

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. No.576/1986.

DATE OF DECISION: February 6, 1990.

Satbir Singh Applicant.

Shri B.S. Chauhan Advocate for the applicant.

V/s.

Union of India & Others Respondents.

Shri M.M. Sudan Advocate for the respondents.

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

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

(Judgement of the Bench delivered by Hon'ble Mr. P.C. Jain, Member (A).

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant, who was working as a Constable in Delhi Police and was later appointed as P.T. Instructor in the DAP at New Police Line, Kingsway Camp, Delhi, has challenged order dated 22.10.84 passed by the Deputy Commissioner of Police, VII Battalion: DAP: Delhi, removing the applicant from service under the D.P. Act, order dated 22.2.85 passed in appeal by the Addl. Commissioner of Police, Delhi, order dated 30.5.85 passed by the Commissioner of Police, Delhi and order dated 2.4.86 purported to be passed by Lt. Governor, Delhi. He has prayed for the following reliefs: -

- "(a) allow this application with costs;
- (b) to quash the departmental enquiry, dismissal order dated 22.10.84, order dated 22.2.85, order dated 30.5.85 and order dated 2.4.86.

(d)

(c) to issue any other appropriate order or direction which this Hon'ble Court deems fit and proper in the circumstances of the case."

2. Briefly stated, the facts of the case are as under: -

The applicant was appointed as a Constable in Delhi Police on 21.11.1972 and was later posted as P.T. Instructor in the DAP at New Police Line, Kingsway Camp, Delhi. During his about 12 years' service, he was awarded six commendation certificates. ~~XXXXXX~~ He was detailed for Advance Mob Course under IVth Battalion, DAP at New Police Line, Delhi commencing from 10.9.1983. He absented himself on 14 occasions during the course. Besides this, it was noticed that he absented himself from duty since his appointment in Delhi Police, on 113 occasions including 14 instances mentioned above. On the basis of his record of service which showed that he had been awarded one censure, 23 times PD, 2 times ED and 22 times warnings and that he had taken four times leave without pay, six times earned leave and there were 19 instances of absence, a Memo dated 5.5.84 was issued to him by Inspector Zile Singh, who had been appointed as an Inquiry Officer (Annexure-B to the application), to hold a departmental enquiry under section 21 of the Delhi Police Act. The Inquiry Officer submitted his report on 30.8.84 (Annexure-D to the application) wherein he concluded on the basis of that/the material brought on record and evidence of witnesses the charge of absenting himself during A.M.C. Course and on other several occasions without permission and prior sanction of the competent authority, as levelled against the applicant, was fully proved and he was held to be a / habitual absentee and incorrigible type of Constable, which made him liable for punishment under Section 21 of Delhi Police Act, 1978. On the basis of the report of the Inquiry Officer, Deputy Commissioner of Police, 7th Bn. DAP, Delhi, issued

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a Show Cause Notice to the applicant on 24.9.84 (Annexure 'E' to the application) wherein he proposed to remove the applicant from service under the D.P. Act and to treat the absence period as leave without pay. The applicant gave his explanation (Annexure 'F' to the application), which is without any date. The Deputy Commissioner of Police, VII Battalion, DAP, Delhi, vide his order dated 22.10.84 (Annexure 'G' to the application) imposed the penalty of removal from service on the applicant under the D.P. Act with immediate effect and his absence period was to be treated as leave without pay. He filed an appeal to the Additional Commissioner of Police (Annexure 'H' to the application), which was rejected vide order of the Addl. Commissioner of Police, AP&T, Delhi, dated 19.2.85 endorsed on 22.2.1985 (Annexure H-1 to the application). His revision petition dated 19.3.85 addressed to the Commissioner of Police, Delhi (Annexure 'I' to the application) was also rejected vide order dated 30.5.85 (Annexure I-1 to the application). He sent a representation to the Hon'ble L.G., Delhi (Annexure 'J' to the application), which too was rejected vide Annexure 'K' to the application.

3. We have gone through the pleadings of the case and have heard the learned counsel for the parties.

4. The plea of the applicant is that the report of the Inquiry Officer, and thereupon orders passed for his removal from service and orders passed rejecting his appeal, revision petition and representation are illegal, arbitrary, unconstitutional and violative of rules besides being too harsh and severe as compared to the gravity of charge. He was compelled by the Inquiry Officer to give in writing that he did not want to file a written statement and produce any evidence. He was given no opportunity to explain the absence from 1972. Non-supply of copies and statements of witnesses caused serious prejudice to him in preparation of his defence; and the punishment awarded is violative of the

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mandatory provisions of Rule 8(a) of Delhi Police (Punishment and Appeal) Rules, 1980 and P.P.R. 16.2(1). According to him, a charge of absence does not amount to misconduct of grave nature so as to warrant removal from service. In oral submissions, the learned counsel for the applicant stated that Rule 16 of The Delhi Police (Punishment and Appeal) Rules, 1980, which relates to procedure in departmental enquiries, has not been complied with inasmuch as copies of documents relied upon for prosecution were not supplied to the applicant along with the summary of misconduct; nor were the extracts of previous punishments given to the applicant. He drew attention to Rule 10 of the Rules ibid to show that previous conduct of an employee can be taken into account only if the current charges are proved. He also stated that the charge levelled against the applicant was very vague and that Rule 16 (xi) was also not complied with as this Rule provides that 'If it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules'.

