

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1601/90

Date of decision 7-4-95

CORAM

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

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Tejbir Singh,
S/o Shri Sultan Singh,
R/o Qr.No. B-5, PS Punjabi Bagh,
New Delhi.

... Applicant

(By Advocate Shri Shankar Raju)

Vs.

1. The Commissioner of Police,
Delhi Police,
Police Headquarters,
MSO Building, IP Estate,
New Delhi.
2. The Deputy Commissioner of Police,
IVth Bn., Delhi Armed Police,
Delhi
3. Union of India,
Ministry of Home Affairs,
Government of India,
New Delhi (through its Secretary)

... Respondents

(By Advocate Ms Rashmi Chhabra with Mrs.
Arunish Ahlawat)

O R D E R

✓ Hon'ble Smt. Lakshmi Swaminathan, Member (J) 27

The applicant, an ex-constable in Delhi Police,
is aggrieved by the order of dismissal passed against
him by respondent No. 2 dated 16.3.1990 and the appe-
llate order dated 17.7.1990 rejecting his appeal
(copies of the orders are placed at pages 27 to 35).

..

12

2. The brief facts of the case are that the applicant was appointed in Delhi Police w.e.f. 3.5.1982. He was placed under suspension vide order dated 16.10.1987 for his arrest in case FIR No. 295/37 under Section 324/506/34-IPC. During his suspension, he absented himself from evening roll call on 29.6.1989 and he was marked absent vide D.D. No. 73 dated 29.6.1989. His suspension was revoked and he was reinstated in service vide order dated 22.9.1989. He reported back for duty vide D.D.No. 99 dated 13.10.1989 after absenting himself for 3 months and 15 days and produced a medical rest for 5 days from 13.10.1989 to 17.10.1989. He was permitted to avail the medical rest at his residence. His father got a report lodged vide D.D.No. 37, dated 18.10.1989 that his son had been advised medical rest for further 5 days, but he did not get the permission of the competent authority for medical rest at his residence. He did not report for roll call, and he was marked absent vide D.D.No. 76 dated 23.10.1989. Since then, he was continuously absent. According to the respondents, he was directed to report to Civil Surgeon, Civil Hospital, Rajpur Road, Delhi for second medical opinion but he did not do so. He was again directed vide Memo. dated 10.11.1989 to report for second medical opinion but this time also, he did not report for the same. Based on these allegations, that he was continuously absent from duty unauthorisedly, departmental action had been taken against him under section

12

13

21 of the Delhi Police Act, 1978 vide order dated 19.12.1989. The applicant did not report to the Enquiry Officer or join in the departmental enquiry and so the proceedings were held ex-parte under Rule 18 of the Delhi Police (Punishment & Appeal) Rules, 1980. The Enquiry Officer completed the ex-parte disciplinary proceedings on 19.1.1990 and held that the charges framed against him were proved. The disciplinary authority, after giving him a show cause notice and considering his reply, passed the impugned order of dismissal dated 16.3.1990. The appeal submitted by him was also considered in detail by the appellate authority before rejecting the same vide order dated 17.7.1990.

3. This D.A. has been filed to quash the above impugned orders. The respondents have filed a reply refuting the averments made by the applicant on which a rejoinder has also been filed by the applicant.

4. We have heard both the learned counsel on merits and perused the records.

5. Shri Shanker Raju, learned counsel for the applicant, based on the following grounds, argued that the impugned orders are illegal and should be quashed, namely, -

(i) That he has not received the intimation

12

to obtain the second medical opinion as required under S.O. 111. He also contends that since any such order calling upon him to produce the second medical opinion could have been sent by post, there was no need to send a police constable to serve the orders dated 31.10.1989 and 10.11.1989, as alleged to have been sent by the respondents. According to him, the applicant did not avoid the second medical examination and it is the fault of the respondents for not communicating these orders to the applicant.

