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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1274/91

New Delhi: December 15, 1994.

HON'BLE MR.J.P.SHARMA, MEMBER (J)

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

Hari Singh,
Constable No.451/NW,
s/o Shri Kali Ram,
r/o Village & P.O.Halalpur,
P.S.Kharkhoda,
Distt. Sonepat (Haryana)

.....Applicant.

By Advocate Shri N.Safaya with
Ms. Sushma Ambardar, Advocate.

Versus

1. Union of India through
Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

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

3. Addl. Commissioner of Police,
Northern Range,
Delhi Police,
Police Headquarters,
IP Estate,
New Delhi.

4. Deputy Commissioner of Police,
North-West District,
Delhi Police,
Police Headquarters,
IP Estate,
New Delhi

.....Respondents.

By Advocate Shri O.N.Trisal.

JUDGMENT (ORAL)

By Hon'ble Mr.J.P.Sharma, Member (J).

The applicant joined as Police Constable on 5.9.68. He was posted at P.S.Keshav Puram and absented himself from duties for 26 days 16 hours w.e.f. 16.9.88 to 12.10.88; 6 days 5 hours and 30 minutes w.e.f. 20.10.88 till 26.10.88; and for 1 day

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2 hours and 30 minutes from 28.10.88 till 29.10.88 and finally for 9 days 14 hours and 50 minutes from 5/6.11.88 till 15.11.88. The applicant was served with summary of allegations on the initiation of the departmental inquiry under Sec.21 of Delhi Police Act, 1978. Inspector Manual Massey was appointed as an Enquiry Officer who proceeded with the enquiry and after drawing the proceedings according to law and following the procedure as prescribed under Rule 16 of Delhi Police (Punishment and Appeal) Rules, 1980, gave his finding that the charge against the applicant of absenting himself from duties during the period referred to above is established. The Disciplinary Authority agreeing with the findings of the Enquiry Officer vide order dated 13.9.89 imposed the penalty of removal from service and the appeal against the same was considered by the ACP(NR), and was rejected vide order dated 19.4.90. Aggrieved by the aforesaid order, the applicant filed the present application in May, 1991 praying that the aforesaid order of removal be quashed and the respondents be directed to reinstate him in service with all consequential benefits.

2. On notice, the respondents contested the O.A. opposing the grant of the relief prayed for by the applicant, stating that the applicant had absented himself unauthorisedly which is an act of gross-misconduct and negligence in the performance of duties by a Govt. servant, particularly the disciplined force like Police. So vide order 20.12.88 the competent authority ordered for holding

an enquiry appointing Mr. Massey as Enquiry Officer. The applicant had almost pleaded guilty to the charges framed by the Enquiry Officer.

3. We have heard Shri N.Safaya, learned counsel for the applicant and Shri O.N.Trisal, learned counsel for the respondents. Though the applicant has taken a number of grounds in the original application challenging the proceeding of the department enquiry as well as the findings given by the Enquiry Officer referring to Rule 16(xii) of Delhi Police (Punishment and Appeal) Rules, 1980. However, the applicant's counsel during the course of argument concluded his argument stating that he is not pressing any of the grounds except Ground No. (vii) that the punishment of removal is very harsh. No doubt, the applicant has worked for 21 years and the period of his absence could have been taken as a leave of any kind. The Ground No(viii) is that the punishment of removal is to be awarded for the gravest act of misconduct and the alleged misconduct cannot be termed as gravest act of misconduct rendering the applicant unfit for police service.

4. When the judgment was under dictation, the learned counsel for the applicant had certain reservations so he consulted the applicant and reiterated his stand that he is pressing the case only on the point of quantum of punishment.

5. On coming to the point of punishment, we do find that a logical interpretation of Rule 16(xii) and Rule 8 of Delhi Police (Punishment & Appeal) Rules have to be taken into account by the competent authority while imposing the punishment. The learned counsel for the applicant has referred

to the ruling in the case of Sukhbir Singh Vs. Dy. Commissioner of Police & others reported in SIR 1984 (2) 149. In that case, the petitioner was charged with theft of utensils and the punishment of dismissal was passed against him, and Delhi High Court remanded the matter for reconsideration of the matter in the circumstances of that case.

