

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1757/90

NEW DELHI, THIS THE 3RD JANUARY, 1994.

MR. JUSTICE S.K.DHAON, VICE-CHAIRMAN (J)
MR. B.N.DHOUNDIYAL, MEMBER (A)

Parkash Chand (8680/DAP)
(PIS No. 28871496)
s/o Shri Khilari Singh,
V. & P.O. Kundli
P.S. Rai
District Sonapat
(Haryana)

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Applicant

BY ADVOCATE SHRI SHYAM BABU.

VS.

1. Delhi Administration, Delhi
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.

2. Additional Commissioner of Police
(A.P.)
Delhi Headquarters,
I.P. Estate,
New Delhi.

3. Deputy Commissioner of Police,
7th Battalion, D.A.P.
New Delhi.

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Respondents

BY ADVOCATE SHRI B.R. PRASHAR.

ORDER (ORAL)

JUSTICE S.K.DHAON:

The applicant, a Constable in the Delhi Police, was subjected to disciplinary proceedings under the Delhi Police Act, 1978 (the Act) and the Delhi Police (Punishment and Appeal) Rules, 1980 (the Rules). An inquiry officer was appointed. A summary of allegations was given to the applicant. Thereafter, the inquiry officer framed the charges. He submitted his report to the disciplinary authority. That authority passed an order of punishment of removal from service. In appeal, the applicant remained unsuccessful. The orders passed by the disciplinary authority and the appellate authority are being impugned in the present OA.

2. In the summary of allegations, the charge, in substance, is that the applicant while temporarily

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posted at Police Station Jama Masjid, Central Distt., Delhi, absented himself from duty wilfully and unauthorisedly on 16.1.1989 and had not resumed his duty in spite of issuing two absentee notices at his permanent home address. The said summary of allegations was given to the applicant on 6.7.1989. As provided in Rule 16 of the Rules, the inquiry officer framed charges on 20.11.1989 and the same was served upon the applicant on 23.11.1989. The charge is that the applicant absented himself from duty unauthorisedly on 16.1.1989 and was, therefore, marked absent.

3. The inquiry officer confined his attention to the absence of the applicant on 16.1.1989 and recorded the finding that his absence on that day was unauthorised. It is to be noted that the applicant joined duties on 12.11.1989 i.e. prior to the framing of the charge. The punishing authority came to the conclusion that the applicant absented himself from duty for 299 days, 22 hours and 35 minutes. The appellate authority, as already stated, maintained the order passed by the disciplinary authority.

4. The first contention advanced by the learned counsel for the applicant is that the charge was really confined to the absence of the applicant on 16.1.1989 and, therefore, he was called upon to explain his absence on that day alone. He had no inkling that he was required to explain his absence for 299 hours, odd hours and odd minutes. Thus, he has been seriously prejudiced by the procedure adopted by the disciplinary authority in taking into account the absence of 299 days, odd hours and odd minutes.

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5. The other contention is that the inquiry officer discarded the testimonies of D.W.I, Shri Sat Parkash, D.W.II, Shri Paras Nath and D.W.III, Shri Mehar Dass on irrelevant considerations. The testimonies of the aforesaid three witnesses have been placed before us. D.W.I, Shri Sat Parkash stated that on 16.1.1989, the applicant was, in fact, admitted in M.C.Chandrawati Narela Unani dispensary. The other two defence witnesses, according to the inquiry officer, fully corroborated the statement of D.W.I. The inquiry officer, it appears to us, discarded the testimonies of the aforesaid three witnesses for no cogent reasons. Had the evidence of the three witnesses been accepted, the conclusion would have been inevitable that the applicant was ill on 16.1.1989 and was admitted in a hospital on that day. We do not know what could have been the impact on the mind of the disciplinary authority if the fact that the applicant was, in fact, ill on 16.1.1989 was recorded by the inquiry officer.

7. The other important aspect which has been urged by the learned counsel for the applicant is that the punishing authority as well as the appellate authority completely glossed over the provisions of Rule 8 of the Rules. A reading of the said Rule will show that a dismissal/removal from service is considered to be an extraordinary punishment. Such punishments are to be awarded for the acts of grave misconduct. Furthermore, a finding has to be recorded that by such a grave misconduct, the officer concerned has rendered himself unfit for police service. We have carefully read the order of the punishing authority and we find that he has used the expression 'gross misconduct'. That apart, the disciplinary authority has failed to record

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the finding that/ the act of gross misconduct, the applicant has rendered himself unfit for police service. The appellate authority too committed that error by contenting itself by recording that the applicant is "unlikely to become a good Police Officer".

8. In the case of MOOL CHAND VS. DELHI ADMINISTRATION & ORS. decided on 10.9.1993(OA No.1712/91 & connected OAs), this Tribunal has taken the view that the condition precedent to the exercise of jurisdiction under Rule 8 is that there should be a finding that the delinquent Government servant is guilty of grave misconduct and that there should be a further finding that by such misconduct, the delinquent has rendered himself unfit for Police service. This Tribunal has taken the view that in the absence of such a finding there will be a case of lack of jurisdiction.

9. Reliance is placed by the learned counsel for the respondents upon a judgement of this Tribunal rendered in OA No.2084/88(Shri Jai Nand Vs. Union of India & Ors.) on 26.5.1993. Upon a reading of the same, we find that the flaw in the charge as existed in the present case was not to be found in that case. Furthermore, the Tribunal in OA No.2084/88 did not advert itself upon the scope of Rule 8 of the Rules. This case is, therefore, not apposite.

10. In the result, this OA succeeds and is allowed. The orders passed by the disciplinary authority and the appellate authority are quashed. The applicant shall be ^{either} reinstated in service with full back-wages. or an order, as permissible under the law shall be passed.

There shall be no order as to costs.

B.N. Dhoundiyal
(B.N.DHOUNDIYAL)
MEMBER(A)

S.K. Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)