

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI:

Regn.No.OA 2372/1990

Date of decision: 04.08.1993.

Shri Bhagirath Singh

...Petitioner

Versus

Delhi Administration & Others

...Respondents

For the Petitioner

...Shri Shyam Babu, Counsel

For the Respondents

...Shri M.C. Garg, Counsel

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN
THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

JUDGMENT (ORAL)
(of the Bench delivered by Hon'ble Mr.
Justice V.S. Malimath, Chairman)

This case has come before the Full Bench having regard to since it raises a the directions of the Division Bench that question similar to the one raised in OA 1344/1990, this case should also be tagged along with the said case which has been referred to the Full Bench. We have today rendered the judgment dismissing OA 1344/1990 and answering the question referred thereto. Prima facie, the said decision is a complete answer to the main contention raised in this case. But Shri Shyam Babu, the learned counsel for the petitioner has advanced arguments to distinguish the said decision. Hence, it is necessary to state the relevant facts for appreciating his contentions.

2. The petitioner, Shri Bhagirath Singh was a Head Constable in the Police Station at Hauz Kaji of Central District. A disciplinary enquiry was initiated against him on the charge that he was unauthorisedly absent after being relieved for attending the course to which he was sent for 198 days and that he was habitually absent from duty on several occasions earlier for which several punishments have already been inflicted. On the ground that this amounts to gross misconduct indicating lack of devotion to duty, a disciplinary enquiry was held. The Inquiry Officer gave his report which was

accepted by the disciplinary authority and on consideration of the cause shown by the petitioner, an order dismissing him from service was passed on 12.07.1989 as per Annexure-E. By the very same order his absence for 198 days was treated as leave without pay. On appeal, the said order was affirmed by order dated 27.03.1990 as per Annexure-G. Hence this application.

3. It was contended by Shri Shyam Babu that this case is different from the one which we disposed of earlier today, namely, OA 1344/1990 and, therefore, the law laid down in the said decision cannot govern the present case. In OA 1344/1990, the disciplinary authority had passed an order of dismissal for unauthorised absence followed by a direction to treat the very same period of unauthorised absence as leave without pay. The contention in that case was that the order granting leave has the effect of nullifying the order of dismissal from service. To us prima facie, it appears that the same principle should govern this case as well. Shri Shyam Babu, the learned counsel for the petitioner, maintained that this case is distinguishable for the reason that in this case right from the beginning the disciplinary authority framed a charge requiring the petitioner to show cause why he should not be inflicted punishment for unauthorised absence and as to why leave without pay should not be ordered for the very same period of unauthorised absence. To us, it appears that the case is not distinguishable. If at all, the facts are stronger in this case. What we have laid down in the earlier decision is that when there are directions which are apparently conflicting in nature, one directing dismissal and the other granting leave for the very same period which formed the basis of the order of dismissal, we should gather the intention of the author of the order and construe the two directions in a harmonious manner consistant with the intention of the author. Hence the crux of the matter is the intention of the author. Material in this case is much better. In this

case the disciplinary authority, while issuing the show cause notice has stated that it proposes to inflict the punishment of dismissal from service for unauthorised absence and for being a habitual absentee and also to direct leave without pay for the said period of absence. Simultaneous issuance of both the directions makes it clear that the intention of the author of the order was to award appropriate punishment for the misconduct flowing from unauthorised absence and for being habitual absentee from duty. As in our opinion, the intention of the author of the order was to take punitive action on the ground of unauthorised absence, the other direction treating the period of unauthorised absence as leave without pay has to be construed as an order indicating the mind of the disciplinary authority to direct that the petitioner shall not be entitled to any pay and allowances for the period of absence. Inartistic language employed cannot be made much of to cloud the real intention of the disciplinary authority which was to pass the order of dismissal. We have, therefore, no hesitation in holding that the principle laid down in OA 1344/1990 governs this case as well. We hold that the latter part of the directions treating the period of unauthorised absence as leave without pay will not have the effect of nullifying the earlier directions dismissing the petitioner from service.