6. We have given careful consideration to the facts and circumstance which prevented the applicant from joining the duties for a particular period of 27 days at a stretch. The contention of the applicant has been that he had not joined the duties due to ill-health for which he had been going under the treatment of a medical practitioner. It is also stated by the learned counsel for the applicant that he submitted his leave application after ~~their~~ joining the duties being declared fit for the duties and enclosed the medical certificate for consideration of the competent authority. However, the disciplinary proceedings remained continued and in the mean time, no specific order was passed on the application of the applicant. We are not considering the non-grant of the leave or that the applicant was entitled to avail of the leave without sanction. We are only taking the matter on the ground of sympathetic consideration because the applicant has already worked for 21 years with Delhi Police and there is no charge framed against him of any mis-conduct committed earlier on that account. Rule 8 of Delhi Police (Punishment & Appeal) Rules lays down that the punishment of dismissal or removal from service can be

passed when the mis-conduct is of a grave nature. It is for the administration to see as to whether the mis-conduct amounts to such nature as to classify as a grave nature. However, for the acts of omission and commission of a delinquent when an explanation is forthcoming, and where a person who was unable to perform his duties on the ground of illness, is taking the stand that he was not physically fit to come and join the duties, the respondents could have also considered that aspect, atleast while awarding the punishment on the proved mis-conduct. The applicant has also ^{the given} magnanimous approach when he before the Enquiry Officer confessed his absence from duties though he has stated that he was not able to join the duties because of his ill-health or indisposition.

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7. The Tribunal cannot/appreciate the evidence on which the Enquiry Officer has come to the conclusion and the disciplinary authority as well as the appellate authority have concurred with the same. The Tribunal, however, can go into the evidence where in the circumstances of a particular case, the punishment imposed is warranted i.e. removal from service. Learned counsel for the applicant has rightly argued that an employee of Central Govt. or the Delhi Administration can very well apply for premature retirement having completed more than 20 years of service. In such a situation, when the applicant has himself pleaded ~~the guilty~~ ⁴ of charge of absence, it was for the competent authority, or the appellate authority, to find that

the punishment should commensurate with the misconduct against the applicant.

8. We are aware of the limitations regarding the quantum of punishment as held by the Hon'ble Supreme Court in the case of UOI Vs. Parmanand-SCALE 1989(1) 606. However, a similar case came before the Hon'ble Supreme Court in United Bank of India Vs. Surendra Nath Endow-^{K. share} J.T. 1994 (1) ^{le.} See p. 217. In that case also, the Hon'ble Supreme Court considered the matter of a Bank -employee and in the circumstances of the case, it was found that the punishment was harsh and was not commensurate with the misconduct ^{forseen} ~~against~~ the employee and, therefore, remanded the case to re-consider the matter to the appellate authority.

9. We observe and emphasize while remanding the case to the appellate authority that/ punishment imposed is harsh and needs reconsideration. The authority considering the matter of punishment of the applicant has not to do so casually and has to take into account the conduct and behaviour during the enquiry that he was ill and submitted medical-certificate, though belatedly; and the charge framed against the applicant; and that there was some leave account standing in the balance at the time when he absented himself. It will be fair and just if any other appropriate punishment other than removal from service is awarded, may be compulsory retirement which will meet the ends of justice.

10. The application is, therefore, disposed of quashing the order of the appellate authority

dated 19.4.90 to the extent of imposition of punishment of removal imposed by the disciplinary authority's order dated 13.9.1989; we remand the matter to the appellate authority to consider the punishment imposed and substitute the same by any other lawful punishment laid down in Delhi Police (Punishment and Appeal) Rules, may be compulsory retirement from service. The applicant may also file a representation to the appellate authority giving compassionate grounds which have been argued by the learned counsel for the applicant, for the consideration of the appellate authority and the appellate authority shall pass a speaking order in the light of the observations made in the body of this judgement. It is expected that the applicant shall make a representation within one month and the respondents will dispose of the same within a further period of three months. No costs.

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(S.R.ADIGE)
MEMBER(A)

J. P. Sharma
(J.P.SHARMA)
MEMBER(J)

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