

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

6

O.A. No. 1709 of 1991
T.A. No.

DATE OF DECISION 27.04.1994

Shri Krishan Kumar Applicant(s)

Versus

Delhi Administration & Others Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(S.K. DHAON)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 1709 of 1991

New Delhi this the 27th day of April, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.K. Singh, Member (A)

Shri Krishan Kumar
R/o House No.3477/4, Regharpura,
Karol Bagh,
New Delhi-110005.

...Applicant

By Advocate Shri Shyam Babu

Versus

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

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

3. Dy. Commissioner of Police,
Ist Bn., D.A.P.,
Delhi.

...Respondents

By Advocate Shri Virendra Mehta

ORDER

Mr. Justice S.K. Dhaon, Vice-Chairman

In the disciplinary proceedings conducted under the Delhi Police Act, 1978 (the Act) and the Delhi Police (Punishment & Appeal) Rules, 1980 (the Rules), the applicant, a Constable (Driver), was on 20.11.1990 awarded a punishment of removal from service by the Deputy Commissioner of Police, the disciplinary authority. On 07.03.1991, the Additional Commissioner of Police, the appellate authority dismissed the appeal of the applicant. These orders are being impugned in the present application.

2. In accordance with the procedure laid down in the Rules, the inquiry officer framed charges stating therein: that the applicant is a habitual absentee and he absented himself from duty ^{from} 26.03.1990 onwards. An absentee notice was sent to him on 11.04.1990 at his home address to report to duty but he failed to do so. Another absentee notice was sent to him on 22.05.1990 to report to duty, but in vain.

These acts on his part amount to gross-misconduct and gross negligence and he is, therefore, liable to be punished under Section 21 of the Act.

3. It appears that the applicant had been suspended from service. The inquiry officer after examining the evidence produced by the Department as well as the applicant, concluded that from the statement of prosecution witnesses, inspection ^{of} documents and circumstantial evidence, it is proved that the applicant is a habitual absentee and negligent towards his duty. He absented himself on 26.03.1990 from duty and he was marked absent vide DD No. 47-B dated 27.03.90. He remained absent continuously and he was suspended on 30.05.1990 and he failed to resume duty in spite of 2 notices sent to him. His defence is that he was upset due to family problems on account of differences between him and his wife. does not constitute sufficient cause so as to entitle him to remain absent from duty for a long period.

4. The punishing authority noted the fact that the applicant faced a departmental inquiry on the charge of gross-misconduct and gross-negligence in performing his duty. He failed to resume duty in spite of notices being sent to him. His previous record indicates that he is a habitual absentee and he absented himself from duty on three occasions. He is thus, quite ^{an} indisciplined and disobedient Constable (Driver). He reported back after his absence on 09.07.1990 after absenting himself for 3 months, 13 days, 2 hours and 35 minutes. A copy of the recommendation of the inquiry officer was given to him for submitting his reply, if any, within 15 days from the date of its receipt, which was received by him on 23.10.1990 but he did not submit his reply till 13.11.1990. This indicates that he has nothing to say in addition to his defence statement. The disciplinary

Sey

9

.3.

authority observed: ".....It is thus proved that he is an incorrigible type of Constable and his long period of absence without any intimation or permission cannot be condoned."

5. The appellate authority dismissed the appeal with a speaking order. He has taken note of the argument advanced on behalf of the applicant that in spite of the recommendation of the inquiry officer that the applicant should be given a lenient punishment, the disciplinary authority awarded him the punishment of removal from service. He recorded the finding that the disciplinary authority is not bound by the recommendation of the inquiry officer on the question of quantum of punishment to be inflicted upon a delinquent servant.

6. We have before us the memorandum of appeal of the applicant. In it, we do not find that the applicant challenged the correctness of the findings recorded by the disciplinary authority that he remained unauthorisedly absent from duty for a period of 3 months, 13 days, 2 hours and 35 minutes. Shri Shyam Babu, the learned counsel for the applicant has vehemently contended that the disciplinary authority passed the order of removal from service without applying his mind to the requirements of Rule 8 of the Rules. The said Rule, inter alia, provides that the punishment of dismissal or removal shall be awarded for the act of grave misconduct rendering him unfit for police service. He has contended that the disciplinary authority has neither recorded a finding that the applicant committed a grave misconduct nor has he recorded a finding that the misconduct attributed to him rendered him unfit for police service.

7. We have already referred to the charge framed against the applicant and to the fact that the disciplinary authority has taken notice of the fact that in the charge it is stated that the applicant is a habitual absentee and by his continued absence, he has committed ^a gross misconduct.

Sluz

Looking into the past conduct of the applicant and keeping in view the fact that he(the applicant) has been unauthorisedly absent for a period of 3 months and more, the disciplinary authority recorded a categorical finding that the applicant is incorrigible. There is no magic enchanctment in the expression "grave misconduct".

8. In the facts and circumstances of the case, there can be no practical difference between the expressions "gross misconduct" and "grave misconduct". In the context and setting in which the expression "incorrigible" has been used by the disciplinary authority in his order, it is apparent that he clearly meant to convey the idea that on account of the past habitual absence of the applicant from duty, he was not fit to be kept as a member of the police force. The disciplinary authority felt that on account of his past conduct it could be reasonably inferred that the applicant's habit was beyond amends. We are, therefore, satisfied that, keeping in view the facts and circumstances of the present case, there is, in any case, an implied finding of the disciplinary authority that the applicant is guilty of grave misconduct and that misconduct has rendered him unfit for the police service.

9. Reliance is placed by Shri Shyam Babu upon a decision given in OA 1757 of 1990 by a two - member Bench of this Tribunal of which one of us (Mr. Justice S.K. Dhaon) was a member. In this case, disciplinary action had been taken against a Constable on account of his absence from duty. The Bench of this Tribunal took the view that, having regard to the requirement of Rule 8 of the Rules, the punishment of dismissal or removal from service could not be imposed without recording a finding that by his act of gross misconduct (the finding recorded in that case) the applicant in that case had rendered himself unfit for the police service. That case is distinguishable from the facts of the present case. We have already stated that in the

814

present case, the disciplinary authority had, after taking into account the past conduct of the applicant, recorded a finding that his habit was incorrigible.

10. Shri Shyam Babu, the learned counsel for the applicant has also relied upon a decision given in O.A. No.1715 of 1991 and connected OAs (Mool Chand Vs. U.O.I.) decided on 15.09.1993 of which one of us (Mrs. Justice S.K. Dhaon) was a member. In this case, the view really taken is that there should be a conscious application of mind on the part of the disciplinary authority on the provisions of Rule 8 of the Rules. Therefore, the view taken is that the condition precedent to the exercise of power of awarding punishment of dismissal or removal is that the authority concerned should record a finding that the delinquent servant is guilty of grave misconduct and there should be a further finding^{that} by such an act, the delinquent servant has rendered him unfit for police service. There can be no quarrel with the propositions laid down in the said case. A difficulty may arise in the application of the said propositions in a particular case, which comes before the Tribunal. It is a trite law that pith and substance and not the form, ~~which~~ matters. Even where ~~the~~ "grave misconduct" has not been used and in the absence of a categorical finding that the misconduct attributed to an employee has rendered him unfit for the police service, the substance of the impugned order should be examined closely. Having done so, we reiterate that, in the instant ~~in~~ case, the order of the disciplinary authority fully conforms to the requirements of the provisions of Rule 8 of the Rules, as highlighted in Mool Chand's case.

11. This application fails and is dismissed but without any order as to costs.

(B.K. SINGH)
MEMBER (A)

(S.K. DHAON)
VICE CHAIRMAN