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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 2799 of 1991

New Delhi, dated the 15th January, 1997

HON'BLE MR. S.R. ADIGE,

HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Rishi Pal,
No.1085/NE,
S/o Shri Harphool Singh,
R/o Qr. No. 11, Type I,
P.S.Geeta Colony,
Delhi.

... APPLICANT

(By Advocate: Shri Shankar Raju)

VERSUS

1. Commissioner of Police,
Police Hqrs.,
M.S.O. Building,
New Delhi.
2. Addl. Commissioner of Police,
(New Delhi Range),
Police Hqrs., M.S.O. Building,
I.P. Estate, New Delhi.
3. Addl. Commissioner of Police,
(North East Distt.),
Delhi. ... RESPONDENTS

(By Advocate: Shri Jog Singh)

JUDGMENT

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

In this application Shri Rishi Pal, Constable, Delhi Police has impugned the order dated 11.6.91 (Ann. A-7) dismissing him from service as well as the appellate orders dated 24.10.91 (Ann. A-9) rejecting the appeal.

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2. A departmental enquiry was initiated against the applicant on the charge ~~that~~ on 29.6.89 at about 10.00 p.m., while informing Inspector Shri R.C.Sharma, Vigilance Branch (Flying Squad) on phone about the illegal detention of a person in East Distt. and demand of Rs.15,000/- by the police, the applicant misbehaved with Shri Sharma on the phone. He did not disclose the full particulars of the detained person, and on persistent requests gave his name as Satish Sharma. It is further alleged ~~that~~ the applicant wanted Inspector R.C.Sharma to come to Kundan Lal Petrol Pump in Shahdara for details and threatened to "see" the Inspector in case he did not come there. Later on the applicant sent one Virendra Choudhary to the Vigilance Branch (Flying Squad) and a raiding party headed by Shri M. Kudisia, ACP Vigilance was formed, which proceeded to Kundan Lal Petrol Pump where the applicant was found in the company of one Divender Sharma a property dealer and alleged land grabber. It is further alleged that on being asked his identity, the applicant gave his name as Constable Satish Sharma and slipped away from the scene after coming to know the

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identity of Shri M. Kudisia, ACP, Vigilance.

It is further alleged that the applicant also appeared to be drunk at the time.

3. The E.O. in his findings held the charges against the applicant as established.

Tentatively agreeing with the E.O.'s findings, a copy of the same was furnished to the applicant vide letter dated 31.1.91 to file representation if any. The applicant submitted his representation on 19.2.91.

After considering the findings and the other materials in the DE record, the Disciplinary Authority by impugned order dated 11.6.91 imposed the penalty of dismissal from service, which was upheld in appeal vide impugned appellate order dated 24.10.91 against which this O.A. has been filed.

4. The first ground pressed by applicant's counsel Shri Shankar Raju was that the applicant's previous record was taken into consideration, without it forming a part of the charge. Reliance is placed on 1993 (23) ATC Ram Lal Vs. UOI & Ors. Rule 16 (xi) Delhi Police (P&A) Rules reads as follows:

" If it is considered necessary to award a severe punishment to the defaulting officer by taking

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into consideration his previous bad record, in which case the previous bad record shall form the part of a definite charge against him and he shall be given opportunity to defend himself as required by rules".

What this sub rule means is that if the misconduct of the applicant is otherwise not so serious as to merit severe punishment, but it is necessary to award him severe punishment because of his previous bad record, then that previous record shall form part of the chargesheet. In the present case it is clear that the charge of misconduct which was proved against the applicant were serious enough to merit severe punishment even without reference to his previous bad record, and under the circumstances it was not necessary ^{to} include his previous bad record in the charge sheet, even if a reference to it ^{in the penalty order} was made. Hence this ground fails.

5. The next ground pressed by Shri Shankar Raju is that the P.E. report and copies of statements made in Vigilance case were not supplied to the applicant which prejudiced him. The respondents in their reply have averred that though a P.E. was conducted against the applicant, the statements of none of the witnesses were recorded before the D.E. proceedings, and

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the averment remains unchallenged, as no rejoinder has been filed. Moreover there is nothing to indicate in the Enquiry Report that the PE report was relied upon in the D.E. Hence this ground also fails and the ruling given in Kashi Nath Dixit Vs. UOI 1986(2) SLJ-SC 279 relied upon by Shri Raju is not applicable to the facts of this case.

6. It has next been contended that the applicant was dismissed by an authority lower than the appointing authority. In paragraph 5(iii) of the O.A., it has been contended that the applicant was appointed by the DIG of Police on 20.2.78 under Punjab Police Rules 1934, but in para 5(vi) it has been contended that the applicant was appointed by the then Supdt. of Police. The applicant is himself not clear who his appointing authority is, and in any event no appointment letter has been filed. Respondents in their reply have pointed out that the applicant was appointed by the then Commandant Delhi Armed Police (and not the DIG of Police) who is equal in rank to the Addl. Dy. Commissioner of Police by whom he was dismissed, and provisions of the Punjab Police Rules are not applicable in the present case. These assertions have also not been rebutted in any rejoinder filed by the applicant, and 1989 SLJ Page 322 relied upon by Shri Raju has no application to the facts of the present case. Hence this ground also fails.

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7. Lastly it was contended that as there was no finding recorded as to the applicant's complete unfitness for police service which was a necessary prerequisite for dismissal in the background of Rule 10 Delhi Police (P&A) Rules, the dismissal was bad in law. The applicant was a member of the Delhi Police which is a uniformed force where the highest standards of order, discipline, and obedience to lawful commands of ones superiors was expected from its members, for the efficient discharge of duties. In the present case before us it has been established in the enquiry that the applicant misbehaved with and threatened his superior officer; did not give his true identity despite persistent requests and in fact gave a false identity; and when the raiding party which had been summoned at his own instance did reach the spot where he also was, ¹ present, he, instead of cooperating with the raiding party, slipped away from the scene without cause or reason. Manifestly such misconduct cannot be countenanced in any Govt. servant much less one belonging to a uniformed force, which renders him completely unfit for police service, and if in addition to the above acts of misconduct, the disciplinary authority after scrutinising his previous record of service and ACRs concluded that repeated

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punishments both major and minor had no effect upon him, it only indicates incorrigibility which justifiably invited the penalty of dismissal. In this connection the Disciplinary Authority is on record as describing the applicant as "a notorious type of police officer. So many punishments major and minor had no effect on him. I am of opinion that Const. Rishi Pal No. 1085/NE cannot make a good officer. He is a spoilt man who has utilised all his energies in his misdeeds. Seeing no other option I hereby dismiss him.....". In Hari Ram Vs. Delhi Admn. & Ors. bearing OA No. 1344/90 decided on 4.8.93 the CAT, Full Bench was of opinion that if the tenor of the punishment order reflected the fact that the delinquent was guilty of grave misconduct rendering him unfit for police service, it was sufficient and it was not necessary that a positive finding should be recorded in so many words that the delinquent was unworthy and unfit for retention in police service. The ratio in Hari Ram's case (Supra) was relied upon in the CAT, Principal Bench judgment dated 10.1.95 in OA No. 2252/90 Shri Phool Kumar Vs. Commr. of Police, New Delhi & Ors. dismissing the OA against which SLP No. 18668/96 was also dismissed by the Hon'ble Supreme Court on 4.9.96.

8. In the result the OA warrants no interference. It is dismissed. No costs.

Lakshmi Swaminathan
(Mrs. LAKSHMI SWAMINATHAN)
Member (J)

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