

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

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O.A.Nos.(1) 1712/1991  
~~XXXXXX~~ (2) 1715/1991  
(3) 2365/1991

DATE OF DECISION: 10-09-1993

(1) Shri Mool Chand  
~~(2) Shri Shiv Dutt~~ Applicant(s)  
(3) Shri Rajender Singh  
Versus

Delhi Administration & Others Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? 45
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

*Shiv*  
(S.K. DHAON)  
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

Date of decision: 10-09-93

- (1) OA No.1712/91  
Mool Chand ... Petitioner  
vs.  
Delhi Administration & ors... Respondents
- (2) OA No.1715/91  
Shiv Dutt ... Petitioner  
vs.  
Delhi Administration & ors.. Respondents
- (3) OA No.2365/91  
Rajender Singh ... Petitioner  
vs.  
Delhi Admn.& ors. ... Respondents

For the petitioners .. Shri Shyam Babu, Counsel.  
For the Respondents .. Shri Vinay Sabharwal,  
counsel and Shri M.C.Garg,  
counsel.

CORAM:  
THE HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN  
THE HON'BLE MR.I.K.RASGOTRA, MEMBER(A)

JUDGEMENT

(BY HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN)

These three Original Applications arise out of the same orders dated 14.6.1990 and 10.12.1990 passed by the Deputy Commissioner of Police (hereinafter referred to as the punishing authority) and the Additional Commissioner of Police (hereinafter referred to as the appellate authority) respectively. They have been heard together and, therefore, they are being decided by a common judgement.

2. The petitioners and 4 others including Rect.(Constable) Rajender Singh No.2842/SD were listed in Delhi Police on 30.6.1989 and were undergoing Basic Recruits Training on or before 10.2.1990 in 10th Bn.-DAP. We may note that the petitioner Shri Rajender Singh before us was given Rect. No.2812. All the 7 Constables, including the petitioners, according to the respondents, absented themselves unauthorisedly. Therefore,

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departmental proceedings were initiated against them by a common order, a common enquiry officer was appointed, the enquiry officer submitted a common report to the punishing authority, the punishing authority passed a common order of punishment and by a common order the appellate authority dismissed the appeals preferred by the petitioners. As already stated, the said orders passed by the punishing authority and the appellate authority are being impugned in these OAs.

3. On 27.2.1990, the punishing authority initiated proceedings for awarding punishment under Section 21 of the Delhi Police Act, 1978 (hereinafter referred to as the Act). Since the aforementioned 7 recruit (Constables) reported back after absenting themselves unauthorisedly without permission/ and information of senior officers, / the said act on their part amounted to grave misconduct, negligence and dereliction in the discharge of their official duties, It accordingly, deputed an Inspector to hold a departmental enquiry.

4. On 15.3.1990, the enquiry officer framed charges against all the 7 Recruit (Constables) including the petitioners. According to the charge-memorandum, the petitioners while undergoing Basic Recruits Training in 10th Bn. DAP were found absent unauthorisedly without permission/information of senior officers on 10.2.1990 and they resumed duty on 11.2.1990, the period of absence being 1 day 2 hours & 30 minutes in the case of Mool Chand; 1 day & 40 minutes in the case of Shiv Dutt; and 1 day, 1 hour and 10 minutes in the case of

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Rejender Singh. Then the crucial words used were: "the above-said act on your part amounts to grave misconduct, negligence and dereliction in the discharge of your official duties."

5. On 14.4.1990, the enquiry officer submitted his report. His conclusion in last paragraph of his report runs as follows:-

" I have gone through the entire evidence on record and come to this conclusion, that the charge is proved beyond any doubt. Moreover, all the seven defaulters have also admitted their wilful absence in their statements submitted by them in the course of the Departmental Enquiry."