- (ii) The ex-parte proceedings held against the applicant are not in accordance with Rule 18 of the Delhi Police (Punishment & Appeal) Rules, 1980. He states that according to the respondents, the summary^{of} allegations, charge sheet and other papers relating to the disciplinary proceedings were passed at his house on 1.1.1990 and on 2.1.1990 the orders for taking ex-parte proceedings were obtained which shows that Rule 18 has not been complied with. He also relies on the observations of the Supreme Court in UOI & Ors. v. I.S. Singh (1994 SCC (L&S) 1131 in which it was held that in the case of an application seeking adjournment on medical ground, not accompanied by medical certificate, the Enquiry Officer ought to demand a medical certificate or direct the delinquent to be examined by a specified medical officer, who ought not to proceed ex parte (see also M. Nagaraj Rao v. UOI (1994(27)ATC 792).
- (iii) He submits that the proceedings in the departmental enquiry could have been held under Rule 16(i) only if he was fit enough to join duty. Therefore, once he has submitted the medical certificate, he cannot be asked to join duty.

12

(iv) He relies on the judgment of this Tribunal in Dalip Singh v. Lt. Governor of Delhi : Ors. (D.A.No. 802/90 dated 23rd December, 1994) and Raibir Singh v. Commissioner of Police (D.A.No. 1218/90 dated 20th December, 1994) and Ex. Constable Ram Singh v. State of Punjab (1992 SCC (L&S) 793). The learned counsel submits that Rule 8(a) of the Delhi Police (Punishment & Appeal) Rules, 1980 has not been followed inasmuch as there has been no finding by the disciplinary authority ~~that there has been no~~ ¹⁸ ~~finding~~ of grave misconduct against the applicant rendering him unfit for police service before passing the impugned order of dismissal. According to him, the punishment is too harsh, since the applicant is only accused of merely being habitual absentee, which is not a grave misconduct and, at best, the case may be remanded to the competent authority for passing any other lesser punishment (see State Bank of India & Ors. v. S.K. Endow and Ors. - 1994 SCC (L&S) 687). He also relies on the judgment of this Tribunal in Noor Mohd. v. Commissioner of Police (D.A.No. 2143/90 decided on 30th November, 1994).

(v) Relying on the judgment of Supreme Court in Haribash Malik v. UOI (1990 (2) ATJ (CAT) 268), Shri Shanker Raju submits that in appreciating the evidence, the disciplinary authority should look at the entire evidence and not pick and choose. According to him, there was no evidence of the applicant's incorrigibility, as found by the disciplinary authority and so the imposition of the severe punishment of dismissal was not warranted.

19

..

12

6. The respondents have stated in their reply that since the applicant did not report to the Enquiry Officer or joined in the disciplinary proceedings despite repeated summons dated 26th, 27th, 28th and 29th December, 1989, the relevant documents pertaining to the disciplinary proceedings were pasted at the door of his residence in the pre-sence of his parents and neighbours on 1.1.1990. In the circumstances, the competent authority, by order dated 2.1.1990, permitted the Enquiry Officer to hold ex parte proceedings in accordance with Rule 18 of the Delhi Police (Punishment & Appeal) Rules. The Enquiry Officer had completed the proceedings and submitted his report on 19.1.1990 holding the defaulter constable guilty of charge framed against him. After giving him a copy of the Enquiry Officer's report, to which the applicant filed his reply, and giving the applicant further opportunity to appear in the D.R. on more than one occasion, the disciplinary authority passed the order of dismissal on 16.3.1990. The dismissal order gives the reasons for the findings. Ms. Rashmi Chhabra, learned counsel for the respondents submits that as per the statement of PW I and V, the orders dated 31.10.1989 and 10.11.1989 have been brought to the notice of the applicant through his mother/parents and he was duly informed for getting the second medical opinion which he failed to do. His past record also shows that he was a habitual absentee which was also mentioned

18

2

in the charge-sheet and proved by the statement of PW-10 in the disciplinary proceedings.

