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THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENMCH

OA No.2226/90

New Delhi, this 25th day of November, 1994

Shri C.J. Roy, Member(J)
Shri P.T.Thiruvengadam, Member(A)

Shri Uttam Singh
s/o Shri Jot Singh
84, Govind Khand
Vishvakarma Nagar
New Delhi-110 032

.. Applicant

By Advocate Shri S.C.Luthra

versus

1. Delhi Administration
Through Secretary-Home
5, Sharnath Marg, Delhi

2. The Commissioner of Police
MSO Building, I>P>Estate,
New Delhi-110 002

.. Respondents

By Advocate Shri O.N.Trishal

ORDER

(Shri C.J. Roy, Hon'ble Member(J))

The applicant has challenged the order dated 30.6.89 by which he was dismissed from service and order dated 8.1.90 rejecting his appeal against the dismissal order. The facts of the case, as told by the applicant, leading to the filing of this application are that, he joined the service on 18.2.82 as Cook in the Delhi Police and while he was posted at the Police Training School, Jharoda Kalan, New Delhi, he was issued with a charge-memo dated 17.1.89 (Annexure A-3) alleging misconduct on his part, i.e. absenting from duty from 3.45 PM on 7.11.88 to 8.10 AM on 8.11.88, instigating the other cooks to slow down the pace of work and that he was habitual in creating indiscipline in other cooks. The applicant submitted his written statement of defence on 3.4.89 (Annexure A-5) refuting the first charge and stating clearly that he had left the mess at 3.30 PM

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alongwith his relative who came to see him after taking permission from the Mess Manager and informing his colleagues. By order dated 17.4.89, an Inquiry Officer was appointed and on 25.4.89 the applicant appeared before the Inquiry Officer and repeated what he had stated in his written statement of defence and denied the other two charges. On receiving a copy of the inquiry report, the applicant found that the IO had recorded that the charge of absence is admitted by the applicant but he did not receive the copies of the documents by which the articles of charge were to be sustained and which find mention in the charge-memo(Annexure A-III). Three PWs and five DWs were examined but in the absence of the Presenting Officer, the IO himself cross-examined some of the witnesses. The IO submitted his report on 26.6.89 (Annexure A-9) on which the impugned dismissal was passed. Hence this application with a prayer for quashing of the impugned orders dated 30.6.89 and 8.1.90.

2. The respondents have filed their reply justifying their action with regard to the dismissal of the applicant as well the rejection of his appeal by the appellate authority. They state that in the disciplinary proceedings it had been established that the applicant after coming to know of his absence having been recorded in the daily diary, incited his fellow cooks to have recourse to slow working in the preparation of food items, with an ulterior motive to create a state of disarray in the institution in retaliation of the action for marking his absence, he

was seen to be prone to instigating his fellow cooks for not cooking the food in time and for adopting non-cooperative attitude to the supervisory officers in the administration of the messes and therefore such sort of averse and lackadaisical attitude and unruly conduct of the applicant were prejudicial to the interest of the organisation and it was unsafe for the police department to retain such a member in service. They further state that the gravity of the charge against the applicant was such as to warrant an ultimate action and no lesser punishment than that of his dismissal from service would have met the ends of justice. He was therefore rightly awarded the punishment of dismissal and that his revision petition was also considered and rejected by the appellate authority.

3. The applicant has filed his rejoinder more or less reasserting what he has stated in the OA.

4. We have heard the learned counsel for the parties and perused the records and also the departmental file made available to us.

5. The Articles of charge framed against the applicant read as follows:

"Article-I: That Cook Uttam Singh No.16/C while working in Mess No.2 of PTS absented himself on 7.11.88 at 3.45PM vide DDE No.41 and reported for duty on 8.11.88 at 8.10 AM vide DDE No.7 after an unauthorised absence of 16 hours & 25 minutes.

Article II: That Cook Uttam Singh No.16/C after reporting on his duty on 8.11.88 at 8.10 AM instigated the other cooks of Messes No.2

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and 3 to slow down the pace of their work and leave the messes at 9.30 AM so that the normal function of the School could be adversely affected.

Article III: That cook Uttam Singh No.16/C is habitual in creating indiscipline in other cooks and instigating them to resort to uncalled for conduct."

