

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

O.A. NO. 2506/1989

New Delhi this the 2nd Day of August 1994.

Shri N.V. Krishna, Vice Chairman(A).

Shri C.J. Roy, Member(J).

Raj Kumar,
 S/o Shri Chetan Das,
 R/o B-2A/115, Janakpuri,
New Delhi.

...Petitioner.

By Advocate Mrs Avnish Ahlawat.

Versus

1. Delhi Administration, Delhi,
 through Commissioner of Police,
 PHQ, Delhi Police,
Delhi.
2. Shri F.L.R. Siama,
 Addl. Commissioner of Police,
 Armed Police,
Delhi.
3. Shri A.K. Seth,
 Dy. Commissioner of Police,
 3rd Bn, Delhi Police,
Delhi.
4. Shri Jai Pal Singh,
 Inspector,
 Enquiry Officer,
 3rd Bn, Delhi Police,
Delhi.

...Respondents.

By Advocate Shri O.N. Trishal.

O R D E R

Shri N.V. Krishnan.

The applicant, a former Constable in the Delhi Police, has been dismissed from service by the order dated 18.2.1988 of the Deputy Commissioner of Police, 3rd Bn., Respondent No. 3 in disciplinary proceedings under the Delhi Police Act, 1978. The charge against ^{he} the applicant was that/was absent from duty from 9 A.M. on 11.8.1986 to 1.40 P.M. on 15.1.1987, i.e. for 5 months, 5 days and 4 hours and 40 minutes unauthorisedly and wilfully, inspite of the fact that three absentee notices were sent to him to resume duties during the above period. He was also charged that he had absented himself on 14 earlier

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occasions in the past, which shows that he is a habitual absentee and an incorrigible type of person. An Inquiry Officer was appointed who examined the witnesses, submitted his report on 8.2.1988, Annexure 'E' holding that the charges made against the applicant are fully proved. The appeal filed by the applicant was rejected on 11.8.1988, Annexure 'H'. Likewise, the revision filed by him has been rejected on 28.3.1989 by the Commissioner of Police, Respondent No.1. The impugned orders have been assailed on several grounds but during the course of final hearing, the learned counsel for the applicant confined her attack only on the punishment. In this connection, she made three points:

- (i) No consideration has been given to the extenuating circumstances of the case.
- (ii) The past punishments could not be relied upon in the present case to condemn the applicant that he is incorrigible or he is habitual absentee.
- (iii) In any case the punishment for the misconduct charged is excessive.

2. The learned counsel for the applicant pointed out that Rule 8 of the Delhi Police (Punishment and Appeal) Rules, 1980 outlines the principles for inflicting major penalty. Clause (a) provides that the punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service. Section 21 of the Delhi Police Act, 1978 enumerates as many as seven different kinds of penalties and in so far as dismissal and removal alone is concerned, it has been specifically indicated that these penalties can be imposed only for the act of grave misconduct rendering the police official unfit for police service. She points out that the basic charge against the applicant is that he remained absent

unauthorisedly for a period of about 5 months. The applicant was not wilfully absent for it is his case that/met with an accident and, therefore, he could not attend the office. Even if it is held that the absence was deliberate and wilful, it cannot be said to be a grave misconduct requiring dismissal at the end of the period the applicant voluntarily resumed office.

3. Likewise, it is contended that the previous punishments taken into account are of a totally different character which have no semblance with the misconduct alleged in the charge. The respondents have filed in Annexure 'A' to the reply the details of the past record of the applicant indicating that he has been awarded punishment on 14 occasions. The punishments are awarded for his absence which, on 10 occasions, were counted in terms /hours, being less than one day. On three other occasions, he was absent for less than 2 days. On the remaining two occasions, the absence was of three days and 10 days respectively. In some cases, the absence was regularised by the grant of leave without pay. In some other cases, he was given punishment drill and administered a warning. The learned counsel for the applicant points out that the absence from duty referred to above do not show that he was a habitual absentee particularly when the absence is reckoned in terms of hours i.e. less than one day. Further, the absence is for the period of past seven years from 1979 to 1986.

