CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.466/1991

New Delhi: March 25, 1995.

HON'BLE MR. S.R.ADIGE, MEMBER (A).
HON'BLE DR. A.VEDAVALLI , MEMBER (J).

Shri Rajender Singh,
Head Constable No.7973 DAP,
s/o Shri Hira Singh,
r/o Ashok Vihar Colony,
Mahalana Road, Near Oil Mill, Gali No.2,
Sonepat (Haryana) .....Applicant.

By Advocate Shri N.Safaya.

Versus

1. Union of India through
Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. Police Commissioner, Delhi Police,
Police Headquarters,
I.P.Estate,
New Delhi.

3. Additional Commissioner of Police,
(Training),
Delhi Police,
Police Headquarters,
I.P.Estate,
New Delhi.

4. Principal,
Training School,
Delhi Police,
Jharoda Kalan,
New Delhi. .....Respondents.

By Advocate Shri B.S.Oberoi

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A).

In this application, Shri Rajender Singh, Head Constable (Driver) Delhi Police has impugned the order dated 27.6.90 (Annexure-H) removing him from service and the appellate order dated 23.11.90 (Annexure-J) dismissing the appeal.

2. The applicant who was a regular and permanent employee in the 6th Battalion Delhi Armed Police and admittedly was temporarily posted to the Police Training School (PTS) Jharoda Kalan, New Delhi in 1989, was charged with indiscipline and dereliction of duty, for remaining absent from duty unauthorisedly, without any prior permission of the competent authority, on as many as six different occasions between the period 22.8.89 to 2.12.89, ranging from absences of 1 hour 35 minutes to 30 days 6hrs. 35 minutes. The charge sheet also specifically mentioned each of the applicant's part absences and acts of default numbering in all 16 , between the period 7.6.75 to 3.7.89 and the punishment awarded each time, including physical- drill(6 in number); warning (thrice); censure (four times); leave without pay(twice); etc. The Enquiry Officer in his findings dated 25.4.90 held both the charges proved, but stated that the circumstances leading to the misconduct of the applicant needed to be taken into account, particularly the fact that the applicant was unable to move from his bed. He, therefore, opined that a lenient view was required to be taken. A copy of the enquiry report was delivered to the applicant on 2.5.90 against his signature and he was given an opportunity to make any submission/representation in regard to the Enquiry Officer's findings. His reply/ representation was due to reach the respondents within 15 days i.e. by 16.5.90, but, the applicant did not file any reply/representation although the time for filing the same was extended by 7 days. The Disciplinary Authority there-upon went

through the Enquiry Officer's findings and relevant papers in the D.E.file including the applicant's defence statement in the D.E. The Disciplinary Authority noted that the defaulterhad pleaded that on three occasions i.e. 26.9.89 to 5.10.89; 25.10.89 to 26.10.89 and 2.11.89 to 2.12.89 his absences took place in consequence of his illness, for which he was advised medical rest and the other absences of one or two hrs. duration on three occasions i.e. 22.8.89; 2.9.89 and 11.10.89 were negligible and were caused by early departure of the Staff bus which he missed. The disciplinary authority also noted that the applicant had further argued that he had sent intimation to the PTS authorities on 6.11.89 about his illness and that the previous absences/defaults had already been decided on the merits of each case and, therefore, had no relevance, but rejected these pleas as not maintainable. The Disciplinary Authority observed that grant of a M.C did not by itself confer upon any Govt. servant any right to leave. The M.C. had to be forwarded to the competent authority and his orders had to be awaited as a preclude to leave on M.C. It was obligatory for the defaulter to make an application for leave on M.C. at his own motion by annexing the M.C. given by the doctor, as to the nature and probable duration of his illness, as provided under Rule 19CCS(Leave) Rules, 1972. In the present case, the applicant had not preferred any leave application and had thereby violated the statutory instructions. He rather had kept his supervisory officers in the dark about the reasons and likely duration of his absence. Being the member of a disciplined force the applicant should have kept

his superiors posted about the full particulars of his illness; his place of residence during his sickness; the name and designation of the doctor; and the quantum of medical rest advised, so that any expedient administrative action e.g. second medical opinion could have been secured, and proper chain of Govt. work arising out of his absence, could have been obtained. The disciplinary authority further observed that no doubt absences on three occasions were for one or two hours duration, but illustrated the applicant's habitual absenteeism.