6. In his written statement of defence (Annexure 5), in so far as Article I is concerned, the applicant has stated that he reached the mess as usual at 2 PM and at 3.15 PM his close relative came to meet him and he left with him around 3.30 PM on 7.11.88 after informing his Mess Manager and colleagues. His duty hours being 6 AM to 10 AM and 2 PM to 6 PM with half-an-hour lunch break, he returned to the mess at 6 AM on 8.11.88 but he was told at 8.10 AM that he was marked absent for 16 hours and 25 minutes, i.e. 3.45 PM on 7.11.88 to 8.10 AM on 8.11.88. He wanted to meet the Mess Manager but he was not allowed. He prayed that his absence was only for two and half hours, i.e. from 3.30 PM to 6 PM and that he may be excused for the same. He denied the other two charges as wrong and incorrect.

7. It is the case of the applicant that Inquiry Officer did not apprise him, he being illiterate, of his rights to engage defence assisant, he was not supplied with day-to-day proceedings nor the statement of witnesses recorded during the inquiry and none of the cooks has corroborated the prosecution but they had denied having ben instigated by the applicant or to slow down the pace of preparation of meals and that he was absent only from 3.45 PM to 6 PM on 7.11.88 and not for 16 hours and 25 minutes as alleged by the respondents.

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8. The case of the respondents, while denying the above averments, is that that the Inquiry Officer recorded the evidence of the PWs/DWs, the depositions were read over to them in the presence of the applicant and they admitted the same as correct and put their counter signature. It is also their case that all the charges have been substantiated with the evidence given by the right persons who took notice of the defaults of the applicant during ordinary course of their business and the Inquiry Officer has concluded that all the charges against the applicant have been proved beyond any reasonable doubt. They further aver that the mention of Inquiry Officer in his finding that "it is unsafe to keep such a government servant in service" is of interlocutory nature and has not influenced the decision of the disciplinary authority about the misconduct of the applicant. They admit about the working hours of the applicant and say that he reported himself for duty the next morning but on coming to know of his absence having been recorded in the daily diary on the preceding day he did not engage himself in work and deliberately evaded to get a report lodged in the daily diary as regards his return from absence untill 8.10 AM on 8.11.88 despite directions given by the Mess Manager, evidently in a bid to shun and retard the work.

9. The short point now for consideration before us is whether the charges are proved and the punishment is commensurate with the charges alleged and the appellate authority has disposed of the case.

10. We have seen the departmental file containing the appeals made by the applicant in Hindi. The applicant has admitted the charge No.1 when he says that "Gair haajri dinank 7/8.11.88 teek hai", which is signed by him in Hindi. Though to a pointed question from the Bench it was answered by the learned counsel for the applicant that it was taken on coercion, which is mentioned first time before us, the word coercion does not appear elsewhere. Therefore, we consider that charge No.1 is proved not only by his own admission in which he has signed but also from the trend of the depositions. He himself had admitted that he had gone out alongwith his relative by taking permission from the Mess Manager. In the cross-examination of the Mess Manager he categorically denied that he had given any permission to the applicant to leave. Therefore, we feel that the enquiry officer has rightly held that the charge No.1 is proved. As regards the charge No.II, namely instigating the other cooks of Mess No.2 and 3 to slow down the pace of their work and leaving the mess at 9.30 AM so that the normal functioning of the school could be adversely affected, the inquiry officer had discussed this charge in detail. He had recorded that the testimony of PW-1, corroborated by the testimony of PW-2 and PW-3, proved this charge. The testimony of the defence witnesses who were the colleagues of the defaulter was not relied upon. It was also indicated that the defence witnesses had even denied the charged-official as being their leader, which is against the accepted statement of the charged-official to the effect that he was elected as General Secretary of the Rasoya & Jalwahak Karmachari Union. With regard to Charge III, PW-3 had stated in his testimony that on

previous occasions the conduct of the defaulter was non-cooperative in that he instigated the other cooks not to adjust their weekly rests to some other days when the cook Shanti Prasad wanted to take casual leave and there was shortage of cooks. In the circumstances, this charge is also stated to have been proved.

11. The learned counsel for the applicant argued that no specific act of instigation had been referred. But in view of the deposition of PW-3 in the enquiry proceedings, this ground ought to be rejected.

12. It was finally argued that the quantum of punishment is disproportionate to the misdemeanour. It is a settled position that Courts and Tribunals may not interfere in the quantum of punishment as held by the Hon'ble Supreme Court in JT 1889(2)SC-132 - UOI Vs. Parma Nanda.

13. In the circumstances, we dismiss the OA with no order as to costs.

P. T. Thiruvengadam
25/11/94
(P.T.Thiruvengadam)
Member(A)

C. S. Roy
25/11/94
Member (J)

/tvgr/