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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

CA No. 2189/91

New Delhi this the 18 th day of October, 1996.

Hon'ble Shri K. Muthukumar, Member (A)

Hon'ble Shri T.N. Bhat, Member (J)

Shri Ranjit Singh
Ex. Constable,
S/o. Shri Raghbir Singh,
V.P.O. Sahibabad,
Daulatpur,
Delhi.

..... Applicant

(By Advocate: Shri Shyam Babu)

Vs.

1. Delhi Administration, Delhi
through its Chief Secretary,
5, Shyam Nath Marg,
Delhi-110 054

2. Additional Commissioner
of Police (Operations) Delhi,
Police Headquarters,
I.P. Estate,
New Delhi-110002.

3. Deputy Commissioner of Police,
Indira Gandhi International
Air Port,
New Delhi.

..... Respondents

(By Advocate: Shri B.S. Oberoi,
proxy counsel for Mr. Anoop Bagai)

O R D E R

Hon'ble Shri T.N. Bhat, Member (J)

the
By/impugned order dated 12.2.1991 passed by

the Dy. Commissioner of Police, I.G.I Airport, New Delhi
the applicant who was then working as a constable in
Delhi Police has been removed from service. By the other
order impugned in this OA and passed by the Additional

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18.10.96.

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Commissioner of Police (Operations) the appeal preferred by the applicant has also been rejected.

2. This OA challenging the aforesaid orders has been filed by the applicant on 19.9.1991 mainly on the grounds; firstly, that the punishment order is arbitrary and illegal; secondly, that the applicant was not afforded adequate opportunity to defend himself in the inquiry held against him; thirdly, that the Enquiry Officer has not given the reasons for the conclusion arrived at in the enquiry proceedings but has jumped to the conclusion arbitrarily; fourthly, that the Medical Certificates of the applicant's illness, though submitted by him, were not considered by the Competent Authority nor was any decision given on this point by it; fifthly, that the Appellate Authority also failed to deal with the contentions raised by the Applicant in his appeal and did not pass a speaking order on the Appeal; and, lastly, that no finding was recorded that the applicant had rendered himself unfit for being retained in the Delhi Police Service, which is a pre-requisite under Rule-8(a) of the relevant Rules. The last mentioned ground above has been taken only in the rejoinder and not in the main OA.

3. The respondents have resisted the claim of the applicant by filing a detailed counter in which it is stated that the Applicant was afforded reasonable opportunity in the enquiry proceedings. It is further averred that the Applicant was found guilty of grave misconduct and was accordingly removed from service, as he had absented from duty at sensitive places of posting and was also found to be a habitual absentee.

4. As already mentioned, the applicant has filed rejoinder to the respondent's counter, in which apart from raising a new point the applicant has reiterated the contentions made in the OA.

5. We have heard at length the arguments of the learned counsel for the parties and have also perused the documents placed on record by them.

6. On a bare reading of the impugned punishment order dated 12-2-1991 it transpires that the disciplinary authority has not recorded a clear finding that the grave misconduct of which the applicant has been found guilty is such as to render him unfit for retention in the Police Force. That such a finding needs to be recorded before the extreme penalty of removal from service can be passed against the delinquent employee in the Delhi Police Service is no longer res integra. This Bench (The Principal Bench) of the Tribunal has consistently held that such a finding must be recorded. To cite only a couple of such cases where this view has been held we may refer to the judgement/order dated 19-4-1996 in OA No. 2052/91 (Ajmer Khan Ex-constable Vs. Delhi Administration and others) and an earlier judgement order dated 3-1-1994 in OA 1757/90 (Parkash Chand Vs. Delhi Administration and Others). All that the disciplinary authority in the instant case states in the impugned order dated 12-2-1991 is that the charge against the applicant is fully proved and that earlier also he had been found absent from duty on several occasions for which he had been punished but that the applicant did not show any improvement. It has further been held

in the order ibid that such acts of indiscipline and habitual absenteeism in the uniformed force could be accepted not condoned. One may agree with the respondents that the above findings do indicate that the charge against the applicant amounted to grave misconduct. But by no stretch of reasoning can it be further held that this would ~~itself~~ amount to a finding that the said grave misconduct rendered the applicant unfit for continuing in the Delhi Police Service. On this ground alone the punishment of removal from service imposed upon the applicant is liable to be set aside.