6. We may now read the order dated 14.6.1990 passed by the punishing authority. The material contents of the order are these. Since the unauthorised absence without permission/information of the recruits(Constables) amounted to grave misconduct, negligence, indiscipline and dereliction in the discharge of their official duties, a regular departmental enquiry was ordered and the enquiry officer found the seven defaulters guilty of the charge framed against them. Though the copies of the findings of the enquiry officer were supplied to the seven defaulters, none of them except Constable Rajender Singh No.2842/SD submitted his representation against the report of the enquiry officer. The seven recruit Constables in their written replies admitted their default of unauthorised and wilful absence without permission/information of senior officers due to one or the other domestic reasons. All of them were listed in the Delhi Police about 7 months back. They were well aware of the consequences of being absented. Still they dare to do so. It reflects their indisciplined bent of mind. They are not likely to become good Police

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Officers in future as they have dared to make them absent in the training period when more punctuality and strict discipline is a must and <sup>an</sup> /indisciplined mind should not be allowed to flourish in a disciplined force. This tendency of indiscipline needs to be curbed with a heavy hand .Hence agreeing with the findings of the enquiry officer and keeping in view the circumstances already stated, an order of dismissal is being passed.

7. The observations of the appellate authority in its order, as material, are these. The reasons given by the appellants for their unauthorised absence may be proper but they were required to obtain leave before they withdrew from the premises. Under the law a policeman is supposed to be on duty 24 hours. They are required to work even on Saturdays and Sundays and holidays <sup>and</sup> / that is why the Government has provided them a month's extra pay in lieu of such hardship duties. Therefore, men in the police force cannot ascribe to themselves to authority to proceed on leave as and when they please. In case, this practice is to be condoned, other policemen would start following this and police will face the situation that on all holidays there will be no police left and criminal elements will have a field day. Obviously no civilised society can permit police organisation to behave in this manner and the State and Society both expect that police will at all times perform its statutory duty on maintenance of law and order on all days. The manner in which these policemen withdrew themselves from duty is highly arbitrary and cannot be condoned in a disciplined and uniformed organisation entrusted with onerous responsibility of law and order. Such a lapse cannot be condoned.

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The punishment admittedly is a severe one but also inescapable if any semblance of discipline is to be maintained in the police force. There is no possibility of soft options when the very existence of the force is at stake. Therefore, the punishment is justified.

8. In spite of strong words used by the punishing and the appellate authorities in their respective orders, the question still is: whether in view of the provisions of the Act and the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as the Rules) an order dismissing the petitioners from service has been validly passed? For reasons stated hereafter, our answer is in the negative.

9. A constable is a police officer of the lowest grade (Section 2(d)). "Delhi police" or "police force" means amongst others, the police force referred to in Section 3. A "police officer" means any member of the Delhi police (Section 2m). "Prescribed" means prescribed by rules (Section 2n). "Rules" means rules made under the Act (2q). There shall be one police force for the whole of Delhi and all officers and subordinate ranks of the police force shall be liable for posting to any branch of the force including the Delhi Armed Police. (Section 3). Subject to the provisions of the Act, the recruitment to, and the pay, allowances and all other conditions of service of members of, the Delhi police shall be such as may be prescribed. (Section 5). Therefore, the conditions of service are to be found either in the Act or the Rules framed under the Act.

10. Section 21 of the Act provides, inter-alia, that subject to the provisions of Article 311 of the Constitution and the Rules (made under the Act),

the officers enumerated therein may award to any police officer of subordinate rank any of the following punishments, namely:

- (a) dismissal
- (b) removal from service
- (c) reduction in rank
- (d) forfeiture of approved service
- (e) reduction in pay
- (f) withholding of increment
- (g) fine not exceeding one month's pay.

In sub-section(2) of Section 21 certain minor punishments are also enumerated with which we are not concerned in these cases.

11. In Section 22 of the Act, it is emphasised that when an officer passes an order of awarding punishment, mentioned in Section 21 as enumerated above, he shall record such order or cause the same to be recorded, together with the reasons therefor, in accordance with the rules.

12. The rules have been undoubtedly framed under the Act. Rule 5 refers to authorised punishments and those are as contained in Section 21 as a whole.

13. Rule 8 has the marginal note "principles for inflicting penalties". Under it, there are several sub-heads ranging from (a) to (g) which are respectively confined to dismissal/removal, reduction, withholding of increment, forfeiture of approved service, fine not exceeding one month's pay, censure and punishment drill. We are concerned with (a) and, therefore, we extract the same:

"(a) The punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service."