3. Likewise it was admitted that he had already been punished for his earlier absences/ defaults and that he should not be penalised for the second time, but the previous absences and misdemeanours of the defaulter had not been reopened for punishing him again, and for taking any decision thereon. The particulars of his earlier absences and defaults had been made a specific charge and taken into consideration to determine whether the past correctional attempts had led the applicant to improve himself or not. The Disciplinary Authority noted that inspite of the past correctional attempts the applicant had not improved and rather proved highly indisciplined, incorrigible and unfit for retention in a disciplined force such as police force. Accordingly, while agreeing with the Enquiry Officer's finding as regard the guilt of the defaulter, the Disciplinary Authority found no reason to retain the applicant in the police force, and accordingly, vide the impugned order, removed him from service with

immediate effect and directed that the period of his unauthorised absences from 26.9.89 to 5.10.89; 25.10.89 to 26.10.89; and again from 2.11.89 to 2.12.89 (43 days in all) be treated as period without pay .

4. The applicant filed an appeal against that order before the Addl.Commissioner of Police on 28.7.90 (Annexure-I) who by order dated 23.11.90 rejected the same, observing that the pleas put forward by the applicant werenot tenable. As regards the applicant's plea that his 43 days' absence period on medical ground was covered by medical certificates and hence it should not be treated as unauthorised absence, the appellate authority rejected the same, as holding that the submission of medical certificates itself did not confer upon a Govt. servant any right to leave and was obligatory for the applicant to have made a proper application for leave on medical certificate at his own motion by annexing the M.Cs given by the doctor as provided in Rule 19 CCS(Leave) Rules, 1972. The appellate authority also observed that two absentee notices were issued to the applicant at his village address which were received undelivered which proved that the applicant was not present even in his village and thus had kept the department in the dark in regard his whereabouts. The other grounds taken by the applicant were also rejected, noting that the applicant's past service record revealed him to be a habitual absentee, and hence the appellate authority saw no reason to interfere with the disciplinary authority's orders.

5. We have heard Shri N.Safaya for the applicant

and Shri B.S. Oberoi for the respondents.

6. The first ground taken by Shri Safaya is that the disciplinary proceedings were vitiated because the applicant was not under the administrative control of the Principal, Police Training School who passed the impugned order dated 27.6.90 as the disciplinary authority. Rule 14(4) Delhi Police (Punishment & Appeal) Rules, 1980 states that the disciplinary action shall be initiated by the competent authority under whose disciplinary control the police officer concerned is working at the time it is decided to initiate disciplinary action. It is not denied that the applicant was working under the Principal, Police Training School, Jaroda Kalan at the time it was decided to initiate disciplinary action. Hence the Principal was the competent authority to order departmental proceeding against the applicant and this was accordingly done, as per rules. Hence this ground fails.

7. The second ground is that the applicant was denied an opportunity to defend himself and no personal hearing was given to him. Attention in this connection has been invited to Rule 17 (2) Delhi Police (Punishment & Appeal) Rules which lays down that personal hearing whenever asked for shall invariably be given an a record kept of pleadings, made by the accused in such hearing. In so far as the applicant of not being given opportunity to defend himself is concerned, it is clear from the perusal of the Enquiry Officer's report that full opportunity was given to the applicant to cross-examine

the PWs, and defence witnesses produced by him were also examined. Thereafter, he was also given an opportunity to submit a written statement and he did submit such statement. It is, therefore, clear that the applicant was associated at all stages of the enquiry, and his contention that he did not get the opportunity to defend himself, is without basis. A perusal of the disciplinary authority's impugned order makes it clear that a copy of the enquiry was delivered to him on 2.5.90 against his signature, and he was given an opportunity to make submissions/ representations in regard to Enquiry Officer's findings. His reply/representation was due to reach the office within 15 days i.e. by 16.5.90, but nothing was heard from him. Another opportunity was given to make submissions/representations within next 7 days, but nothing was heard from the applicant till the date of the disciplinary authority's impugned order i.e. 27.6.90. No doubt, the applicant did make a prayer in his appeal petition for personal hearing by the appellate authority, but Rule 25Delhi Police (Punishment & Appeal) Rules, relating to the manner in which the appellate order is passed, does not make it mandatory for a personal hearing to be given at the appellate stage. Shri Safaya has relied upon the rulings in Ram Chander Vs. UOI -ATR 1986 (2) 251 and D.K.Yadav Vs. JNA Industries Ltd.-J.T. 1993(3) 618 in support of his contention that by not giving the applicant a personal hearing, the principles of natural justice have not been followed which has vitiated the deparmental proceedings, but as stated above where the relevant rules themselves make it mandatory to grant

