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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1942/90

New Delhi: January 27th, 1993.

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

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

Balwan Singh, No.1428/W,
s/o Shri Risal Singh,
r/o Village and P.O.Ladpur,
P.S.Sultanpuri,
Delhi

.....Applicant.

By Advocate Shri J.P.Verghese.

Versus

1. The Delhi Administration,
through
Chief Secretary,
Old Secretariate,
Rajpura Road,
Delhi.

2. The Commissioner of Police,
Police Headquarters,
IP Estate,
New Delhi

....Respondents.

By Ms. Shaily Bhilotra, proxy counsel
for Mrs. Avnish Ahlawat, counsel for
the respondents.

JUDGMENT

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

In this application, Shri Balwan Singh, Ex. Constable, Delhi Police has impugned the order dated 25.1.90 (Annexure-I) dismissing him from service, and the appellate order dated 11.7.90 (Annexure-II) rejecting the appeal.

2. The applicant, who entered service as a Constable in the Delhi Police in February, 1983, was proceeded against departmentally on the charge, vide charge sheet dated 28.7.89 (Annexure-V) that:-

"you while posted at P.S.Nangloi were detained for duty with I/C 5-8 i.e. on Summons & Warrants processing. Constable Balwan Singh No.1428/W was searched in the premises of P.S. Nangloi, but he was not found present and as such he was marked absent vide D.D.No.28-B dated 16.5.89. However,

Constable resumed his duty on 16.5.89 at 1.25 p.m. vide D.D.No.52-B P.S.Nangloi after absenting himself wilfully and unauthorisedly. He had again absented himself wilfully and unauthorisedly from duty and was marked absent vide D.D.No.58-B dated 17.5.89 at 9-45 a.m. P.S.Nangloi. He resumed his duty vide D.D.No.19-B dated 18.5.89 P.S.Nangloi after absenting himself wilfully and unauthorisedly. As such you Constable Balwan Singh No.1428/W contravened the provisions of S.O. No.111 and Rule 19(5) of CCS(Revised Leave) Rules,1972.

2. It is also alleged against you Constable Balwan Singh No.1428/W that you were arrested by the police of P.S. Ballabgarh, Distt. Faridabad (Haryana) vide D.D. No.25 dated 15.5.89 at 4.10 p.m. u/s 41(2)/109 Cr.P.C. along with your associates Rajbir, Dharambir and a lady named Rita, while they were hiding themselves in a Car No.DDQ -7329 in order to molest this lady. They were produced before SDM where they were bailed out. It has also been alleged against you that you were under the influence of alcohol. You also left the station without permission of the competent authority and involved yourself in a criminal activity.*

3. The Enquiry Officer in his report dated 1.9.89 held that the /charge against the applicant stood proved. A copy of the report was served upon the applicant and he was directed to show cause vide notice dated 19.10.89(Annexure-Ex.36)why he should not be dismissed from service. After considering his reply and giving him a personal hearing on 10.11.89, the disciplinary authority imposed the impugned penalty of dismissal which was upheld in appeal against which this O.A. has been filed.

4. The first set of grounds taken by the applicant is that the Tribunal should appreciate the evidence and there is no evidence to support the charges. In this connection, applicant's counsel Shri Verghese has argued that the second half

of the charge has been wrongly inserted to give the impression that the two absences in the first charge were motivated with the ~~desire~~^{aim} to commit the offence mentioned in the second half of the charge. Neither of these arguments bear scrutiny. Firstly, it is well settled that the Tribunal cannot reappreciate the evidence, as it is not a court of appeal. As regards the second argument, the applicant has sought to explain his absence on the morning of 16.5.89 by claiming that on the previous day when he went to serve summons and reached Vasant Vihar, one of his relatives met him and told him that his brother was seriously ill and he proceeded to his residence to see his ailing brother and to get him medically treated. He thought he would return within no time, it took him 6 hours 15 minutes. However, this brother, who was cited as a defence witness, has deposed that the applicant never came to see him and later he came to know that the applicant had been arrested at Ballabhgarh.

