

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1218/90

New Delhi this the 20th Day of September, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. T.L. Verma, Member (J)

Ex. Constable Rajbir Singh
Son of Sh. Tek Ram,
R/o Village Nirthan P.S. Sehri,
District Sonapat (Haryana). ...Applicant

(By Advocate Sh. Shankar Raju)

Versus

1. The Commissioner of Police,
Police Headquarters, M.S.O. Building,
I.P. Estate, New Delhi-110002.
2. The Additional Commissioner of Police,
Armed Police, Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi-110002.
3. The Dy. Commissioner of Police,
9th Bn. D.A.P. Pitampura,
Delhi-110034. ...Respondents

(By Advocate Sh. Raj Singh)

ORDER(ORAL)

Hon'ble Mr. N.V. Krishnan:-

The applicant was a Constable in the Delhi Police who has been dismissed from service by the Annexure A-6 order dated 14.6.89 of the disciplinary authority, respondent No.3. This order was passed in disciplinary proceedings. The appeal filed by the applicant has also been dismissed. The charge against the applicant is that he was nominated for the Advance Mob Control Course. He joined on 1.2.88 but he absented himself therefrom 3.2.88 and thereafter did not report despite 7 absentee notices issued to him.

2. An enquiry was held and the enquiry officer held the applicant guilty of the charge. Therefore, the disciplinary authority issued the Annexure A-A 5 show

cause notice dated 11.5.89 in which he was informed that it was proposed to impose punishment of dismissal on him. After considering his explanation the impugned Annexure A-6 order was passed.

3. In this order a reference has been made to his past record and he has been dismissed from service. The applicant has prayed for a direction to set aside the impugned order of punishment and reinstate him in service with all consequential benefits.

4. The respondents have filed a reply resisting the application and contending that the applicant was given all opportunities in the enquiry and as he was found guilty, an appropriate punishment has been imposed on him.

5. When the matter came up for hearing, the learned counsel for the applicant pointed out that the charge against him was of unauthorised absence. His defence is that he was not well and he has sent medical certificates which were not accepted by the enquiry officer in the disciplinary proceedings. He, however, contends that the order of the disciplinary authority suffers from the serious infirmity which renders it liable to be quashed. He points out that the order could not have passed without following the procedure laid down in the Delhi Police (Punishment and Appeal) Rules, 1980. Rule-16, which deals with the procedure in departmental enquiry provides in sub rule (xi) as follows:-

123

"(xi) 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 further points out that Rule-8 lays down the principles of imposition of penalties. Sub rule (a) reads as follows:-

"(a) Dismissal/Removal.-The punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service."

6. The learned counsel points out that in the charge dated 21.12.88 (Annexure A-2) the Inquiry Officer who framed the charge did not indicate that the previous record would be taken into account for the purpose of Rule 16 (xi). In so far as the order of the disciplinary authority is concerned, there is no finding that the charge proved against the applicant is an act of grave misconduct rendering him unfit for Police service. He, draws our attention to the judgement rendered in OA-1219/93 decided on 16.12.93 - Ex. Constable Rajbir Singh Vs. Delhi Administration and Others, a copy of which is kept on record, in which it has been held, in the light of the earlier decision of the Tribunal that, the failure to record any specific finding that the charge proved is "a grave misconduct rendering him unfit for Police service is a sufficient ground to quash the order of punishment.

7. We have heard the learned counsel for the respondents. He submits that a perusal of the order of the disciplinary authority does not necessarily establish

U

that the previous record has been taken into account. The disciplinary authority only has made a reference to the factual position in regard to the applicant's earlier record.


8. We have carefully considered the rival contentions. We notice that the learned counsel for the applicant is on strong grounds when he states that the charge has failed to mention that it was intended to take into account the previous record of the applicant for considering his punishment. The submission of the learned counsel for the respondents that this has not been taken into account in the Annexure A-6 order is untenable. Paragraph-2 of that order specifically mentions in detail about the previous record and the punishment awarded to the applicant earlier. If previous record was not intended to be taken into account, it does not make sense to note that the disciplinary authority took the trouble of narrating facts relating to his past record. We also find that it is after narrating such record that the disciplinary authority came to the conclusion that "such indiscipline by a Policeman in a disciplined force is highly reprehensible." Therefore, we are satisfied that a more severe punishment of dismissal - which is also the extreme punishment has been awarded on the basis of considering the past record of the applicant than would be the case, if that record was not considered. This is contrary to the provisions of law.

9. In regard to Rule 8(a) we find that there is no finding of the disciplinary authority that the charge proved amounts to a grave misconduct which renders the


applicant unfit for Police service. On the ratio of the judgement of the Tribunal in OA-1219/93 referred to above, the order of punishment deserves to be quashed on this ground.

10. In the circumstances, we are satisfied that the only grievance of the applicant which has been established is that the punishment of dismissal has been awarded to him contrary to the provisions of the rules. In the circumstances, the orders of the respondents in so far as they concern the imposition of penalty alone, are quashed and the matter is remanded back to the third respondent to reconsider the quantum of penalty which should be imposed on the applicant keeping in view the observations we have made in this regard in the preceding paragraphs. Regarding back wages etc. it would depend on the final order to be passed by the disciplinary authority. The disciplinary authority is directed to pass final orders within a period of two months from the date of receipt of this order.

11. The O.A. is allowed, to the above extent. No costs.


(T.L. VERMA)
MEMBER (J)

'Sanju'


20/9/94
(N.V. KRISHNAN)
VICE-CHAIRMAN (A)