4. What the applicant is now charged is unauthorised absence for a period of more than five months. There has been no such absence in the past. In regard to the absence of 10 days from 21.12.1985 to 31.12.1986, he was granted leave without pay though E.L. and Medical leave were available to him.

5. In the circumstance, she contends that the punishment of dismissal has been given on this consideration only.

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6. The learned counsel for the respondents submitted that the chargesheet mentioned about his previous records and his being punished on 14 occasions, shows that he was incorrigible and habitual absentee. He, therefore, contended that the misconduct now charged, namely, unauthorised absence, is of the same kind as the earlier misconduct referred to in Annexure 'A' and that, therefore, the respondents were fully justified in taking that into account while imposing the penalty.

7. We have carefully considered the submissions. We have no doubt, in our mind that the applicant had invited this disciplinary proceeding on himself by not sticking to the rules. Admittedly, the applicant had reasons to remain absent as admitted in Paras 11, 12 and 13 of the reply. The applicant had produced a medical certificate from the CGHS dispensary regarding his disability but that is only for a period of 5 days and he ought to have joined on 24.8.1986. The plea of the applicant is that the accident was more serious and had required further treatment. One cannot rule out this possibility, though this possibility seems to be somewhat remote in the context of the fitness certificate given by the CGHS. Be that as it may, the applicant ought to have intimated the authorities concerned about his inability to attend duty explaining the reasons thereof. He also ought to have submitted medical certificates from the Government Doctor or, if that was not possible, from a Private Practitioner while he was allegedly undergoing further treatment. In any case, he also ought to have informed the department about his whereabouts because it has come on record that even notices requiring him to join duties could not be served on the address given in his service record. Therefore, there is no doubt that the applicant had rendered himself liable for penalty under the rules.

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8. The only question is whether sufficient considerations have been shown to the alleged medical grounds and whether the previous record was such as was relevant in the context of the charge.

9. We have carefully gone through the pleadings and the documents filed. We note that the Inquiry Officer has, in his report (Annexure 'E') found that the evidence of the Private Practitioner Dr. Ashok Vohra stands falsified. Apparently, the disciplinary authority did not subscribe to this view for he does not say anything in this regard when he specifically adverted to this witness. The disciplinary authority only states in the Annexure 'F' order in this connection that the applicant had produced Dr. Vohra in his defence to prove that he was ill. If he was actually ill, he should have got the leave sanctioned from the competent authority as required by S.O. No. 111 and CCS(leave) Rule 19.5. In the circumstance, it is clear that the applicant was really ill. That, however, did not justify his absence without first intimating the authorities concerned at the earliest opportunity. In the circumstance, the applicant was certainly guilty of the misconduct.

10. In regard to punishment, the disciplinary authority has come to the conclusion that this is a "Gross Misconduct" in a disciplined force, which is quite a different from a grave misconduct, which alone justifies its punishment of dismissal/removal.

11. In regard to the previous absence on 14 occasions, the fine distinctions between the absence then and the unauthorised absence now have not been noticed. We notice that the appellate authority has not considered the question of punishment from this point of view. We also find that the Commissioner of Police has also not considered the quantum of punishment and given it the consideration it required.

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12. In the circumstances, we are satisfied that while the applicant was guilty of misconduct for remaining unauthorisedly absent, the penalty that should be imposed on him has to be reconsidered in the light of the specific provision of Rule 8(a) and in the circumstance that he appeared to have fallen ill which contention has not been rejected by the disciplinary authority. In addition, a question has to be considered whether the absence on the 14 occasions in the past is comparable to the absence now charged, which alone would justify taking into consideration that earlier record for deciding the quantum of the penalty to be imposed on the present charge. We are of the view that this consideration can best be done by the Commissioner of Police, i.e. The revisional authority.

13. In this view of the matter, we set aside the order of the revisional authority, Annexure-J to the extent that he has upheld that penalty imposed by the disciplinary authority and maintained by the appellate authority and direct him to reconsider the quantum of penalty in the light of the observations we have made here. O.A. is disposed of accordingly. No costs.

for
(C.J. ROY)
MEMBER(J)
2-8-94.
'SRD'

N.V. Krishnan
2-8-94
(N.V. KRISHNAN)
VICE CHAIRMAN(A)
2-8-94