5. The next argument is that Rules 15 and 16 Delhi Police (Punishment & Appeal) Rules are ultravires to Section 21 Delhi Police Act, and Articles 14, 16 and 311 of the Constitution. Section 21 Delhi Police Act, which has been enacted subject to the provisions of Article 311, prescribes the different authorities who are competent to impose various categories of punishment. Rule 15 Delhi Police (Punishment and Appeal) Rules prescribes the purpose and procedure for a preliminary enquiry, while Rule 16 Delhi Police (P & A) Rules lays down the procedure to be followed in departmental enquiries. The preliminary inquiry provided in Rule 15 is fact finding in nature and its purpose is to establish the nature of the default and identity of defaulter, to collect ~~particulars~~^{particulars}

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prosecution evidence, to judge the quantum of default and to bring relevant documents on record to facilitate a regular departmental enquiry. The procedure for departmental enquiries in Rule 16 is that the summary of allegation is prepared and served on the applicant who may admit or deny the alleged misconduct. In case he admits the misconduct, the charges are forthwith framed and served. In case he denies the misconduct, evidence is recorded on behalf of the prosecution and prosecution witnesses are examined and cross-examined. When the evidence in support of the allegations is recorded, the Enquiry Officer may, if he considers that the allegations are not substantiated, drop the proceedings and discharge the accused. It is only when the Enquiry Officer considers that such allegations carry substance, that he proceeds to frame formal charges and call upon the accused to answer them. The accused person is then permitted to summon defence witnesses who are examined, and at the end of the defence evidence, the accused person is required to submit his own version of the facts. The Enquiry Officer may thereafter examine other witnesses called court-witnesses for clarifying certain facts whom the accused person is permitted to cross-examine, and to make a supplementary final statement, before the Enquiry Officer proceed to record a finding. Manifestly ⁱⁿ these rules apply to all members of the Delhi Police, and provide ample opportunity to ^{to be heard and} them ⁱⁿ to defend ^{themselves} the ~~matter~~. It cannot, therefore, be said that these rules violate the principles of natural justice, or are arbitrary, unreasonable, discriminatory or are violative of Articles 14, 16 and 311 of the Constitution.

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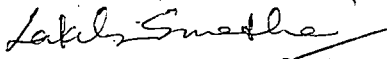
6. The next argument advanced is that there was no criminal involvement on the part of the applicant; otherwise approval would have been sought and taken under Rule 15(2) Delhi Police (Punishment & Appeal) Rules. Rule 15(2) applies only where there is a preliminary inquiry. In the present case, there was no preliminary inquiry and hence the question of taking permission under Rule 15(2) does not arise. This argument also fails.

7. Next it has been urged that the applicant was not supplied with a copy of the Enquiry Officer's report under Rule 16(2) Delhi Police (Punishment & Appeal) Rules. We note that a copy of the show cause notice, provided to the applicant vide memo dated 19.10.89 specially mentions that a copy of the Enquiry Officer's report is being enclosed. The applicant did not at that stage make any complaint that he had not received the enclosure, and in the appellate order also this point does not appear to have been urged. It, therefore, clearly appears to be an after-thought and is rejected.

8. The next ground taken is that when he was discharged by the SDM in the criminal case, he ought not to have been punished in the departmental enquiry and the punishment is unduly harsh. A discharge is not the same thing as an acquittal and the applicant has failed to produce any law or rules which lay down that a discharge in a criminal case operates as a ban to departmental proceedings on the same or similar facts. In so far as the harshness of the punishment is concerned, it is well settled ^{when / by} that the conduct of the departmental enquiry shows no infirmity and the

punishment was lawfully imposed, the Tribunal has no jurisdiction to go into its quantum as that ~~is~~ is the domain of the Executive Authority.

9. In the present case, we discern no infirmity in the conduct of the departmental enquiry and the punishment of dismissal itself was lawfully imposed. Under the circumstances, the impugned orders warrant no interference and this application fails. It is accordingly dismissed. No costs.


(LAKSHMI SWAMINATHAN)
MEMBER (J)


(S. R. ADIGE)
MEMBER(A)

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