The respondents have also stated that although in Rule 16 of the Delhi Police (Punishment and Appeal) Rules, there is no provision for defence assistance, but in this case, the applicant had been given full opportunity to take such assistance, if he so desired, which had been communicated to him in the summary of allegations. The ex parte proceedings were fully justified as the applicant has failed to cooperate in the departmental enquiry proceedings and there was ^{no} infirmity therein. As per the standing order, the applicant was also required to attend roll call even while on suspension. Since the applicant did not comply with the order to submit second medical certificate in spite of the information given to him, he cannot now complain. As far as the previous record was concerned, the charge has referred to his being

18

2

a habitual absentee and in accordance with rule 10 of the Delhi Police (Punishment and Appeal) Rules, 1980, the same had been taken into account which was, therefore, legal and there was no infirmity. They have submitted that the punishment orders are based on evidence and in accordance with the Rules and, therefore, legal and valid.

7. We have carefully considered the arguments of learned counsel of both the parties, perused the record and pleading in the case.

8. On the facts of the case, the arguments of Shri Raju, learned counsel for the applicant that he had not received intimation to obtain the second medical opinion is totally baseless, as it is seen from the record that the applicant was served the order requiring him to obtain the second medical opinion, which he failed to do. The mere fact that the respondents sent the police constable to serve the orders on him, instead of sending them by post, does not make the service, in any way improper. The important thing to note is that sufficient notice had been given to him to obtain a second medical opinion and this ground is, therefore, rejected.

197

2

9. As regards the second objection, the record in the disciplinary proceedings confirm that the applicant failed to respond to repeated summons issued by the Enquiry Officer, which resulted in the relevant papers being pasted at his residence on 1.1.1990 followed by the permission of the disciplinary authority to hold ex-parte proceedings. Here again, it is the applicant's own conduct which has resulted in the ex-parte departmental proceedings, and on the facts of the case, we do not see any infirmity in the same. The judgment of the Hon'ble Supreme Court in UOI & Ors. v. I.S. Singh (Supra) will not help the applicant in this case because, in this case, the applicant had not requested for adjournment of the disciplinary proceedings on medical grounds accompanied by proper medical certificate. Other cases relied upon on the question of ex-parte do not also help the applicant in this case, as he has deliberately avoided to take part in the proceedings as seen from the record.

10. The next ground is that the departmental proceedings could have been held under Rule 16(i) only if he was fit enough to join duty. In this case, however, having regard to the provisions of S.O. 111, it was well within the powers of the respondents to call upon him to submit the medical certificate in the prescribed form/obtain a second medical opinion. In the appeal submitted by the applicant dated 13.4.1990, he states that he has produced the medical certificate from various private doctors in Delhi under whom he

18

states he was undergoing medical treatment for his absence for the period in question. If he could produce the medical certificates from the private doctors in Delhi, there is no reason why he could not have complied with the further instructions to him to produce the medical certificates as required under the rules from the Civil Surgeon, Civil Hospital, Rajpur Road, Delhi. It is also seen that at the time when the police constable went to serve the order on him, he was not present at his residence. All this shows that the conclusion of the disciplinary authority that he had failed to comply with the orders for obtaining a second medical opinion is not without basis, and we are not, therefore, inclined to interfere with the order. The facts also show that if he was fit enough to be examined by private doctors and was, therefore, able to move about, the claim of the applicant's counsel that he was required to be on bed rest and was not able to join duty does not appear to be convincing. This argument is also rejected.

11. The next ground is that there should have been a specific finding of 'grave misconduct' by the disciplinary authority before passing the impugned order of dismissal from service.

12. Here, we must refer to two Full Bench Judgments decided on 4.8.1993 In Bhagirath Singh v. Delhi Administration & Others (O.A.No. 2372/1990 and Hari Ram v. Delhi Administration & Urs. (O.A.No.1344/90) reported

in Full Bench Judgments of CAT (1991-1994) - Bahri Bros. PP. 235 & 239
and Krishna Kumar v. Delhi Administration (1994) 28 ATC 16.