He cited the case of SHRI RAM CHANDER Vs. DELHI ADMINISTRATION AND OTHERS (1988 (6) Administrative Tribunals Cases 485) to prove that absence due to medical treatment is not wilful and, as such, it could not be taken as a misconduct and the punishment is disproportionate to the gravity of the charge against the applicant.

5. The plea of the respondents is that the applicant was given full opportunity to produce documents and lead any evidence in the enquiry. On the other hand, on 24th August, 1984, he gave in writing that he was not to file any document or produce any witness in defence of his case. He was also supplied copies of all the required documents free of charge and on 16th May, 1984, he had

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made a categorical statement that he did not want copy of any other document. In reply to the grievance of the applicant that he was given no opportunity to explain his conduct for the back period from 1972, the learned counsel for the respondents averred that the Summary of Allegations, a copy of which was given to the applicant, did include the charge of his remaining absent on a number of occasions right from the date of his joining and that he was given full opportunity to explain the same. The plea of the applicant that his absence on 14 occasions during the period he was detailed for undergoing Advance Mob Control Course, was due to his illness, according to the respondents, has been adequately dealt with by the disciplinary authority and the appellate authorities in the impugned orders.

6. The plea of the applicant that he was not given opportunity to explain his position for his absence on a number of occasions in the past right from 1972, does not seem to be correct in the facts of the case. The imputation of charge clearly mentions that the applicant absented himself from duty since he joined Delhi Police on 2.11.72 for 113 occasions including 14 instances during the A.M.C. Course under 4th Bn. DAP at New Police Lines, Delhi. A gist of his bad record of service was also indicated in the charge itself which states that he had been awarded one censure, 23 times P.D., 2 times E.D., 22 times warning, 4 times leave without pay etc. The allegation of the applicant that he had not been supplied copies of the documents as also the statement of witnesses is also not true inasmuch as a list of witnesses with brief nature of evidence and a list of documents along with summary of allegations were duly supplied to him and his signatures obtained on 9.5.84. The departmental file produced by the respondents contains original documents which clearly establish the fact that he had received along

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with the Memo a Summary of Allegations and other documents free of charge. In his statement on 16.5.84, he himself admitted that he had received copies of all the documents on 9.5.84 and to a specific question "Do you want the copy of any document at this stage, excluding already supplied to you", he said, "No." The report of the Inquiry Officer is quite exhaustive and it is evident therefrom that the applicant was given full opportunity to defend himself. The Show Cause Notice dated 24.9.84 served on the applicant by hand and with which a copy of the findings of the Inquiry Officer was also enclosed, gave all necessary details of his absence as also the unhappy record of his past service. The Disciplinary Authority in his order dated 22.10.84 discussed in detail all the points raised by the applicant in reply to the Show Cause Notice. Similarly, the order passed by the Addl. Commissioner of Police on 22.2.85 on the appeal of the applicant and also the order of the Commissioner of Police, Delhi dated 30.5.85 on the revision petition of the applicant are speaking orders and deal with all the points raised by the applicant. We are satisfied that the applicant had been provided adequate opportunities to defend his case and the inquiry had been completed in accordance with the provisions of Section 21 of the Delhi Police Act, 1978 and Rule 16 of The Delhi Police Punishment and Appeal Rules, 1980.

7. Rule 10 of The Delhi Police Punishment & Appeal Rules, 1980 provides that if the previous record of an officer, against whom charges have been proved, shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. Rule 16 (xi) provides that if it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record,

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the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself. Provisions of both these Rules are in no way helpful to the applicant since it is proved beyond doubt that the applicant has been absenting himself without permission and prior sanction of the competent authority repeatedly, indicating and thereby showing continued misconduct/ incorrigibility. Herein, the previous bad record of the applicant has been included in a definite charge against him and the same forms a basis in the award of the punishment of removal from service.

8. The case of Shri Ram Chander Vs. Delhi Administration and Others (1988 (5) Administrative Tribunals Cases 485) cited by the applicant is not applicable to his case. In fact, in that case too, the order of dismissal on account of his involvement in a drunken brawl was declared justified. The charge in the instant case is not a one-time absence without prior sanction of the competent authority, but is of repeated instances of absence in spite of a number of warnings. In the circumstances of the case, we hold that the punishment of removal from service is justified.

7. In view of the foregoing discussion, we do not find any merit in the application of the applicant, which is hereby rejected. The parties shall, however, bear their own costs.

J. P. SHARMA
(J.P. SHARMA) 6/2/90
Member(J)

6/2/1990
(P.C. JAIN)
Member(A)

6.2.1990.