14. Rule 9 provides, inter-alia, that the misconduct of a police officer may be judged in relation to the position he was occupying at the time when such misconduct was committed.

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15. Rule 10 is relevant and may be extracted:

" 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."

16. It may be noted that the punishment of dismissal from service is the severest form of punishment envisaged in the Act and the Rules. That is so because dismissal involves not only removal from service but also a bar on re-employment by the State. That is why in Rule 8(a) a distinction is drawn between a misconduct and a grave misconduct. It is obvious that a person can be punished for a misconduct and punishments of various forms have been catalogued by the legislature and the rule making authority. The intention is that for attracting the punishment of dismissal/removal there should not only be misconduct but it should be of serious character. A clue is given as to what would amount to a grave misconduct in Rule 10 so as to entail an order of dismissal.

17. We are assuming for the purpose of the present cases that the absence of the petitioners from duty for a justifiable cause even for one day constitute an act of misconduct. This is so as they acted contrary to the code of conduct. We may also assume that in these cases a single act of omission on the part of the petitioners amounted to misconduct. However, we are satisfied that the condition precedent to the exercise of power under Rule 8(a) is that there should be a finding that the delinquent Government servant

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is guilty of grave misconduct. Before awarding a punishment of dismissal it is mandatory that the order of dismissal should be made only when there is grave act of misconduct. It is implicit in Rule 8(a) that there has to be a conscious application of mind by the punishing authority as to whether in its opinion the misconduct attributed to a Government servant is of such a serious nature as to be dubbed as grave. The punishing authority is empowered under the statute to pick and choose between the various forms of punishments as enumerated in Section 21 and in Rule 8.

18. We have already referred to Section 21 of the Act which emphasises that the power of awarding of punishment enumerated therein is subject to the provisions of the Rules. In other words, the power conferred upon the authorities mentioned in Section 21 to pick and choose the various punishments enumerated thereunder is not absolute. It has to be exercised in accordance with the provisions of the Act and the Rules. To put it differently, the exercise of discretion is controlled and regulated by the provisions of the Act and the Rules. In Section 22, we find an in-built safeguard of the interests of a delinquent police officer. Whenever an officer decides to inflict a punishment of either dismissal or removal from service or of any other form he has to record reasons therefor. Rule 8 puts a further limitation on the exercise of power under Section 21.

19. A combined reading of Section 22 and Rule 8 makes it clear that before awarding the punishment of dismissal or removal from service, the punishing authority is required not only to record a definite

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finding of grave misconduct but is also required to give reasons in support of such a finding.

20. Let us now examine the impugned orders to find out whether any attempt has been made in them to record a finding that the petitioners committed an act of grave misconduct by remaining absent unauthorisedly on a holiday and for one day. Having read and re-read the orders, we are of the considered opinion that neither the punishing authority nor the appellate authority recorded any such finding. We may recapitulate that the charge against the petitioners was an omnibus one that the act amounted to grave misconduct, negligence and dereliction in the discharge of official duties. We may also recapitulate that the enquiry officer recommended that all the charges stood proved. We have already extracted the relevant portion of the order of the punishing authority wherein he has stated that he agrees with the report of the enquiry officer. He, therefore, registered his agreement with the report of the enquiry officer that the charge of grave misconduct, negligence and dereliction in the discharge of official duty is proved. The appellate authority too has not recorded any finding of grave misconduct. We are, therefore, of the opinion that the relevant authorities did not apply their mind to the crucial question whether having regard to the facts and circumstances of the cases, the conduct of the petitioners <sup>was</sup> really tantamounted to a grave misconduct so as to entitle them to inflict a punishment of dismissal from service upon the petitioners.

21. Rules 8 and 10 of the Rules cannot be read in isolation of each other. If read together, the conclusion is inescapable that the punishment of

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dismissal or removal can be awarded only upon the satisfaction of the authority concerned that the delinquent officer is completely unfit for police service. No such finding has been recorded either by the punishing authority or by the appellate authority.