personal hearing only when specifically asked for, before the disciplinary authority passes order, and whereas in the present case the applicant was given full opportunity to defend himself during the course of the departmental enquiry and did not specifically asked for a personal hearing before the disciplinary authority passed orders, it cannot be said that the deparmental proceedings were vitiated. Hence the rulings in Ram Chander's case (Supra) and D.K.Yadav's case (Supra) do not help the applicant. Furthermore, it must be noted that the rules themselves have nowhere been challenged in the O.A.

8. The next ground taken is that the disciplinary authority has disposed of the Enquiry Officer's report mechnically without due application of mind. Manifestly, this ground is without merit because a plain reading of the impugned order makes it amply clear that he has fully applied his mind before passing the impugned order. Hence this argument fails.

9. The next argument advanced is that the applicant has been subjected to double jeopardy inas much as the applicant has been removed from service, and the period of his unauthorised absences has also been ordered to be treated as period without pay. This argument is also without merit, because it is clear that the punishment is only one , namely removal from service and the order for treating his absence period without pay, is no punishment. As the applicant did not work for the above period, he is not entitled to get wages on the well settled principle 'No Work No Pay'.

10. The next ground taken is that it is arbitrary for the respondents to have included the previous record of the applicant and made it a fresh charge for inflicting the punishment for removal from service. It has been contended that framing of a charge on previous misconduct already dealt with, is violative of Articles 14, 16 and 20(ii) of the Constitution, and in this connection Rule 16(xi) of Delhi Police (Punishment and Appeal) Rules has also been challenged as being violative of Articles 14, 16 and 20(ii) of the Constitution. This rule lays down that ' if it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall for the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules.'

11. The respondents have challenged these averments, and have contended that the previous absence from duty and misdemeanours of the applicant were not considered while taking the decision to punish him again. The particulars of his earlier period of absence were taken into consideration only to find out and conclude that the past corrective efforts did not have any salutory effect on the applicant, and he continued to be indisciplined, incorrigible and unfit for retention in police. It is denied that Rule 16(xi) is ultra virus of Articles 14, 16 & 20 (ii) of the Constitution.

12. The perusal of disciplinary authority's order makes it clear that the applicant was not being penalised for the second time for his past acts of misconduct. Those previous absences/mis-demeanours

were not reopened for punishing him again . Hence the allegation of double jeopardy fails on that score also. The disciplinary authority's impugned order states that in the bacground of Rule 16 (xi) , the applicant's previous absences/defaults were taken into consideration only to determine whether the past correctional devices had any salutory effect on the applicant's habit of absenteeism and committing misconduct or not. It was eventually determined that inspite of past correctional devices the applicant had failed to improve himself and continued to remain indisciplined, and incorrigible rendering him and unfit for retention in police service.

13. In the light of this position, it cannot be said that the action of the respondents in including the applicant's previous record in the charge sheet, in accordance with Rule 16 (xi) was violative of the principles of natural justice, or that Rule 16(xi) itself is ultravirgs of Articles 14, 16 and 20(xi) of the Constitution.

14. The purpose of including a delinquent Officer's previous bad record, in the list of charges which he has to face, is not to punish him again, where he has already been punished for those acts of misconducts, but to determine whether those punishments had a salutory effect upon the applicant or not, and to give him adequate opportunity to defend himself before the disciplinary authority imposes a severe punishment upon him after taking into account the defaulter's past misconducts. In other words, far from it being violative of the principles of natural justice, and ultravirgs of Articles 14, 16 and 20 (ii) of the Constitution.

Rule 16 (xi) provides an effective safeguard to a delinquent officer, that his past bad record will not be taken into consideration for the purpose of awarding a severe punishment, without it being made the basis of a definite charge against him, and on his being given opportunity to defend himself. Furtheremore, this rule is applicable to all members of the Delhi Police who form a separate Class by themselves. Under the circumstances, the inclusion of the applicant's previous misconduct in the list of charge is fully in accordance with Rule 16(xi), which itself is fully inconsonance with the Delhi Police Act and with the provisions of the Constitution . Hence this ground also fails .

