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REGN.NO.OA.1631/87 Date of decision:22.3.1993

Vishnu Dutt. ... Petitioner.

Versus

Union of India
through
the Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi and anr. ... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN.
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER(A).

For the Petitioner. None.

For the Respondents. SI Satish Kumar
Rao, (Deptt.
Official).

JUDGEMENT (ORAL)

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

The petitioner is not present. The respondents are also not represented by their counsel. Sub-Inspector Satish Kumar, however, is present on behalf of the respondents. He could not be of any assistance to the Tribunal for ^{he} is not either well informed about the case nor has he brought the original record of the case. This is one of the many cases where we find that the Administration is an orphan before the Tribunal. It is unfortunate that the responsible administration of the police administration is not adequately represented to defend its proceedings before the Tribunal. This matter is of the year 1987 and pending for a long time. In the circumstances, we thought it proper to look into the record and dispose of the case on merits. Accordingly, we have perused the record.

2. The petitioner was a Head Constable in the Delhi Police. He was under suspension having regard to the criminal case pending against him. During subsistence of the suspension, he absented himself and, therefore, a disciplinary inquiry was initiated against him. We find from the records that the petitioner was evading service of notice and was not availing the opportunity which was given to him for effective participation in the disciplinary inquiry. The authority after everything reasonably possible to give him an opportunity of defending himself ultimately decided to proceed against him exparte. It was made clear that at every stage of the proceedings thereafter, he would be given an opportunity to participate in the inquiry. In spite of several opportunities given to him to participate in the inquiry, for the reasons best known to him, he did not avail the opportunities afforded to him. A disciplinary inquiry was held, evidence was collected and ultimately the disciplinary authority held the charge levelled against the petitioner for his having unauthorisedly absent from duty proved and issued a show cause notice as to why he should not be dismissed from service. After giving such an opportunity, an order came to be passed dismissing the petitioner from service.

W The said order was affirmed by the appellate

authority and the revisional authority. It is in this background that the petitioner has approached this Tribunal for relief.

3. One of the contentions raised by the petitioner is that he was appointed by the Deputy Inspector General of Police and, therefore, it was not competent for the Additional Deputy Commissioner of Police to pass the impugned order. The petitioner has not produced any satisfactory material in support of his case that he was appointed by the Deputy Inspector General of Police. It is clear from the order of the Commissioner of Police, Delhi dated 7.11.1985 that the enlistment of the petitioner was made by the Superintendent of Police and according to Rule 12 read with Rule 4 of the Delhi Police (Punishment and Appeal) Rules, 1980, the Superintendent of Police and the Additional Deputy Commissioner of Police are competent to award the punishment of dismissal. The petitioner has failed to establish that the impugned order has been made by the authority lower than the appointing authority.

4. So far as the merits of the case are concerned, the findings are based on evidence produced during the course of the inquiry. The findings of fact recorded by the authorities are not liable for interference. The petitioner was given adequate opportunity of defending himself at every stage. It is the

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petitioner who was adopting dilatory tactics to delay the disciplinary proceedings. It is not possible, in the circumstances, to accept the bald assertion of the petitioner that he was not given adequate opportunity of defending himself or there was violation of principles of natural justice. We, therefore, see no good ground to interfere. The petition fails and is, therefore, dismissed. No costs.

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

Member(A)

V. S. Malimath
(V.S. Malimath)

Chairman

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