

Central Administrative Tribunal
Principal Bench, New Delhi.

15
D.A. 1454/1988

New Delhi, This the 06th Day of April 1994

Hon'ble Shri J.P. SHARMA, Member (J)

Hon'ble Shri S.R. Adige, Member (A)

Omkanwar Singh S/o Shri Dewan Singh,
aged about 26 years, was working as Constable
in the office of Delhi Police, r/o V & P.O.
Ladpur, Delhi - 110081

By Mrs Avnish Ahlawat ...Applicant

Versus

1. Administrator, Delhi Administration, Delhi.
2. Commissioner of Police, Delhi Administration, Delhi.
3. Deputy Commissioner of Police VII Battalion, D.A.P. Delhi.

...Respondents

By Shri D.N. Trisal

ORDE R (Oral)

Hon'ble Shri J.P. Sharma, Member (J)

1. The applicant was serving as a constable in the Delhi Police. On 29-4-1985 he was late or was absent for 15 hours 7 minutes and on 3-6-85 he was also late or absent for 12 hours 45 minutes and on 15.6.85 he was ~~third~~ late by 8 hours 45 minutes. He had only joined Delhi Police in September 1982. In view of this absentee period, the departmental enquiry under section 21 of the Delhi Police Act was ordered to be initiated by the disciplinary authority. The enquiry was held under the provision of Delhi Police Punishment Rules 1980. The period of absence has been upheld by the enquiry officer and the disciplinary authority after issue of show cause notice considering that the applicant was also earlier absent.

himself on 496 occasions held that he is an incorrigible type of persons unsuited for police force and accordingly the enquiry officer imposed the punishment of removal from service by the impugned order dated 28-4-1986. The applicant has assailed the order by way of an appeal thereafter by revision. But the appellate authority, Additional Commissioner of Police by the order dated 12-8-86 and the Revisional authority by the order dated 24 Nov 86 rejected the representation. The applicant therefore, filed this application in August 1989 on which notices were issued to the respondents. The respondents contested the application and opposed the grant of relief prayed for stating that the applicant has absented himself on a number of occasions besides 3 occasions for which he was charged. In spite of the fact that he was given a minor punishment for earlier absentee period he did not correct himself and he repeated the same mis-conduct and showed incorrigibility. He was awarded 2 censures, 142 days PD, 16 days ED, 4 warning and 3 times leave without pay. He also absented himself during the departmental enquiry proceedings. The punishment therefore was that the applicant be dismissed.

2. The case was taken up in the pre-lunch session when the counsel for the applicant was not present. But Shri D.N. Trisal counsel for the respondents was present. We gave a pass over to this case but the counsel for respondents stated that he will be busy in the afternoon and cannot be present in the afternoon. So we have decided to hear the counsel for respondent before lunch in the presence of the applicant. The arguments of the applicant

was therefore adjourned till after lunch. We have heard the learned counsel for the applicant in the post lunch session and perused the records. The Departmental Representative ASI Mangal Dixit was also present on behalf of the respondents.

3. The learned counsel for the applicant did not press this application on merits except that she challenged the punishment imposed by the respondents for absence of 3 occasions and that too for certain hours. Her contention is that the applicant has been given not only harsh but severe punishment and the respondents have not considered the aspect that the applicant was not allotted any official residence near the place of postings and the ^{rental} accommodation in metropolis of Delhi is being too high and being a low paid Central Govt employee he could not afford to pay high rent he was staying at ^{village} Ladpur bordering Harayana. We have given our anxious thought. The Tribunal normally do not interfere in the quantum of punishment unless it is established that the same is perverse or in the circumstances of the case not justified. The Hon'ble Supreme Court in a recent judgement has also considered the aspect as to whether the punishment should commensurate with the misconduct and considering the aspects of the case remanded the case to the appellate authority to apply their mind.

In the case of SBI Vs Samrendra Keshava Endore reported in Judgement today 1994 Vol 1 SC page 270 the Hon'ble Supreme Court held that the punishment of removal was harsh in the

circumstances of the case and the matter was remitted to the Appellate Authority for re-consideration. In that case the individual was absent from duty. In the present case also we find that the Constable Omkanwar Singh was absent only for certain hours on three occasions.

Normally under CCS~~Rules~~ leave of 1972, if a central Government employee reaches late on 3 occasions one casual leave is deducted from the account. The same leave Rules are applicable to Delhi Police Personnel. However since this is a disciplined force, it is expected by those who are members of the force to be punctual and alert as well as attentive in their discharge of their duties and to be present ~~at~~ all the time they are being sent to perform the duties.

The observation of the Revisional Authority that the applicant is incorrigible is based on the fact that he earlier absented himself on 49 occasions. The respondents in their reply at page 3 had given details of that absentee period and we find that whenever the applicant was absent it was only for certain hours and for that absentee period he has already been given minor punishment. Under Rule 8 of Delhi police Punishment Rule 1980 " The punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for Police Service".

In the absentee report from the year 1983 to July 1985 the maximum absence of the applicant has been for 6 and 10 days ~~and still~~ till 1985 on medical grounds and for this 17 days leave without pay was given to him. On other occasions of 1 or 2 absence during

all these period either he was issued a warning or casual leave has been granted. Disciplinary authority has taken all these periods also in passing the order of punishment and held that the applicant is an incorrigible type. We therefore, do feel that in the circumstances of the case that the Revisional Authorities should re-consider the punishment imposed by the disciplinary authority as well as Appellate Authority.

4. The learned counsel for the applicant has also made a statement at the bar in the event of punishment being modified from that of a removal from service to some other sort of punishment the applicant will not claim the wages, salary allowances or any other benefits for the period from his removal from service to the period of re-instatement.

5. The learned counsel for the respondents Shri O.N. Trisal has left the matter to be considered by the Tribunal while concluding his arguments in the pre-lunch session.

6. In view of the facts and circumstances the application is partly allowed and disposed of as follows:-

(a) The mis-conduct alleged against the applicant and the charges levelled against him as held by the Enquiry officer are not interfered with.

(b) The quantum of punishment imposed by the disciplinary authority and the appellate authority ~~shall be~~ is subject to the reconsideration of the Revisional

authority as directed hereunder and the case is remanded to the Revisional authority for fresh decision of punishment to be imposed.

(c) In the event of Revisional authority exercises its discretion to substitute the punishment of removal for any other punishment as envisaged in the Delhi Police Punishment Rules then the punishment will stand modified to that extent. The Revisional authority shall dispose of the matter by a speaking order taking into consideration the observation made in the body of the judgement on the fact that the punishment imposed should commensurate with the mis-conduct alleged against the delinquent.

(d) In the event of Revisional authority substitutes any other punishment other than removal of service then the applicant shall be re-instated as per direction in the Revisional order but in that event he shall not be entitled to any wages for the period of removal from service by the the impugned order of 28.4.86 till the re-instatement as per the statement given at the bar by the learned counsel for the applicant having instructions from the applicant before this Bench.

7. In the event of any order being passed as stated above in para 6(d) the Revisional authority should also pass specific order for treating the intervening period i.e. from the date of removal to the date of reinstatement

for the purpose of pensionary benefits including promotion. The respondents is directed to dispose of the matter within three months from the date of receipt of this order. No costs.

Adige
(S.R.ADIGE)

Member (A)

J.P.Sharma
(J.P.SHARMA)

Member (J)

LCP