4. The next contention of Shri Shyam Babu, the learned counsel for the petitioner is that the mandate of Rule 8(a) of the Delhi Police (Punishment & Appeal) Rules, 1980, has not been borne in mind by the disciplinary authority. The said mandate is that the punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for Police service. It was maintained that unless the disciplinary authority applies its mind to this statutory requirement and records a finding that the petitioner has committed a grave misconduct rendering him unfit for Police service, it would not

be justified in passing an order awarding punishment of dismissal from service. Shri M.C. Garg, the learned counsel for the respondents invited our attention in this behalf to Rule 10 of the Delhi Police (Punishment and Appeal) Rules, 1980, which reads as follows:-

" The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for Police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness for Police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank".

It was urged that while deciding on the question of punishment, the disciplinary authority shall not only apply its mind to the provisions of Rule 8(a) but also to the provisions of Rule 10 of the Delhi Police (Punishment & Appeal) Rules, 1980. This contention of Shri Garg is sound and has to be accepted. So far as Rule 10 is concerned, it speaks of the previous record of an officer against whom the charges have been proved. If such a previous record shows continued misconduct indicating incorrigibility and complete unfitness for Police service, it is indicated that normally dismissal from service would be the most appropriate punishment. The question for consideration is whether the disciplinary authority did bear in mind the provisions of Rules 8(a) and 10 in awarding the punishment of dismissal from service. When we peruse the show cause notice it becomes clear that the disciplinary authority has stated about the previous conduct of the petitioner of being absent from duty on nearly 11 occasions constituting gross misconduct and negligence and rendering him unbecoming of a Government servant in violation of Rule 3(i)(iii) of the CCS(Conduct) Rules, 1964, making him liable to be dealt with departmentally under Section 21 of the Delhi Police Act, 1978. Implicit in the show cause notice is the tentative opinion formed by the disciplinary authority that the conduct of the petitioner which has been held proved justified the inference of gross misconduct and negligence rendering him unbecoming of a Government servant in violation of Rule 3(i)(iii) of CCS(Conduct) Rules, 1964. After considering the cause shown by the petitioner, the disciplinary authority has stated in the

impugned order that the petitioner is still running absent since 20.05.1989 and he is a habitual absentee and an incorrigible type of a Police officer. It is further stated that in the circumstances he has no option except to dismiss the petitioner from service after confirming the show cause notice issued to him. There is sufficient indication of the mind of the disciplinary authority from what he has recorded. It is stated that it has no option but to dismiss the petitioner from service meaning thereby that in its opinion that is the most appropriate punishment to be inflicted. Earlier the disciplinary authority has stated that the petitioner continued to remain absent from duty and that he is a habitual absentee and incorrigible type of a Police officer. 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 ~~had~~ 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 & 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. What was not expressly said, in the order of the disciplinary authority is made good in the order of the appellate authority who says that, in his opinion, there is no place for the petitioner in the disciplined force meaning thereby that he is unworthy of being retained in service. The facts are tell-tale in this case. The

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memo of allegation shows that the petitioner was absent from duty on 11 occasions. Out of them he has been given penalty of censure and leave without pay on 8 occasions. On one occasion the leave was granted without pay. On another occasion the direction was to grant leave of the kind due. On two other occasions it is stated that in regard to his absence the order made is filed. It is thereafter the petitioner absented himself for 198 days. What is worse is that he continued to remain absent even after the disciplinary proceedings were initiated against him by the disciplinary authority. All these factors in the background of the fact that the petitioner was a responsible member of the Police force as Head Constable, justifies the inference that the petitioner was guilty of grave misconduct rendering him unfit and unworthy of being continued in service. That being the inference which legitimately flows from the facts of this case we will not be justified in interfering in this case.

5. For the reasons stated above, this application fails and is dismissed. No costs.

B. N. DHOUDIYAL
(B.N. DHOUDIYAL)
MEMBER (A)
04.08.1993

S.K. DHAON
(S.K. DHAON)
VICE CHAIRMAN
04.08.1993


V.S. MALIMATH
CHAIRMAN
04.08.1993

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