15 . The next ground taken is that many of the absences of the applicant from duty relate to absences of insignificant duration, namely of few hours and where the absences are of the longer duration i.e. on a few days, they have been regularised or condoned by grant of leave, and under the circumstances dismissing the applicant after considering all the previous occasions of absences from duty, was arbitrary and unnecessarily harsh, and in this connection Shri Safaya has relied upon the ruling in T.F.Pereira Vs. Administrator of Goa, Daman & Diu & others-1978 AISLJ 614. Shri Safaya has also invited attention to Rule 10 Delhi Police (Punishment & Appeal) Rules relating to maintenance of discipline and he contends that as on the basis of the materials on record, the applicant's complete unfitness for police service is not established, the punishment of removal from service is unnecessarily severe. He has also invited our attention to the ruling in Sukhbir Singh Vs. DCP

New Delhi-1984 (2) SLR 149. Even if the applicant's period of absences of short duration, measuring less than a day are disregarded, the fact is that the applicant was absent. The applicant himself admits that he was absent on three occasions, totalling 43 days. The applicant contends that he was sick and was down with malaria and high fever which relapsed and thus resulted in his absence. He submitted the medical certificates for these periods issued by the CGHS and a fitness certificate after he had recovered. In this connection, a perusal of medical certificate (Annexure-N) which is dated 2.11.89 and which was issued by CGHS indicates that the applicant was suffering from malaria and was advised bed rest for 15 days. Thereafter another medical certificate was issued on 17.11.89 indicating that the applicant was suffering from burning urine and pain in abdomen and was advised bed rest for 15 days. Thus, the period from 2.11.89 to 2.12 .89 does appear to have been covered by medical certificate. Similarly, the medical certificates at Annexure- K & L also issued by the CGHS indicate that for the earlier period i.e. 26.9.89 upto 5.10.89 also, the applicant was suffering from malaria, and was declared fit for duty on 6.10.89. Again on 25.10.89 the applicant was found to be suffering from malaria vide CGHS medical certificate of that date and was advised bed rest for one day. Thus it does appear that the applicant's absences for a total of 43 days were due to illness on account of malaria . Be that as it may, as the respondents are correct when they state that the grant of medical certificate does not itself confer any right upon a Govt.servant to leave. The medical certificate should be forwarded to the competent

authority and his orders must be obtained as a prelude to leave on medical certificate. The defaulter should have applied for leave on medical certificate at his own motion by annexing medical certificate given by the doctor as to the nature and probable duration of his illness as provided under Rule 19 CCS(Leave) Rules and S.O 111. It is true that the Enquiry Officer, while holding that the charge were proved against the applicant, had pointed out that the applicant was not in a position to move from the bed and, therefore, a lenient view is required to be taken. The Disciplinary Authority while accepting the findings of the Enquiry Officer has imposed the extreme punishment of removal from service, after taking into account the applicant's previous bad record of service.

16. The question then arises whether the Tribunal can interfere with the quantum of punishment or not. The applicant has alleged that his misconduct was not so grave as to warrant the severe punishment of removal from service and, therefore, this punishment is unnecessarily harsh. It is, however, well settled through a catena of justments, including UOI Vs. Parmananda- 1989 SC 1185 that if the penalty can lawfully be imposed, and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the competent authority. The adequacy of penalty unless it is malafide, is certainly not a matter for the Tribunal to concern with. Recently in the case of State Bank of India & others Vs. S.K. Endow & another- 1994 (27) ATC 149 , The Hon'ble Supreme Court on the question of the imposition of appropriate punishment has held as follows:-

> Imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the appellate authority to interfere with it

but not to the High Courtor to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It is not an appeal from a decision but a review of the manner in which the decision was made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the authority after according a fair treatment, reaches on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the court."

17. As the departmental enquiry had been conducted in accordance with rules and in consonance with the principles of natural justice where the applicant had been given full opportunity to defend himself, we find no good ground to intefere with the same. This application fails and is dismissed. No costs.

28/3/95

(DR.A.VEDAVALLI)
MEMBER(J)

(S.R.ADIGE)
MEMBER(A)

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