7. However, we do not find ourselves in agreement with the further contention made by the applicant's counsel that the applicant deserves to be exonerated and reinstated in service without imposition of any penalty. This contention has been raised mainly on the ground that neither the Enquiry report nor the order passed by the Disciplinary Authority is a reasoned one. The Judgement of the Apex Court reported in AIR 1985 Supreme Court 1121 (Anil Kumar Vs Presiding Officer & Ors) has been cited in support of the contention. On going through the Judgement (Supra) we find that in the case before the Apex Court all that had been done by the enquiry officer was to annex the record of evidence to an order-sheet without even an attempt to establish correlation between the two. The evidence was not discussed and the enquiry officer had only recorded his *ipse dixit* that the charges were proved. It was in these circumstances that the Hon'ble Supreme Court held that the order of

termination of service based upon such proceedings could not be sustained. The facts of the instant case are clearly distinguishable. Unlike in the case before the Apex Court, the charged officers in the instant case neither produced any evidence in his defence nor even exercised his right of cross-examining. The witnesses produced against him. The Enquiry Officer made a mention of both these facts in his report. Not only that but also was the evidence against the applicant discussed and reproduced in the report. It was further stated that on the strength of evidence ^{that} the charge against the applicant was established. We are, therefore, convinced that the principle laid down by the Apex Court in the judgement (Supra) is not attracted in this case.

8. The learned counsel has also cited the judgements of Apex Court in Malkiat Singh Vs. State of Punjab (reported as JT 1996 (2) S.C. 648), Mandeep Kumar Vs. State of Haryana & another. (JT 1995 (8) 445) and Union of India & Ors. Vs. Giriraj Sharma (1994 Supple. (3) S.C.C. 754) in a bid to support the contention that absence from duty would not normally be sufficient to attract any punishment. We have carefully gone through the above judgements and find that no such general principle has been laid down by the Apex Court. It was only in the peculiar facts and circumstances of those cases that the Hon'ble Supreme Court held that the penalty of removal from service was not called for. It is significant to note that in Giriraj (Supra) it was further held that a minor penalty could be imposed. Similarly, in the other two cases, while giving reprieve to the charged officials the Apex Court directed that if those officials again absented themselves in future they should be

removed from service.

9. An attempt was also made by the Applicant's counsel to show that the charge served on the applicant was vague. This contention was made in reference to the allegation that the applicant was a habitual absentee. We have carefully gone through the contents of the charge-sheet and are convinced that there is nothing ^{vague} in the above charge. On the contrary, it has been specifically mentioned in the charge-memo that the Applicant had been found to be a habitual absentee, having absented himself in the past on 24 occasions for which punishments had been imposed upon him, but that the Applicant showed no improvement.

10. To sum up, we do not find any legal flaw on the basis of which the inquiry proceedings could be said to be vitiated. However, as already stated, the punishment of removal from service in the instant case is not legally correct, as there is no specific finding recorded in terms of the provisions contained in Rules 8 (a) and 10 of the Delhi Police Service (Punishment and Appeal) Rules, 1980 that the gross misconduct of which the applicant has been found guilty is such as to render him unfit for Police service.

11. In the event, this O.A. is partly allowed, the impugned orders are set aside and the Disciplinary Authority is hereby directed to consider the Applicant's case afresh in the light of the observations made by us hereinabove and to impose upon ^{him} any penalty, other than the penalty of removal

or dismissal from service, as may be considered appropriate in the circumstances. In the meantime the Applicant shall be taken back in service and reinstated, unless the Competent Authority decides to keep him under deemed suspension. The applicant shall, however, not be entitled to back wages, but he shall be granted continuity in service.

12. We further direct that this order shall be implemented within a period of three months from the date of receipt of a copy of the order by the respondents.

13. No costs.

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(T.N.BHAT) 18.10.1996
Member (J)

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(K.MUTHUKUMAR)
Member (A)

cc.