

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 25 of 1989

New Delhi this the 4 day of February, 1994

CO-CRAM :

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Nawal Kishore S/O Bhedi Ram,
Ex-Constable No. 128/Vig.,
10236/DAP,
R/O Village & P.O. Khad Mohan Nagar,
Distt. Bulandshahar, UP. ... Applicant

By Advocate Shri C. N. Sreekumar

Versus

1. Deputy Commissioner of Police,
Vigilance, MSO Building, Police
Headquarters, I.P.Estate, New Delhi.
2. Addl. Commissioner of Police (Training)
MSO Building, Police Headquarters,
I.P. Estate, New Delhi.
3. Commissioner of Police,
MSO Building, Police Headquarters,
IP Estate, New Delhi. ... Respondents

None for the Respondents

O R D E R

By Hon'ble Mr. S. R. Adige, Member (A) -

This is an application by Shri Nawal Kishore, a dismissed Constable of the Delhi Police, praying for setting aside the order of dismissal dated 11.8.1987 (Annexure-F), which has been upheld in appeal by the Additional Commissioner of Police on 3.12.1987 (Annexure-G) and in revision by the Commissioner of Police on 14.3.1988 (Annexure-H).

2. The applicant joined service in the Delhi

Police on 11.3.60. A departmental enquiry was initiated against him, vide summary of allegations dated 22.1.86 (Annexure-A), in which it was alleged that

- i) while posted in Vigilance Branch, PHQ he absented himself from duty on 25.11.85 without prior intimation and reported back for duty on 17.12.85 after an absence of 22 days. He submitted a medical certificate from a private doctor of Ghaziabad. His absence from duty was unjustified. He did not resume duty although absentee notice was sent to him through S.P. Bulandshahr on 4.12.85.
- ii) He went to Ghaziabad without any permission from the competent authority.
- iii) The constable was a habitual absentee was punished as many as nine times before this for wilful absence while posted in Delhi Police.

3. From the findings of the Enquiry Officer dated 23.3.87 (Annexure-C), it appears that the applicant was summoned to attend the D.E. on 22.10.86, 28.10.86, 25.10.86, 5.11.86, 5.12.86, 26.12.86 and 20.2.87, but he failed to turn up. Accordingly the orders for conducting the proceeding ex parte were obtained. On the basis of statements furnished, charges were framed that the applicant absented himself from duty from 25.11.85 and reported back for duty on 17.12.85 forenoon after absenting for 22 days. A medical certificate of a doctor, CGHS Dispensary, Ghaziabad, UP was furnished by the applicant at the time of resuming duty on 17.12.85 in which the doctor had declared him fit to resume his duty on 15.12.85 but the applicant resumed his duty only on 17.12.85 i.e. after absenting himself for three days. As regards the second allegation a charge was framed that the applicant had left the station

i.e. Delhi without permission. The charge sheet did not carry any specific charge with regard to allegation no. iii. The E.O. concluded by stating that the allegations against the petitioner stood proved.

4. A show cause notice was issued to the applicant on 22.4.87 (Annexure-D) as to why he should not be removed from service which was received by him on 18.5.87. His reply was to have reached the respondents within 15 days of the receipt of the notice, but till 11.8.87, no reply appears to have been sent. Accordingly, the order dated 11.8.87 was issued (Annexure-F) dismissing the applicant from service which was upheld in appeal (Annexure-G) as well as in revision on 14.3.88 (Annexure-H).

5. The first ground taken by Shri Shree Kumar, learned counsel for the applicant is that the entire departmental proceedings are vitiated because the penalty of dismissal has been imposed, taking into account the applicant's previous bad record, for which no charge was framed. This ground has merit. It is clear from the disciplinary authority's order dated 11.8.87 as well as the appellate and revisional order that the respondents have considered the past bad record of the applicant while imposing the severe punishment of dismissal, and yet this alleged bad record has not formed the basis of a definite charge as specifically required under Rule 16(xi) of the Delhi Police Punishment & Appeal Rules, 1987. No doubt, the summary of allegations does mention that the applicant is a habitual absentee who has been punished as many as nine times for wilful absence from duty, but mere

mention of the applicant's previous bad record in the summary of allegations is not sufficient. The rule requires these allegations forming the basis of a specific charge, which has not been done in this case, and hence the disciplinary authority's order as well as the appellate and revisional orders are bad in law and cannot be sustained.

6. As this application is entitled to succeed on this ^{short in} ground alone, we do not consider it necessary to discuss the other grounds taken by the applicant.

7. In the result, this application is allowed and the disciplinary authority's order dated 11.8.87 as well as the appellate order and the revisional order dated 14.3.88 are set aside. The respondents are directed to reinstate the applicant with immediate effect. They should comply with these orders within one month from the date of receipt of a copy of this order. The respondents will be at liberty to proceed against the applicant departmentally in accordance with law, and it will be open to them to determine how the period of the applicant's absence from duty till the date he actually rejoined, ^{is} to be treated for the purpose of pay and all other benefits, after the departmental proceedings are concluded.

8. No costs.

In folge
(S.R.ADIGE)
MEMBER(A)

Jointly
(J.P.SHARMA)
MEMBER(J)

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