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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1427/90

Hon'ble Mr. S.R. Adige, Member (A)
Hon'ble Mrs Lakshmi Swaminathan, Member (J)

New Delhi this the 10th day of ^{March} February 1995.

Mohinder Singh
S/o Hari Ram
R/o Village Asawarpur
P.O. Partap Stadium
Rai (Haryana) in 131029
Ex. constable No. 11584/DAP 10th Bn.
DelhiApplicant
(By Advocate: Shri Mukul Sharma)

Versus

1. The Commissioner of Police
Delhi Police
Police Headquarters
I.P. Estate, New Delhi.
2. The Additional Commissioner of Police
Armed Police, I.P. Estate, P.H.Q
New Delhi.
3. The Deputy Commissioner of Police
10th Bn., Delhi Armed Police
Pitampura, Delhi-110 052.
4. Shri Jagdev Singh Rana
Inspector (E.O.) 10th Bn., DAP
Service through Deputy Commissioner
of Police, 10th Bn., Pitampura
Delhi-110 052.Respondents.

JUDGEMENT

Hon'ble Mr. S.R. Adige, Member (A)

In this application, Shri Mohinder Singh, Ex-Constable of Delhi Police has impugned the order dated 31.7.1989 (Annexure A-II) dismissing him from service and the order dated 2.3.1990 of the Respondent No. 2 (Annexure A-IV) rejecting the appeal.

2. The applicant who joined service as a constable in the Delhi Police on 9.6.1976 was proceeded against on the charge (Annexure A-I)

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that he abstained himself from official duties without information/permission of the higher officer on 4 different occasions ranging from 23 hrs 15 minutes to 2 months, 5 days, and 13 hrs & 15 minutes. The charge-sheet stated that his previous record also showed that he was a habitual absentee who was found to have abstained himself from duty on 11 different occasions in the past.

3. The Enquiry Officer in his findings (Attached to Annexure A-I) held that the applicant was guilty of the charge drawn up against him. After hearing the applicant in person in the orderly room on 31.7.1989, the disciplinary authority imposed the punishment of dismissal, directing that the period of absence be treated as not spent on duty hence without pay. In appeal, the disciplinary authority's order was ^{upheld in} ~~impugned~~, against which this OA has been filed.

4. The first ground is that the unsubstantiated charge of absence on previous occasions should not have been included in the summary of allegations as it prejudiced the mind of the respondents. Rule 16 (xi) Delhi Police (Punishment & Appeal) Rules specifically lay down that if it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his bad record, the previous bad record shall form the basis of a definite charge against him and he shall be given the opportunity to defend himself as per rules. The respondents in their reply have stated that the previous record of absence was cited in the summary of allegations, not to prejudice the E.O. and the authorities, but only to consider whether there were adequate grounds to take a sympathetic view. As Rule 16 (xi) Delhi Police (P & A) Rules has been complied with, and there is nothing to indicate that adherence to this rule was done to prejudice the mind of the respondents or their mind was thereby prejudiced, this ground fails.

5. The next ground taken is that copies of the entries of previous absences were not supplied to the applicant. The respondents in their reply have stated that record of previous 11 occasions was duly exhibited in the DE as per prescribed procedure in the applicant's presence and this finds support from that portion of the Enquiry Officer's report containing the statement of PW2 ASI Jiwan Singh wherein it is stated that he " also submitted the previous record of the defaulter in proof of his habitual absentism". They also aver that copies of the applicant's previous absence was supplied to him and he has acknowledged receipt of the same. Hence this ground fails.

6. The next ground is that the applicant had been paid normal salaries for these periods of absence upto his last date of duty viz 31.7.89 which implied that leave had been sanctioned for these periods. He did not take this ground in his appeal and it clearly appears to be an afterthought. Even if, as claimed by him, salary was paid for some periods of absence, it cannot be said that repeated absentism from duty without prior permission as in this case does not amount to dereliction of duty, particularly for a member of a disciplined force such as police. The fact of payment of salary does not condone the misconduct. Hence this ground fails.

7. The next ground taken is that proper intimation regarding the relevant period for obtaining leave was sent to the concerned authorities and sanctioned by them. Prima facie, the burden of establishing any averment, lies upon the person making that averment, but there is nothing to indicate that the applicant sent any application for leave, which was received by the respondents. The applicant claims that he had to remain absent on account of the illness of his wife, but the appellate authority has pointed out the medical prescriptions of his wife produced by the applicant do not tally with his periods of absence and even for such situations, there is a well settled procedure.

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- of properly applying for leave and awaiting orders thereon, before outrightly availing of this leave. No leave can be claimed as of right and leave cannot be availed of in anticipation of it being granted, more so in a disciplined force such as the Police.
8. The next ground taken is that Rule 16(x) Delhi Police (P&A) Rules have not been followed as the disciplinary authority has not given his own finding or evaluation or evidence. The Disciplinary Authority has, for the reasons recorded in the EO's report, agreed with EO's findings, after carefully going through the evidence on record, and has also stated that he gave the applicant a personal hearing on 31.7.1989 and he (the applicant) had nothing to say beyond what he had ^a said earlier. Hence Rule 16(X) has been complied with and this ground also fails.
9. In so far as the alleged harshness of the punishment is concerned, it is well settled in GOI Vs. Paramanda AIR 1989 SC 1185 that 'the adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence...."
10. The next ground taken is that the show-cause notice against the punishment ^{of} ~~by~~ ^{not} dismissal was issued to the applicant vide Rule 16 (xii)(c) Delhi Police (P&A) Rules, but this provision ^{has been} ~~was~~ diluted vide Notification No. F.56/85 Home (P) GOI dated 4.9.86 itself i.e. prior to the DE and hence this ground also fails.
11. During arguments, applicant's counsel Sh.M. Sharma argued that the procedure for conduct of a DE for imposing a major penalty under Rule 16 Delhi Police (P&A) Rules was violative ^{of} ~~of~~ the principle of ^{natural} justice in as much as before the issue of the charge sheet, the EO's mind would already have been prejudiced towards the delinquent and the enquiry could not therefore be fair and impartial. At the outset, we must note that this ground was not

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urged either in the application itself or in the rejoinder. However as it was urged during hearing, we consider it fit to examine it. The procedure in DE's which are likely to result in a major penalty, as laid down in Rule 16 DP (P&A), requires the police officer concerned to appear before the EO and admit or deny the misconduct on the basis of the summary of allegations drawn up by the EO and served upon him. When the police officer concerned admits the misconduct, the EO ~~brought~~^{straight} away from charges against him. When he denies the misconduct, the PWs are examined and cross-examined; statements and documents are brought on record which are read out to the concerned officer and opportunity is given to him to take notes and it is only after all the evidence in support of the allegations has been recorded ^{in is fully satisfied} that the E.O. / ~~held~~^{held} that there is substance in the allegations, proceeds to frame formal charges and call upon the concerned officer to answer them and lead defence evidence. Thus far from prejudicing the mind of the EO, this procedure gives ample opportunity to the accused officer to be heard, defend himself and prove his innocence, and cannot be said to lead to a biased or unfair finding or otherwise be violative of the principle of natural justice or of ^{Articles 14 and 16} the ~~society~~ of the Constitution.

12. In the result, the impugned orders warrant no interference. This application fails and is dismissed. No costs.

Lakshmi Swaminathan

(Lakshmi Swaminathan)
Member (J)

S.R. Adige

(S.R. Adige)
Member (A)

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