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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. No. 2052/91 /19 Decided on: 16.4.96

Ajmer Khan APPLICANT(S)
(By Shri Shyam Babu Advocate)

VERSUS

Delh Admn. & Ors. RESPONDENTS
(By Shri Arun Bhardwaj Advocate)

OD RAM

THE HON'BLE SHRI S.R. Adige, MEMBER (A)

THE HON'BLE SHRI ~~K. S. M. A. K.~~ D.C. Verma, Member (J)

1. To be referred to the Reporter or not? yes
2. Whether to be circulated to other Benches of the Tribunal ? No

Adige
(S.R. ADIGE)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

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Original Application No. 2052 of 1991

this the 16th day of April 1996.

HON'BLE MR S.R. ADIGE, MEMBER (A)
HON'BLE MR D.C. VERMA, MEMBER (J)

Ajmer Khan (Ex-Constable) (542/DAP) S/o Sri Abdul
Gani, R/o E-20/8A, Subhash Mohalla, Gali No. 8,
Shahdara, Delhi.

Applicant

By Advocate : Sri Shyam Babu

Versus

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

2. Deputy Commissioner of Police, 1st Bn., D.A.P.,
Delhi.

3. Addl. Commissioner of Police (Armed Police),
Police Headquarters, I.P. Estate, New Delhi.

Respondents

By Advocate : Sri Arun Bhardwaj

O R D E R

D.C. VERMA, MEMBER (J)

By this O.A., the applicant Ajmer Khan,
Ex-Constable, Delhi Armed Police, has challenged
and prayed for setting aside the inquiry report
(Annexure-'F' to the O.A.), ~~imposed~~ order of
punishment dated 27.9.90 (Annexure-'G' to the



O.A.) and appellate order dated 22.3.1991 (Annexure 'I' to the O.A.) and to reinstate the applicant in the service with effect from 27.9.90 with all consequential reliefs/benefits.

2. The brief facts, leading to the aforesaid orders, is that the applicant who was posted in May, 1990 at C.P. Reserve, Vijay Ghat was under the influence of liquor. The applicant blew whistle and started abusing Company Commander. When Inspector Raghbir Singh came-out, he was also abused. Applicant used unparliamentary language and became violent. The applicant was suspended by order dated 4.5.90 with immediate effect, pending departmental enquiry. By an order dated 21.5.90 (Annexure-B to the O.A.), respondent No. 2 ^{was} appointed Inquiry Officer. The Inquiry Officer served upon the applicant a memorandum of inquiry alongwith summary of allegations, list of witnesses and list of documents (Annexure-C to the O.A.). The Inquiry Officer examined four witnesses produced by the prosecution (Annexure-D to the O.A.) on 1.6.90. In Setember, 1990, the Inquiry Officer submitted his report. The Inquiry Officer found the charges against the applicant proved and held the applicant guilty of the charges. A copy of inquiry report is Annexure-F to the O.A. On 27.9.90, the respondent No. 2 i.e. Dy Commissioner of Police, 1st Bn., D.A.P., Delhi passed the impugned order of punishment (Annexure-G to the O.A.) dismissing the applicant from police force with immediate effect and also treating the



period of suspension w.e.f. 4.5.90 to the date of issue of impugned order as a period not spent on duty. The applicant preferred an appeal to the respondent No. 3 i.e. Addl. Commissioner of Police on 26.10.90 (Annexure-H to the O.A.). The appeal was rejected by the order dated 23.3.91 (Annexure-I to the O.A.), hence this O.A.

3. The learned counsel for the applicant Sri Shyam Babu has raised two points; first point is that in view of rule 8 (a) of Delhi Police (Punishment and Appeal) Rules 1980 (in short Rules of 1980), the order of dismissal or removal can be awarded for the act of grave misconduct rendering him unfit for police service. The second contention is that punishment awarded to the applicant is dis-proportionate to gravity of the charges imputed to the applicant.

4. Section 21 (1) of the Delhi Police Act, 1978 enumerates the punishment which may be awarded as below :

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

Sub-Section 2 of Section 21 enumerates the minor punishment. Punishment which may be awarded under section 21 (1) is subject to the provisions of Article 311 of the Constitution and the Rules. For any punishment of the kind mentioned in Section 21 (1), the officer who pass the order has to record reasons therefor (section 22). The learned counsel for the applicant, placing reliance

dt. 10.9.93
on the decision of the Principal Bench of the
Tribunal, ~~extreme cases~~ given in a batch of
cases in O.A. No. 1712/91 Mool Chand Vs. Delhi
Administration & others and two other cases, has
contended that section 21 of the Act, Rules 8,
9 & 10 of the Rules 1980 have been considered
and discussed in detail and has ~~held~~ held 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, which renders him unfit
for police service.

5. The findings of the Inquiry officer
is as below :

"I Insp. Ravi Sehgal the E.O.,
in view of deposition of the PWs
who has fully supported the prosecution
theory with any contradictions what-
so ever, their cross examination,
observations thereon, written statement
of the defaulter and comments thereon
hold Constable Ajmer Khan No. 542/DAP
guilty of the charges."