22. The charge is that the petitioners misconducted themselves in the discharge of their official duties. Admittedly, they absented themselves on a Sunday, a holiday, while under training. There is no allegation that any extraordinary or emergent situation had arisen between 10.2.1990 and 11.2.1990. Again there is no allegation that the petitioners were required to perform any special duty on the said days. There is also no allegation that, on account of some emergency or even otherwise, the members of the Police force, who were under training along with the petitioners, were on 10.2.1990 and 11.2.1991 required to render any service. It is nobody's case that the petitioners were assigned any duty in connection with law and order problem etc. or would have <sup>been</sup> assigned such a duty but for their absence. The inference is inevitable that had they been not absent they would have performed work, if any, in relation to training alone. Again, it is not the department's case that any special training was imparted to the trainees during the period of the absence of the petitioners.

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23. Misconduct in office has been defined in **Black's Law Dictionary, Sixth Edition** at page 999 thus:

" Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

24 P.Ramanatha Aiyar's Law Laxicon, Reprint

Edition 1987 at page 821 says:

" ... Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

25. Any act of omission or commission or any act involving malfeasance, misfeasance or non-feasance <sup>in the course of employment</sup> will certainly amount to misconduct in the discharge of official duties. There should be a direct nexus between the misconduct attributed and the duty discharged. The petitioners certainly committed an act of misconduct in remaining on an unauthorised leave in their capacity as police officers. However, in our opinion, they did not commit an act of misconduct in the discharge of their official duties. The punishing authority and the appellate authority, therefore, committed an illegality in upholding the charge that the petitioners misconducted themselves in the discharge of their official duties.

26. Section 24 of the Act provides that every police officer, not on leave or under suspension, shall for all purposes of the Act be deemed to be always on duty and any police officer or any number or body of police officers allocated for duty in any part of Delhi may, if the Commissioner so directs, at any time, be employed on police duty in any other part of Delhi for so long as the services of the police officer or number or body of police officers may be required in such other part of Delhi. This provision should be read along with Section 3 which provides that there shall be one police force for the whole of Delhi and its members shall be liable for posting to any branch including the Delhi Armed Police.

In Section 24 a fiction has been created. The purpose of the fiction is that a member of the police force unless on leave or under suspension shall be available for rendering service round the clock. This is so as the police force has to be in readiness all the 24 hours to meet any eventuality which is expected to be met by such a force. It is true that the fiction created by a statute should be taken to its logical conclusion. It is also true that the fiction should be used only for the purpose for which it has been created and not beyond. The two statements of law have to be harmonised. If Section 24 is to be given a literal interpretation, it has to be necessarily held that a police officer, not under suspension or on leave, while committing an act of misconduct wholly unconnected with the discharge of his official duties would be deemed to have committed such an act during the course of his official duty. A police officer may commit an act of adultery, bigamy or assault etc. Can it be said that he has committed such acts in the discharge of his official duties so as to give him the protection of Section 197 of the Code of Criminal Procedure when he is prosecuted in a court of law? Likewise, can it be said that a police officer will be entitled to a notice under Section 80 of the Code of Civil Procedure if he commits a civil wrong having no relation with the discharge of his official duty? Surely, the answer will be in the negative. Therefore, Section 24 cannot be used by the respondents for bringing home the charge to the petitioners that they misconducted themselves in the discharge of their official duty.

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27. We are not interfering at all with the quantum of the punishment awarded to the petitioners. This is not in our domain. We have already emphasised that the punishing authority and the appellate authority committed an error of jurisdiction in failing to record a finding that the misconduct attributed to the petitioners amounted to a grave misconduct. That was a condition precedent to the exercise of power of dismissal. We have also held that power under Rule 8(a) could not be exercised against the petitioners as no finding has been recorded that they were completely unfit for police service. This was also an error of jurisdiction. We have further held that the authorities passed illegal orders while recording the finding that the petitioners misconducted themselves in the discharge of their official duties.

28. These petitions succeed and are allowed. The impugned orders dated 14.6.1990 passed by the punishing authority and 10.12.1990 passed by the appellate authority are quashed in so far as they relate to the petitioners. The petitioners shall be reinstated in service with full back-wages.

29. There shall be no order as to costs.

*I.K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER(A)

10/9/93

*S.K. Dhaon*  
(S.K. DHAON)  
VICE-CHAIRMAN(J)

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