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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1532/90

New Delhi, 2.9. 1994

CORAM :

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Jaswant Singh,
Ex-Constable (Driver),
Police Training School,
Jharoda Kalan, New Delhi.

... Applicant

By Advocate Shri S. C. Luthra with Shri O. P. Khokha

Versus

1. Commissioner of Police,
Delhi Police,
Delhi Administration,
Delhi.

2. Principal,
Police Training School,
Jharoda Kalan, New Delhi.

3. Additional Commissioner of
Police : Training, Delhi.

... Respondents

By Advocate Mrs. Avnish Ahlawat

O R D E R

Shri S. R. Adige, Member (A) -

In this application, Shri Jaswant Singh, Ex Constable (Driver), Delhi Police, has impugned the order dated 12.1.1988 (Ann.-I) dismissing him from service which has been upheld in appeal vide Addl. Commissioner of Police order dated 28.3.1989 (Ann.-II) and in revision vide Police Commissioner's order dated 17.7.1989 (Ann.-III).

2. The applicant was proceeded against departmentally on the charge that while posted at Police Training School, Jharoda Kalan, New Delhi, he used sarcastic

remarks and derogatory language against S.I. Nand Ram on 22.4.1987; he refused to perform duty on 16.4.1987 when asked to do so by S.I. Nand Ram; he proceeded on three days special leave without bringing the same to the notice of his supervisory officer on 17.4.1987; and he proceeded as an outdoor patient from the Police Trg. School on 21.4.1987 without prior permission of the Motor Transport Inspector, PTS, and when asked, he replied in an indisciplined manner that he had gone on his own and the Inspector could do what he liked.

3. The enquiry officer in his findings held all the charges against the applicant were proved beyond doubt. Accepting the findings, the disciplinary authority by the impugned order dated 12.1.1988 imposed the penalty of dismissal, which was upheld in appeal and in revision against which the applicant has now filed this O.A.

4. The first ground taken by the applicant is that the revision order ^{has} taken into account the previous order of punishment (dismissal, subsequently commuted on appeal to withholding of increment for one year temporarily for quarelling and misbehaviour), and as the penalty order as well as the appellate order have merged in the revision order, the latter is bad in law, as the applicant's past conduct did not specifically form part of the charge to enable him to show cause. This argument has no merit, because as correctly pointed out by the respondents in their reply, no mention of the past bad record of service of the applicant finds place in the penalty order of

the disciplinary authority, and the revisionary authority was merely discussing the pleas advanced by the petitioner in his revision petition and those discussions and the concerned facts were not the basis of the penalty imposed. *Regarding the second ground taken, of absence of independent witnesses, the respondents in their reply admit that none of the PWS supported the allegations of usage of sarcastic remarks and derogatory language against S.I. Nand Ram, nor the allegation of refusal to do duty on 16.4.1987 except S.I. Nand Ram himself, but this fact alone does not mean that the erring Constable did not commit the alleged misconduct. S.I. Nand Ram reported the alleged misconduct to his senior officer in the ordinary course of business, and the respondents state that there is no valid reason to disbelieve his testimony. Furthermore, although the applicant had been sanctioned three days special leave/permission by the Principal, PTS, the standing orders provide that the applicant should have availed of the same only after obtaining his immediate superior's permission to ensure that there was no dislocation in work, but the statement of Inspector Kesho Ram makes it clear that the applicant did not do so. The respondents in their reply have also drawn attention to the defence statement submitted by the applicant to the E.O. during the disciplinary enquiry which we have also inspected, in which he stated that he had asked Inspector Kesho Ram for permission to go to hospital as an outdoor patient which upon being refused, led to arguments, upon which the applicant without obtaining Inspector Kesho Ram's permission proceeded from the PTS as an*

outdoor patient. Thereupon when Inspector Kesho Ram asked him why he left the premises of his own, the applicant is stated to have replied (as per Inspector Kesho Ram's statement in the D.E.) in an insulting manner that the Inspector could do whatever he liked. The respondents assert that the Inspector holds a position of trust and responsibility and his testimony cannot be lightly brushed aside. As a Tribunal, we would be exceeding our jurisdiction if we reappraise the evidence. In the light of the foregoing discussion we are, however, clear in our view that this is not a case where there is no evidence, or the evidence is based on conjunctures and surmises, or the findings based on that evidence are ^{per}verse, arbitrary or mala fide, or otherwise violative of Articles 14 and 16 of the Constitution. Hence, this ground also fails.

6. The third ground taken is that the copy of the enquiry report was not supplied before imposing the penalty. The applicant's counsel Shri Luthra stated during hearing that the copy of the report was not even supplied with the penalty order. This has been denied by the respondents' counsel. The applicant has not succeeded in establishing that he raised this plea at any previous stage, because if he had, surely there would have been some response to it in the appellate, and/or revisionary order. This, therefore, appears to be an afterthought. Even otherwise, as the D.E. was concluded before 20.11.1990, the non-supply of the copy of the enquiry report to the applicant before imposing the penalty does not vitiate the D.E.

7. In the result, no interference in the impugned orders is warranted and this application is dismissed. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

S. R. Adige
(S. R. Adige)
Member (A)

/as/