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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 2064/88

DECIDED ON : 6.7.1993

Mahinder Kumar ... Applicant

Vs.

Delhi Administration & Ors. ... Respondents

COURT :

THE HON'BLE MR. JUSTICE S. K. DHAON, V.C. (J)

THE HON'BLE MR. B. N. DHOUNDIALYAL, MEMBER (A)

Shri J. P. Verghese, Counsel for the Applicant

Shri B. S. Oberoi for Shri D. K. Sharma,
Counsel for the Respondents.

JUDGMENT (CRAL)

Hon'ble Mr. Justice S. K. Dhaon, V.C. (J) --

The applicant, who was a Head Constable in the Delhi Administration was dismissed from service by the order dated 7.12.1987. On 12.4.1988 the appeal preferred by him was dismissed. On 30.9.1988 the revision petition filed by him was too dismissed. The three orders are being impugned in the present application.

2. The legal procedure was followed. On the basis of statement recorded during the disciplinary proceedings a charge was framed. The charge, *inter alia*, was that on 6.2.1986 while the applicant was posted in Kotwali Circle and was detailed for duty at Salim Garh roundabout between 5.00 pm and 8.00 pm when checked by the DCP/Traffic at 5.35 pm was not in uniform and was sitting on the traffic pedestal. He was surrounded by public men and one home guard. He had unauthorisedly stopped truck No. DHC 1411 through the home guard and demanded 'Entree Fee' from the truck driver. The collection of such a fee did not form part of his duty.

Furthermore, the petitioner ran away from his duty after seeing the then DCP/Traffic, Shri Neeraj Kumar, IPS.

3. Evidence was recorded before the inquiry officer. The Punishing authority, while agreeing with the findings of the inquiry officer, passed the order of dismissal from service.

4. We are not impressed with the argument of the learned counsel for the petitioner that the charge levelled against the petitioner was vague. We have already referred to the relevant portion of the charge. We are satisfied that the allegations made therein were specific and the petitioner was in no way prejudiced. We are not satisfied that there is no evidence on the record to substantiate the findings of the punishing authority.

5. In the departmental proceedings, the driver of the truck resiled from his statement given in the preliminary inquiry that the petitioner had got the truck stopped with the motive of realising a certain sum as fee. The punishing authority while taking into consideration the testimony of the other witnesses and other surrounding circumstances and after taking note of the fact that the said driver had resiled from his statement, drew an inference that the petitioner had got the truck stopped with a view to realise some money, even though realisation of any fee did not form part of his duty. The submission is that the inference drawn was perverse as in the absence of the ^{statement of the} truck driver there was no other material to support such an inference. This submission is not sound. Even after excluding the testimony of the driver of the truck, a reasonable man could draw the inference as drawn by the punishing authority. We are not sitting as a court of appeal. We are satisfied that taking into account the facts and circumstances of the case, the punishing authority could reasonably draw such an inference.

6. Now we are left with the legal submissions made on behalf of the petitioner. The first is Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 had not been complied with. This rule provides, *inter alia*, that in cases in which a preliminary inquiry discloses the commission of a cognizable offence by a police officer or subordinate rank in his official relations with the public, departmental inquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal case should be registered or a departmental inquiry should be held. In the appellate order the point has been met. The appellate authority has recorded the finding that the examination of the papers showed that the orders were duly issued for both the "PE as well as the DE". We are informed that PE stands for preliminary inquiry and DE for departmental inquiry. It is thus clear that the disciplinary authority had applied its mind. It is true that the punishing authority in Rule 15(2) is called upon to make up its mind as to whether the departmental inquiry or a criminal prosecution should take place either after or during the course of the preliminary inquiry. In the instant case, it is implicit that the punishing authority at the thresh-hold ruled out a criminal prosecution. Therefore, no prejudice has been caused to the petitioner. The punishing authority substantially complied with the provisions of Rule 15(2).

7. Rule 8 provides that the punishment of dismissal or removal from service shall be awarded for an act of grave misconduct rendering a person unfit for police service. The argument that no specific finding in that behalf had been recorded is not correct. In the order of the punishing authority it is recorded : "On sighting the then Deputy

Commissioner of Police, Traffic, the Head Constable ran away from the sight. This conduct of the Head Constable amounts to gross misconduct and reflect strong ulterior motive." In the revisional order it is recited : "He was dealt with on the charge of mal practice of unauthorised checking of a truck without uniform and demanding entree fee, which have fully been proved during the DE proceedings. The punishment awarded is commensurate with the gravity of misconduct."

8. Rule 16 emphasises that there should be a real application of mind by the punishing authority while awarding the penalty of dismissal/removal. We are satisfied that the punishing authority as well as the appellate authority were aware of the provisions of Rule 8 and they were satisfied that the facts of the case called for an order of dismissal.

9. Rule 10 provides that the previous record of an officer against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness for a particular rank is proved, the punishment shall normally be reduction in rank. This is a provision which gives discretion to the punishing authority to award a lesser punishment to the delinquent police officer. This does not, in any manner, deprive the punishing authority of his power to pass an order of dismissal/removal in appropriate case while exercising power under Rule 8. The punishing authority had applied his mind while coming to the conclusion that the petitioner's case was a fit case where punishment of dismissal should be awarded.

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10. Reliance is placed on Mohd. Ramzan Khan's case for the proposition that a copy of the inquiry officer's report should have been furnished to the petitioner by the punishing authority before passing an order of punishment. It is to be remembered that that decision was rendered some time in the year 1991. The Supreme Court itself made it clear that this decision would not be given retrospective effect. The position was clarified in the case of S. P. Vishwanathan vs. Union of India (1990 (1) SCC 269). In the instant case, the order of dismissal was passed ~~legally~~ in 1987.

11. No other point has been pressed in support of the petitioner's case. We see no merits in this case which is dismissed. No orders as to costs.

B. N. Dhoundiyal
(B. N. Dhoundiyal)

Member (A)

S. K. Dhaon
(S. K. Dhaon)
Vice Chairman (J)

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