In Bhaqirath Singh's case, the Tribunal held -

"Though the disciplinary authority has not stated in so many words that the misconduct of the petitioner which is duly proved is such as to render him unfit or unworthy to continue in Police service, the nature of the misconduct held proved, in our opinion sufficiently justifies such an inference. The appellate authority which had occasion to examine the appropriateness of the punishment has expressed itself most candidly in this behalf by saying that indeed there is no place for such an indisciplined person in a disciplined force. There is a forceful expression on the part of the appellate authority conveying that in his opinion the petitioner is unworthy of being retained in Police service. It is not the use of the precise language employed in Rules 8(a) and 10 of the Delhi Police (Punishment and Appeal) Rules, 1980 that is crucial. We should on reading the entire order ascertain whether we can gather that the concerned authority had formed the opinion that the delinquent official is not worthy of being retained in Police service." (emphasis added)

not use of the
In other words, it is just the exact words used in Rule 8(a) and 10 which are important but whether the punishment order satisfies the pith and substance of the rules.

13. In this case the disciplinary authority has recorded that he is a habitual absentee and incorrigible type of constable as is evident from the record. Unauthorized absence in a disciplined force is a "serious misconduct" and the disciplinary authority proceeded to pass the order of dismissal. The appellate authority has also examined the appropriateness of the punishment order and has expressed his opinion as follows :-

" The extent of his intentional disobedience

25

of departmental order is quite clearly established and it is proved that he was purposely absenting himself from his duties. Such habitual absenteeism cannot be tolerated in an organization which is entrusted with the responsibilities of maintenance of law & order and prevention and detection of crime. If other police officers start taking his example, it will become extremely difficult to maintain discipline in the Police organization. The punishment of dismissal is fully merited and is commensurate with his grave misconduct of such prolonged unauthorised absence and I see no reason in his appeal to interfere with this order. The appeal is rejected.*

Therefore, from the orders of the disciplinary authority and appellate authority, it is possible to say that they have come to the conclusion that the ^{applicant's} unauthorised absence in a disciplined force is a "serious misconduct" which warrants his dismissal. The appellate authority has, in fact, added that his "grave misconduct" of such prolonged unauthorised absence fully merited the punishment order. By stating that he is an incorrigible type of person or that his habitual absenteeism cannot be tolerated in a disciplined force shows that they had formed the opinion that he was unfit to be retained in service. In the light of the Full Bench Judgments and the facts in this case, we find that there has been no violation of Rules 8(a) and 10 of the Delhi Police (Punishment & Appeal) Rules, 1980, and this ground is also rejected.

In view of the above,
14. /the cases relied upon by the applicant Dalip Singh v. Lt. Governor of Delhi & Ors. (Supra) and Raibir Singh v. Commissioner of Police (Supra) will, therefore, not assist him.

18. In Noor Mohd. v. Commissioner of Police case (supra),

2

the Tribunal found that none of the prosecution witnesses appears to have deposed before the Enquiry Officer about the number of times the applicant remained absent unauthorisedly, and hence, it was held that the finding that applicant was a habitual defaulter is not based on evidence on record. This is not the case here. The disciplinary authority's order refers to the evidence of Head Constable Prithvi Raj, PW 10 produced before the Enquiry Officer to prove that the applicant is a habitual absentee as he had absented himself from the duty unauthorisedly on 24 times in the past. As such, this plea of the applicant is also not tenable.

16. The last ground taken by the applicant's counsel is also without any force. On a plain reading of the impugned orders, it is clear that the disciplinary authority have looked at all the evidence on record before coming to the conclusion that the applicant is a habitual absentee and incorrigible type of constable rendering unfit to be continued in service. Having regard to these findings, we find no good ground to warrant interference in this case. ¹²Based on the decision

in Haribash Malik v. UDI (Supra) ¹³which is not relevant to the facts in this case.

17. There is also no merit in the other objections raised in the O.A. to set aside the impugned orders.

18

23

18. For the reasons given above, this application fails and is dismissed. There will be no order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige

(S.R. Adige)
Member (A)