

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH N/DELHI

O.A. No. 1276/1988

Date of Decision 3.12.93

THE HON'BLE MR. B.S. HEGDE , MEMBER(JUDICIAL)
THE HON'BLE MR. P.T. THIRUVENGADAM, MEMBER(A)

Shri Hari Parkash
S/o Sh. Risal Singh,
R/o A 23, Satyawari Colony,
Ashok Vihar, Delhi-110032

..... Applicant

(By Advocate Sh. Ashok Aggarwal)

Versus

1. Union of India,
through Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001
2. The Commissioner of Police, Delhi
Police Head Quarters,
I.P. Estate, New Delhi

..... Respondents

(By Advocate Sh. B.N. Gobaradhan)

J U D G E M E N T

(Hon'ble Sh. B.S. Hegde, Member(Judicial))

The applicant has filed this application under
Section 19 of the Administrative Tribunals Act, 1985
challenging the impugned order dated 6.7.1987 by the
Appellate Authority of the Respondents and prayed for
his reinstatement in service with full back wages etc.

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2. The applicant was enlisted in Delhi Police in July, 1974 as a Sweeper. During the period from 17.9.78 to 24.3.79, the applicant absented himself unauthorisedly on more than one occasion. Though he was warned several times and granted leave without pay yet he did not improve in his day-to-day working. The above acts on the part of the applicant amounted to grave mis-conduct and indiscipline. Accordingly, the Respondents initiated departmental enquiry against him. The enquiry was entrusted to one Shri Banarsi Das Inspector of Police to enquire into the alleged charges. The Enquiry Officer submitted his finding stating therein that the charge framed against the applicant has been proved beyond doubt.

3. The Disciplinary Authority tentatively agreeing with the findings of the Enquiry Officer issued a show-cause notice vide dated 3.5.1980 proposing therein the applicant's removal from service. The applicant gave a reply vide dated 16.5.80 to the said show-cause notice. After considering the reply of the applicant, keeping in view of the findings of the Enquiry Officer, the Punishing Authority, found the same to be unsatisfactory and imposed a penalty of removal from service vide

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order dated 28.7.80. Thereafter, the applicant sent a legal notice on 2.8.1982 for reinstatement. Having not received any reply from the Respondents, he filed a civil suit on 15.12.1982. The said suit has been transferred to Tribunal, after the Tribunal came into existence.

4. The Tribunal, vide its order dated 27.1.1987, having considered the rival contention of the parties ~~it was~~ noticed that the applicant had not exhausted the remedies available to him under the relevant rules by filing an appeal to the Additional Commissioner as advised to him in the impugned order; instead he had filed a suit for declaration that also more than two years after his removal. Accordingly, the Tribunal thought fit not to interfere at that stage and directed the applicant to exhaust the remedies available to him under the rules and had observed that the present suit also suffered from laches on his part. Accordingly, the Tribunal directed the applicant to exhaust the departmental remedies available to him and directed the applicant to file an appeal against the impugned order if so advised within a period of one month which should be accepted by the Appellate Authority for consideration after condoning the delay.

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Thereafter, the appeal should be disposed of on merit in accordance with law.

5. Pursuant to the Tribunal's direction, the applicant preferred an appeal vide dated 24th February, 1987 to Additional Commissioner of Police which was replied by the competent authority on 7.5.87 stating that his application is barred by limitation and accordingly the same was rejected. Thereafter, the applicant filed a review application vide dated 28.5.87 before the Additional Commissioner of Police urging the authorities to review the earlier order in view of the specific direction given by the Tribunal stating that the Appellate Authority should consider his appeal after condoning the delay. The competent authorities, keeping in view of his Review application and the direction issued by the Tribunal, passed a reasoned order vide dated 6.7.87 on merits of the case and rejected the contention of the applicant stating that they do not want to interfere with the punishment given by the Punishing Authority and accordingly the appeal was rejected.