6. The punishing authority, after
considering the Inquiry officer's report, passed
the order dated 27.9.1990, the relevant concluding
para is as below :

"Keeping in view of the above discuss-
ions the evidence on record cannot be
disbelieved. The above act & conduct
of the defaulter Constable Ajmer Khan
No. 542/DAP is totally irresponsible,
indisciplined and shows that he has
no respect for rules as well as lawful
order of his senior officers. His
wilful and deliberate misconduct while
on duty cannot be ignored. I, therefore
dismiss Constable Ajmer Khan No. 542/
DAP from the Police force with immedi-
ate effect. His suspension period
w.e.f. 4.5.90 to the date of issue of
this order will be treated as period not
spent on duty." *J*

Thus, there is nothing in the findings or in the order of the punishing authority, it is contended, that the act of the applicant amounts to grave misconduct and that grave mis-conduct was of such a nature to render the applicant unfit for police service.

7. We have given our anxious thought to the submissions made by the learned counsel for the applicant and we are of the view that the contention of the learned counsel has force.

8. The learned counsel for the respondents, Sri Arun Bhardwaj, has submitted that on going through the Inquiry Officer's report and the detailed orders passed by the punishing authority, it is clear that the act of the applicant amounts to grave mis-conduct. The learned counsel for the respondents has drawn our attention towards the recorded finding that "Constable Ajmer Khan No. 542/DAP is irresponsible, undisciplined and shows that he has no respect for the rules as well as law ful order of his senior officers." His wilful and deliberate mis-conduct, according to the learned counsel while on duty cannot be ignored though the word grave has not been used in the order the conduct amounts to grave mis-conduct. Even if, looking to the totality of the circumstances as mentioned in the order of punishing authority, the mis-conduct committed by the applicant is accepted as grave mis-conduct, we are unable to agree that mere finding of grave mis-conduct is sufficient for an order of dismissal

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or removal under rule 8 (a) of the Rules 1980. A clear cut finding to the effect that the grave mis-conduct is of such nature which renders the applicant unfit for police service has to be recorded before passing the order of dismissal or removal. Even, in the appellate order dated 22.3.1991, there is no finding to the effect that the applicant is unfit for police service. A reading of section 21 of the Act and rule 8 of the Rules of 1980 show that various type of punishment can be awarded to any police officer of sub-ordinate rank. If the act is not a grave mis-conduct or if the grave mis-conduct is not such which renders the police officer unfit for police service, an order of dismissal/ removal under rule 8 (a) of Rules 1980 may not be awarded but other punishment as may be appropriate in the circumstances of particular case, may be awarded to the delinquent officer.

9. In the present case, as there is no finding that the applicant was found unfit for police service, the award of punishment, dismissing the applicant from service is not legally maintainable. It may also be mentioned here that there is nothing in the order of punishing authority about previous record of the applicant, which may show continued and habitual conduct indicating irresponsibility & complete unfitness for police service. We also find that xxxxx

whatever mis-conduct has been committed by the applicant, it was under the influence of liquor.

Therefore, on the facts and circumstances of the case, we uphold the decision of finding the applicant guilty of charge but the imposition of the punishment of dismissal from service is not in accordance with Rule 8 (a) of Rules 1980 and is, therefore, quashed.

10. In the result, this O.A. is decided as above. As the order of dismissal has been quashed, the applicant shall be reinstated within a period of one month from the date of receipt of copy of this order. Within the said period the respondent No. 2 i.e. Deputy Commissioner of Police shall pass fresh order of penalty other than dismissal/ removal. He is also directed to pass orders, in accordance with the law, as expeditiously as possible, as to how the period from the date of dismissal till the date of reinstatement, shall be treated. No costs.



MEMBER (J)
GIRISH/-



MEMBER (A)

11. I have ^{had} the benefit of reading the judgment recorded above by my learned brother.

12. I would only like to add ^{that} in SLP (Civil) No.12208/95 (2465) Lt. G. of Delhi & others Vs. Dilip Singh, decided on 12.3.95, while dismissing the SLP filed by L.G.Delhi against the judgment of the CAT, Principal Bench dated 23.9.94 in O.A.No.802/90, the Hon'ble Supreme Court was pleased to hold follows:

"Delay condoned."

In the light of Rule 10 which says, "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" and in the absence of a finding in the order of disciplinary authority regarding complete unfitness of the respondent for the service, we cannot say that the Tribunal's order is wrong. It is obvious that Rule 10 contradicts the discretion which a disciplinary authority otherwise possesses. Learned Addl. Solicitor General requested that the restriction placed by the Tribunal that while passing fresh order with respect to penalty viz. that only a penalty other than dismissal or removal should be awarded, is not justified in the circumstances of the case. We are also not satisfied on this core, because we cannot permit the disciplinary authority to fill lacune by recording a finding to that effect. In the circumstances, we are not able to say that the order of the Tribunal is wrong. The Special Leave Petition is accordingly dismissed."

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13. In the light of that judgment I agree with the contents of paragraphs 9 and 10 of the judgment recorded by my learned brother above.

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(S.R. ADIGE)
MEMBER (A).

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