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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. O.A. 1451/87. DATE OF DECISION: 8.2.1993

Durga Prashad. ... Petitioner.

Versus

Union of India & Ors. ... Respondents.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the Petitioner. ... Shri A.S. Grewal, Counsel.

For the Respondents. ... Shri O.N. Trishal, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner, Shri Durga Prashad, entered service as a Police Constable in the year 1961. A disciplinary inquiry was initiated against him by the issuance of a charge sheet on 25.7.1983 as per Annexure'B'. It is alleged that the petitioner along with two other police constables having consumed liquor on 31.5.1983 went to the shop of Shri Hari Prasad Mishra, misbehaved and quarrelled with him because he demanded full amount for cigarettes purchased by them. When Head Constable Sadhu Ram came on hearing about the quarrel, on his instructions the petitioner and two others left towards the Bus stand. On the way, they teased and tried to criminally assault a girl, namely, Ms Raj Bala, who was going to her house along with her brother. When her brother tried to interfere, the petitioner tried to assault him. When Head

Constable Sadhu Ram came there, the petitioner and two others ran away. The Inquiry Officer conducted the inquiry and recorded the evidence produced. The Inquiry Officer submitted a report holding the charges proved and recommended dismissal from service. The petitioner was given an opportunity of showing cause by the disciplinary authority. After considering the cause shown, the petitioner was dismissed from service on 21.2.1986. That order was affirmed by the appellate authority on 12.9.1986 which in turn came to be affirmed by the revisional authority on 13.2.1987. It is in this background that the petitioner has approached thisTribunal for relief.

2. Shri Grewal, learned counsel for the petitioner, firstly contended that no preliminary inquiry having been held in this case as required by Rule 15 of the Delhi Police Punishment and Appeal Rules, 1980 (hereinafter referred to as 'the Rules'), the entire inquiry is vitiated. Rule 15(1) which provides for a preliminary inquiry as is clear from the language employed therein is only an enabling provision. In express terms, it states that in cases where specific information covering the points exists a Preliminary Inquiry need not be held and departmental inquiry may be ordered by the disciplinary authority straight away. It is, therefore, clear that it is not mandatory to hold a preliminary inquiry in every case. The object of holding a preliminary inquiry

is to ascertain the nature of default, identify the defaulter, collect prosecution evidence, assess the quantum of default and to bring relevant documents on record to facilitate a departmental inquiry. If the information that is available by itself is sufficient to hold a regular departmental inquiry, it is not obligatory to resort to preliminary inquiry. As in this case, the charges could be levelled against the petitioner on the basis of the information the authorities had already received, there was no need to hold a preliminary inquiry. Hence, failure to hold a preliminary inquiry cannot vitiate the entire disciplinary proceedings.

3. It was next contended that as the charge levelled against the petitioner could constitute a criminal offence, disciplinary inquiry could not have been held without the prior approval of the Addl. Commissioner of Police concerned as required by sub-rule(2) of Rule 15 of the Rules. It is necessary to state that Rule 15(2) is not attracted in this case for the reason that no preliminary inquiry was required to be held. Besides, it is only for the authorities to make up their mind as to whether a departmental inquiry should be held or a criminal case should be lodged against the delinquent official. In our opinion, even if the prior permission was not taken, that by itself is not sufficient to declare the entire disciplinary proceedings void.

4. It was next contended that the disciplinary action was not initiated by the competent authority as contemplated by sub-rule(4) of Rule 14 of the Rules which provides that the disciplinary action shall be initiated by the competent authority under whose disciplinary control the Police Officer concerned is working at the time it is decided to initiate disciplinary action. As the petitioner was posted in East District, the disciplinary authority in this case was competent to initiate the disciplinary action. There is no substance in this contention either.

5. It was next contended by the learned counsel for the petitioner that this is not a case warranting imposition of the penalty of dismissal from service. He submitted that such a penalty could have been imposed for a grave misconduct. It was further urged that no inference that the misconduct is grave could have been drawn without examining the past service of the petitioner. In support of this contention, a reliance was placed on Rule 16.2(1) of the Punjab Police Rules, 1934. The counsel for the petitioner in support of his contention relied upon a case reported in 1984(2) SLR 149 between SUKHBIR SINGH VS. DEPUTY COMMISSIONER, POLICE(DELHI). It is enough to say that a Full Bench of the Principal Bench in O.A.2442/88 decided on 12.8.1992 between RAJPAL & ANR. VS. DELHI ADMINISRATION

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& ORS. held that Rule 16.2.1 of the Punjab Police Rules, 1934 stood impliedly repealed by the Delhi Police Punishment and Appeal Rules, 1980. The Full Bench has held that having regard to the view it has taken on the subject, the judgement of the learned Single Judge of the Delhi High Court cannot be followed. So far as Rule 8 of the Rules is concerned, it provides for imposition of the penalty of dismissal from service for grave misconduct. The Full Bench has held that Rule 10 can be invoked when the misconduct held proved by itself is not sufficient for imposition of the penalty of dismissal from service. It enables consideration of previous record of service also for imposing such a punishment. If misconduct proved is sufficient to warrant dismissal from service, the question of considering records of previous service does not arise.

6. Having given our anxious consideration to the charges held proved against the petitioner who was a police constable, we have no hesitation in holding that the misconduct proved is grave rendering the petitioner unfit for continuing in service. Hence, it is not possible to take the view that the provisions of Rules 8 and 10 of the Rules have not been properly complied with in this case. Besides, the normal rule is that the Tribunal ought not to interfere with the quantum of punishment.

7. For the reasons stated above, this petition fails and is dismissed. No costs.

(S.R. ADIGE)
MEMBER(A)

(V.S. MALIMATH)
CHAIRMAN

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