6. The said impugned order has been challenged in this O.A. on the ground that the proceedings of enquiry has been vitiated in law as well as the appellant

has not been afforded reasonable opportunity of being heard in the matter. Neither the department nor the Enquiry Officer has told the applicant about his rights in the enquiry proceedings and he could not cross-examine the witnesses of the department nor he could produce evidence in support of his case etc. Secondly, the punishment of removal is disproportionate and harsh to the gravity of the alleged charge and therefore the order of removal is hit by the provisions of the Article 14 of the Constitution. The absence of the appellant from time to time was not intentional but for unavoidable reasons arising out of continuous illness of his wife etc.

7. In the light of the above, the short point for consideration is whether the orders passed by the Appellate Authority is just and proper in the facts and circumstances of the case. On perusal of the record, we find that the appellant attacked the order of removal on two grounds. Firstly, that he has not been given due opportunity in the enquiry proceedings. Secondly, that the punishment of removal is disproportionate and harsh to the gravity of the alleged charge etc. It is apparent from the order passed by the Deputy Commissioner of Police vide dated 18.7.1980 that the departmental enquiry file clearly

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shows that all his ~~pleas~~ were accepted by the Enquiry Officer under the standing rules and instructions and he was given sufficient time to prove his innocence but he himself had given in writing that he did not want to produce the DWs and also did not want to cross examine the statement of PWs any more. The defaulter has also been given personal hearing by the Deputy Commissioner of Police but he stated nothing more to justify a lenient view. Accordingly, the competent authority had come to the conclusion that the defaulter has no genuine excuse to account for his enormous absence of duty and all his pleas are imaginary and unfounded. Sufficient opportunities were given to the applicant to prove his innocence. Since no plausible reply is forthcoming for his unauthorised absence, there was no other alternative but to remove him from service.

8. On perusal of the Appellate Order dated 6.7.1987, we find the Appellate Authority, keeping in view of the direction given by the Tribunal, noted that the ^{of the} conduct/enquiry was in accordance with law and complied with the various procedures laid down therein. Since the unauthorised absence has been proved beyond doubt and after considering the reply of the applicant and in the light of the findings of the enquiry officer, punishing authority has

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come to the conclusion that the reply filed by the applicant was unsatisfactory and imposed the punishment of removal from service.

9. The Appellate Authority has considered the various issues raised in the appeal. Though he was given the full opportunity to cross examine the witnesses, he had not availed the said opportunity. Besides the Punishing Authority had given him the personal hearing after examining the material on record and passed the order vide dated 28.7.1980. Considering the various unauthorised absence of the applicant and his conduct, the Appellate Authority is not inclined to disagree with the findings of the Punishing Authority and accordingly the appeal has been rejected.

10. On perusal of the record, we find, that all the contentions of the applicant saying that the enquiry was defective, quantum of punishment is disproportionate and disciplinary authority has not applied his mind all are imaginary and unfounded. It is undisputed that the applicant had remained absent without proper sanction which has brought out during the course of enquiry and the applicant was not able to convince the authority why he remained absent for such a long time. In view of the

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Supreme Court observation in Parmananda case, the Tribunal is not sitting as a appellate court and it is not open to re-appraise the evidence of the competent authorities which is otherwise found to be in accordance with law. Pursuant to the Tribunal's direction, the applicant was allowed to prefer an appeal which was otherwise barred by time except the direction of the Tribunal, the appellate authority would not have entertained the same.

Nevertheless, as per the direction of the Tribunal, the appellate authority heard his appeal on merit and passed suitable order in accordance with law.

In the facts and circumstances of the case, we do not find any lacuna in the order passed by the appellate authority and we are not inclined to disturb the findings of the appellate authority at this stage and accordingly we dismiss the O.A. There will be no order as to costs.

P.J. Thiruvengadam

(P.T. Thiruvengadam)
Member (A)

B.S. Hegde 3/12/93
(B.S. Hegde)
Member (J)