper procedure for availing the leave is to intimate the

19

department and submit the medical record in time so that the department has an opportunity to verify the medical papers of the applicant to ensure that the medical papers submitted by the Government servant are genuine and not forged or manipulated. In the present case though the applicant had given certain explanations to his absence, but along with it he had annexed the certificates purportedly issued by one Shri Dr. Shyam Lal, RMP which is not admissible as a valid medical certificate under Rule 19 ibid. There is nothing on the record to show that the applicant had informed the department about the mitigating circumstances under which he had to remain absent from duty. The only evidence which we find is the explanations given by the applicant at the time of resuming duty, wherein it has been stated that he neither had to his credit a long leave nor had any certificate regarding illness of his wife. Apart from it, a telephonic information was also sent which was recorded by the department but it was with respect to only one absent. Apart from this evidence, there is nothing on the record to indicate that the applicant had informed the department about his illness or had sent a registered communication to the department asking for grant of leave. The applicant had abruptedly left the place of his duty without informing the department and had never cared to sent any medical papers to the department so that he could have been subjected to second medical examination. We find from the record that the applicant is habitual of remaining absent abruptly without informing the department and joining thereafter by producing medical

record from an incompetent authority. In some cases the medical record has been obtained from Delhi had been annexed which also raises doubt upon the genuinity of the medical record. Whereas the applicant had gone to his native place yet he had taken treatment at Delhi. If the applicant had been at Delhi for his treatment then an information could have also been given to the department regarding his illness as his place of posting is also situated in Delhi. We have carefully perused the finding of the enquiry officer and evidence recorded therein and find that there is sufficient evidence in the form of documentary evidence, i.e., DD entry regarding absence of the applicant which are sufficient to show that the applicant had wilfully and unauthorisedly absented from duty without seeking prior permission to leave the headquarter and also did not inform the department or sent any medical certificates during the period of absence. Mere submission of medical record at the time of joining duty would not be a compliance of Standing Order No.111 as well as Rule 19 of CCS (Leave) Rules, 1972. Apart from this the Tribunal has a limited scope in judicial review. The evidence recorded by the department cannot be reappraised to come to a different conclusion as arrived at by the departmental authorities. In this view of ours, we are fortified by the ratio laid-down by the Hon'ble Apex Court in Kuldeep Singh Vs. Commissioner of Police and Others, JT 1998(8) SC 603. We also find that the present case is neither of no evidence nor

the findings of the Enquiry officer are perverse. As such the contention of the learned counsel for the applicant is rejected.

8. It is further contended that the applicant's past record had been taken into reckoning and the same could not have been found part of the allegation and in none of the 16 occasions described as past record the applicant was awarded any punishment. In this back ground, it is stated that the same is incorporated to prejudice the mind of the disciplinary authority. It is further contended that as the previous absence had already been regularised the same should not have been taken into consideration. We have seen the extract of previous absents of the applicant as annexed by him at Annexure-AI and find that the applicant had absented on 16 occasions and this period was treated as leave without pay and was also awarded punishment. Under Rule 16(xi) of the Delhi Police (Punishment and Appeal) Rules, 1980, the previous record can be taken into consideration after being incorporated as a charge adjudge the incorrigibility of a Police Officer on the basis of his past record. In order to arrive at the charge of habitual absenteeism the previous absences of 16 occasions had been taken into consideration by the respondents. On the basis of these absences during the short span of service of 9 years, the disciplinary authority observed the applicant as habitual absentee and incorrigible. In our view, in a disciplined force remaining absent on several occasions would certainly indicate towards the

habitual absenteeism. In our considered opinion even though the period has been regularised in the past, would certainly be taken into consideration to see whether a police officer is a habitual absentee or not. Apart from it, from the reply of the respondents, it is found that apart from absences of 16 occasions earlier the applicant had been proceeded against in another departmental enquiry for remaining absent for 128 days and had also been continuously absenting himself w.e.f. 4.11.1997. In view of this, finding of the disciplinary authority regarding habitual absenteeism and incorrigibility of the applicant cannot be found fault with.

9. It is next contended that the applicant had informed the department and had also given ample justification for his remaining absent on all these occasions but the authorities had not taken into consideration his explanation and proceeded to award him an extreme punishment without keeping in view of the extenuating circumstances and condition of the applicant and his family. As no moral turpitude is alleged the dismissal was absolutely excessive and was in contravention of Rule 8(a) and 10 of the rules ibid. On the other hand, the respondents contended that the applicant is in the habit of absenting himself unauthorisedly and had not participated in the enquiry which ultimately had to be proceeded ex-parte on 17.10.1997. The applicant had neither produced his defence evidence nor submitted his defence statement. Despite accorded an opportunity to file a representation to the finding, the applicant had

voluntarily chosen not to file the same, which shows that he had nothing to say in his defence and is not interested in service. The respondents contended that the punishment was proportionate to the charge and this question had already been gone into both by the appellate and the revisional authority. We have given careful consideration to this contention and find that the applicant had participated in the enquiry upto the stage of cross-examination of prosecution witnesses and thereafter despite being served he had chosen not to participate in the enquiry. We find from the record that the applicant had submitted the list of defence witnesses and thereafter had not cared to bring the defence witnesses in the enquiry and thereafter on his being served with the findings, he did not care to file his reply, the disciplinary authority finding no alternative, ultimately ordered an ex-parte enquiry against the applicant under Rule 18 of the Rules ibid. In this back ground we are of the confirmed view that the applicant had himself to be blamed for non production of his defence. Despite accorded reasonable opportunities and having notice of the proceedings the applicant had neither submitted his defence evidence nor submitted the defence statement. The applicant had further remained continuously absent in the enquiry and had also not filed representation against the finding. In this view of the matter, as the applicant had not produced any legal and authentic proof in his defence the respondents despite according reasonable opportunity to him, proceeded to record a finding of guilt against him and ultimately imposed a major punishment. The

applicant in his defence has not brought the medical record as well as the evidence to show that he had informed the department whenever he remained absent. As there is nothing on the record to show the same the absence of the applicant is to be treated as wilful and unauthorised as proved by the department. In absence of any proof of communication, and medical record submitted to the enquiry officer during the enquiry the action taken by the respondents is absolutely justified.

10. The disciplinary authority had taken into consideration the entire material on record and in absence of representation of the applicant to the finding rightly recorded an ex-parte order. The appellate authority had also gone into the proportionality of punishment and on the basis of the incorrigibility of the applicant and his frequent absents in a disciplined force rejected the appeal. The revisional authority too had gone into the proportionality of the punishment. In our considered view also and supported by the ratio laid down in Full Bench of this Tribunal in Virender Kumar & Others Vs. Commissioner of Police, Delhi and Others, ATJ 1999(3) CAT(PB) 342, wherein it has been held that habitual absenteeism of a Police Officer would bring him within the ambit of a grave misconduct and render him incorrigible, there is valid compliance of Rule 8(a) and 10 of the Delhi Police (Punishment & Appeal) Rules, 1980.

25

11. Having regard to the above reasons and discussion made, the OA is found bereft of merit and the same is dismissed. No costs.

S.A.T.Rizvi

(S.A.T. RIZVI)
MEMBER(A)

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/