

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 755/88
T.A. No.

199

DATE OF DECISION 7.2.91Kali Ram

Petitioner

Shri N.S. Bhatnagar

Advocate for the Petitioner(s)

Versus

UDI and others

Respondent

Ms. Kumkum Jain

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G.Sreedharan Nair, V.C.

The Hon'ble Mr. P.C.Jain, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(G.Sreedharan Nair)
Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Registration No. O.A.755 of 1988

Date of order 7.2.91

Kali Ram

..

Applicant

- versus -

The Union of India and others..

Respondents

CORAM: Hon'ble Shri G.Sreedharan Nair, V.C.

Hon'ble Shri P.C. Jain, Member (A)

Counsel for the applicant : Shri N.S. Bhatnagar

Counsel for the respondents: Ms. Kumkum Jain

O R D E R

Hon'ble Shri G.Sreedharan Nair, V.C.:-

The applicant, who was Constable attached to the Delhi Police, was proceeded against for unauthorised absence from duty for a period of 85 days and 20 hours. His past record was also relied upon in support of the allegation that he was a habitual absente. The applicant denied the charge. An enquiry was conducted. The Enquiry Officer submitted his finding that the charge is established. The disciplinary authority by the order dated 19.6.1987 imposed upon the applicant the penalty of dismissal from service. The appeal preferred by the applicant was rejected by the order dated 30.11.1987 and the revision petition submitted by him was rejected on 23.2.1988.

dy

2

2. The applicant assails these orders. The ground urged is that before imposition of the penalty, he was not issued any show-cause notice regarding the proposed penalty, which was required in view of rules 16 and 17 of the Delhi Police (Punishment and Appeal) Rules, 1980, as they stood before the amendment. It is alleged that the amendment introduced by the notification dated 4.9.1986 dispensing with the opportunity of making representation on the proposed penalty is opposed to Article 311 of the Constitution of India and hence is illegal and inoperative.

3. In the reply filed on behalf of the respondents, it is stated that the penalty was imposed in accordance with law. It is contended that before the imposition of the penalty it was not necessary to issue a show-cause notice with respect to the proposed penalty in view of the amendment to clause(xii) of rule 16 of the Rules.

4. The point that was pressed by counsel of the applicant was that the order imposing the penalty has to be set aside since the applicant was not afforded an opportunity to make a representation against the proposed penalty of dismissal from service. There is no merit in the submission. It is not disputed that the enquiry against the applicant was governed by ~~the~~ [✓] ~~unamended~~ provisions as contained in the Delhi Police (Punishment and Appeal) Rules. Though as per the ~~unamended~~ provision, a show-cause notice stating the

2

punishment proposed to be awarded and calling upon the accused officer to submit representation against the proposed action was required, by the amendment introduced by the Delhi Police (Punishment and Appeal) (Amendment) Rules, 1986. It was provided that if the disciplinary authority, having regard to its findings on all or any of the charges and on the basis of the findings adduced during the enquiry is of the opinion that any of the penalties specified in rule 5 (i) to (xii) should be imposed on the Police Officer, it shall make an order imposing such penalty, and it shall not be necessary to give the Police Officer any opportunity of making representation on the penalty proposed to be imposed.

5. It was argued on behalf of the applicant that the aforesaid amendment is illegal as opposed to Article 311 of the Constitution of India. We are unable to agree. After the Constitution (42nd Amendment) Act the necessity of the issue of a show-cause Notice with respect to the proposed penalty has been done away with. It has also to be pointed out that there is no prayer for striking down the amended provision in the Rules.

6. In view of the above, we dismiss the application.

(See 7/2/1991)
(P.C.Jain)
Member (A)

7/2/1991
(G.Sreedharan Nair)
Vice-Chairman

C.MAHTO