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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA 2641/2000

New Delhi, this the 7th day of September, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Ex. Constable Giri Raj No.9478/DAP~
S/o Shri Kishan Lal Meena,
R/o Vill-P.O. Dabra, Tehsil-Sapotra
Distt. Karoli, Rajasthan.

...Applicant

(By Advocate Shri Sachin Chauhan)

V E R S U S

UNION OF INDIA : THROUGH

1. 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
8th Bn, DAP, Kingsway Camp
New Police Lines
Delhi.

...Respondents

(By Advocate Shri Rajan Sharma through
proxy counsel Shri Ashwini Bhardwaj)

O R D E R (ORAL)

By Hon'ble Smt. Lakshmi Swaminathan, VC (J)

In this application, the applicant has impugned the penalty orders issued by the respondents dated 19-11-1999 passed by the disciplinary authority and dismissal of his appeal by the appellate authority vide his order dated 6-7-2001. These orders had been passed after holding a Departmental enquiry against the applicant under the provisions of Delhi Police Act, 1978.

2. The Relevant portion of the summary of allegations against the applicant, on the basis of which

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findings against the applicant were given by the Enquiry Officer reads as follows :-

"It is alleged against Const. Giriraj No.9478 DAP (PIS No.28900527) that while temporarily attached with Security Unit from 8th Bn. DAP, he was relieved from Security Lines vide DD No.14 dated 18-10-1998 P.M. Cell Security with the direction to report for duty in 8th Bn. DAP, but he did not report for duty in 8th Bn. DAP. Thus, he was marked absent vide DD No.35B dated 3-12-1998 E-Block, Security Lines w.e.f. 18-10-1998 and since then he is continuously running absent. Two absentee notices were sent to him at his native village vide this office memo Nos. 32095-98/ASIP-8th Bn. DAP, dated 16-11-1998 and 33999-3402/ASIP-8th Bn. DAP dated 8-12-1998, with the direction to resume his duty at once and in case of sickness the Constable was directed to report to the Civil Surgeon, Civil Hospital, Distt. Swai Madhopur, Rajasthan for medical examination. He neither resumed his duty, nor reported to the above Civil Hospital for his medical examination. Thus the Constable has violated the norms laid down in CCS (Leave) Rules 1972 and S.O.III of Delhi Police by absenting himself unauthorisedly and wilfully without any intimation or prior permission of the competent authority. He was also placed under suspension vide their office order No.36158-78/HAP 8th Bn. DAP dated 24-12-1998."

3. We have heard Shri Sachin Chauhan and Shri Ashiwini Bhardwaj, learned counsel for the applicant and the respondents respectively and perused the documents on record.

4. Shri Sachin Chauhan, learned counsel for the applicant has submitted that ^{the} main ground on which he is challenging the aforesaid punishment orders is that the respondents have clearly violated the provisions of Rule 16 (xi) of the Delhi Police (Punishment & Appeal) Rules, 1980. He has submitted that both the disciplinary authority and the appellate authority in their orders have referred to and taken note of the applicant's past record, namely, 22 occasions when he has been absent, which they have considered as showing that he is incorrigible and not

fit to be continued in a disciplined force like Delhi Police. Shri Ashwani Bhardwaj, learned counsel for the respondents has submitted that while it may be so that both disciplinary authority and appellate authority have referred to the past conduct of the applicant, that has not weighed in their minds. According to him, what has weighed with the competent authorities is the fact that the applicant was absent for nearly one year with respect to the specific charges which have been investigated in the present case that his absence from 18-10-1998 to 19-4-1999 and 28-4-1999 to 22-10-1999 i.e. for more than one year. Shri Sachin Chauhan, learned counsel relies on the judgement of the Tribunal in Constable Satish Kumar Vs. UOI & Ors. (OA 139/98) dated 16-11-2000, copy placed on record. On the other hand, learned proxy counsel for the respondents relies on the judgement of the Hon'ble Supreme Court in State Bank of Patiala & Ors. Vs. S.K.Sharma (JT 1996 (3) SC 722) which has also been dealt with in the same judgement.

5. On perusal of the disciplinary authority's order as well as the appellate authority's order in the present case, we note that perhaps unnecessarily both the authorities have, for whatever reasons they thought fit, referred to the previous service record of the applicant and particularly his being absent unauthorised for 22 occasions on which they had earlier taken a lenient view. One view is possible that even without such reference to the past record of the applicant of his absence unauthorisedly on 22 occasions in nine years of service, the authorities could have come to the conclusion they did to remove him from service as ordered by the appellate

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authority vide his order dated 6-7-2000. But at the same time, we also see force in the submissions made by Shri Sachin Chauhan, learned counsel that it is not for this Tribunal to act as if it is the competent authority. No doubt the competent authorities should have confined themselves to the charge under question and followed the relevant procedure laid down in Rule 16 (xi) read with rule 10 of the Delhi Police (Punishment & Appeal) Rules, 1980. Why there was any need to refer to the past indifferent attitude of the applicant that he had absented himself on 22 different occasions for which punishments have already been awarded to him in non-compliance of the Rules, is a matter for the respondents to consider and explain. They ought to follow the relevant rules and regulations in each case. We hope that they will follow the rules strictly in future. In the present case, as contended by the learned counsel for the respondents, even the absence of the applicant for more than one year from duty, which was the subject matter in issue in the charge, was sufficient material for the respondents to come to the conclusion that he is an incorrigible type of person, without any reference to his past conduct. However, as already mentioned above, this is not what the disciplinary authority or the appellate authority have done.

6. We note that the appellate authority has reduced the quantum of punishment i.e. from dismissal from service awarded by the disciplinary authority for remaining absent from duty which he had considered as disproportionate to one of removal from service. At the same time, the appellate authority has also noted as below :-

"Punctuality of the appellant is poor, as seen from his service record. Previously he remained absent

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on 22 different occasions and the punishments awarded to him had no effect on him and he continued to remain absent from duty for a long period of almost one year which indicates incorrigible character of the appellant."

The above shows that unnecessarily the appellate authority has also made reference to the past conduct of the applicant without fully complying with the provisions of Rule 16 (xi) of the Delhi Police (Punishment & Appeal) Rules, 1980.

7. However, the learned proxy counsel for the respondents has submitted that the absence of the applicant from duty from 18-10-1998 to 22-10-1999, which is the subject matter of the charge has been fully proved in the Departmental enquiry proceedings, which was itself sufficient to award the punishment of removal from service. At the same time, the authorities have failed to follow~~ed~~ the procedure laid down in the relevant Rules.

8. In the facts and circumstances of the case since the disciplinary authority as well as the appellate authority have mentioned the past record of the applicant in their orders which is contrary to the Rules framed under the Delhi Police Act, 1978, we quash the disciplinary authority's order dated 19-11-1999 and the appellate authority's order dated 6-7-2000. As the applicant was under suspension, he shall be reinstated and placed under suspension and we make it clear that in the circumstances of the case, the applicant shall not be entitled to any back wages from the date of his dismissal to the date of his reinstatement. The reinstatement shall be done within one month from the date of receipt of a copy of this order. Thereafter the

disciplinary authority shall pass an order within a month from the date of his reinstatement in accordance with Law and Rules.

(Govindan S. Tampi)
Member (A)

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(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)