

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

O.A. No.1052 of 1991

(6)

New Delhi, this 27th day of April, 1995

Hon'ble Shri A. V. Haridasan, Vice Chairman(J)

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

Shri Kishan (4883/DAP),
R/o Qtr. No.805, Timarpur,
DELHI.

... Applicant

By Advocate: Shri Shyam Babu

versus

1. Delhi Administration, Delhi
through Chief Secretary,
5, Sham Nath Marg,
DELHI 110.054.
2. The Deputy Commissioner of Police,
5th Bn., D.A.P.,
DELHI.
3. The Additional Commissioner of Police
(Armed Police) Delhi,
Police Headquarters,
I. P. Estate,
NEW DELHI 110 002.

Respondents

By Advocate: Shri Rajender Pandita

ORDER(Oral)

Shri A. V. Haridasan, VC(J)

The applicant, Shri Kishan who was dismissed from service vide order dated 20.2.90 of the Deputy Commissioner of Police, has filed this application under Section 19 of the Administrative Tribunal Act, 1985 when his appeal to the Additional Commissioner of Police was rejected vide order dated 6.7.90 by impugning these orders and praying for a direction to the respondents to reinstate him in service with all consequential benefits.

Contd...2

✓



The brief facts of the case are these. The applicant was proceeded against departmentally in November, 1989 for alleged unauthorised absence from duty for 112 days upto 31.10.89. An enquiry was held in which as many as 5 witnesses in support of the charge and 2 witnesses in defence were examined. The enquiry authority reported a finding of guilt which was accepted by the disciplinary authority and vide impugned order at Annexure 'E', the disciplinary authority imposed on the applicant a penalty of dismissal from service as it was held by him that the misconduct of the applicant was of a grave nature. ^{and that} His previous record of service also justify awarding to him a punishment of dismissal. The applicant submitted an appeal to the Additional Commissioner of Police in which, ^{he} inter-alia, contended that during the period of his absence for which he was proceeded against ~~that~~ he was suffering from Schizophrenia and in support of ^{his} case, he attached along with the memo of appeal a photocopy of a medical certificate. The appellate authority on a consideration of the appeal, found no reason for interference and found no fault of the disciplinary authority in dismissing the applicant from service. The applicant has challenged this order and filed this O.A.

The learned counsel for the applicant tried to assail the impugned orders on various grounds. He

Contd...2

8

argued that in accordance with Rule 8 (a) ^{read with Rule 10} of the Delhi Police (Punishment and Appeal) Rules, 1980 unless the disciplinary authority finds that ~~though~~ the misconduct committed by the delinquent police officer is of a grave misconduct and that he is totally unfit to be retained in police service, a penalty of dismissal from service cannot be granted and that in this case as the disciplinary authority's order does not disclose a finding that the misconduct was of a grave nature or that the applicant was totally unfit to be retained in police force, the impugned order of dismissal from service cannot be sustained. We are not persuaded to agree to this argument. It is stated in the summary of allegations that misconduct of wilful and unauthorised absence from duty on the part of the applicant is a grave misconduct and in the impugned order of the disciplinary authority it has been specifically held that the charge has been proved and that he was of the opinion that the applicant is a person unfit to be retained in service.

We have perused the materials available on record and have considered the case on assessment. Regarding the manner in which the disciplinary proceeding was held, on a perusal of the file relating to the departmental proceedings, we find that there is no infirmity in the proceedings. However, the applicant ^{attempted} through his defence witness had ~~admitted~~ to establish

Contd...4

✓

9

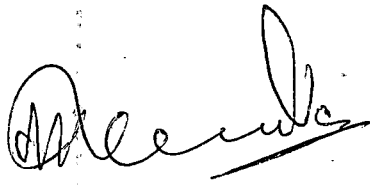
during the enquiry that his absence was owing to his mental depression and that he had resumed duty only at the persuasion of his relatives and one of the witnesses. In his memo of appeal submitted to the Additional Commissioner of ^{Police} ~~Appeal~~ he had contended that during the period in question two successive criminal cases were charged against him when he was highly depressed and became schizophrenic and that for these reasons, he could not report for duty. It was also stated that intimation of his absence was sent by one of his relatives. In support of the case of the applicant that he was suffering from Schizophrenia during the period in question, the applicant had submitted along with the memo of appeal a copy of the medical certificate also. The appellate authority advertng to this plea of the applicant and the medical certificate, has opined that the contention of the applicant that he was suffering from Schizophrenia was no excuse for withdrawal from duty unauthorisedly. If the applicant was really suffering from Schizophrenia or any disease of mind like mental depression, his absenting from duty cannot be considered to be wilful because a man with an unsound mind would not be in a position to take right decision. Therefore, while considering this aspect of the case, we are of the view that the appellate authority should have taken a decision ^{as to} ~~that~~ whether the ^{Care of} applicant ^{that he} was suffering from Schizophrenia during the period in question is true or not. Before arriving at a conclusion on this, the appellate authority should have considered the genuineness of the medical certificate.

10

The learned counsel for the applicant states at the Bar that even in the year 1981 the applicant had an attack of Schizophrenia and that the department itself constituted a medical board for considering whether he was suffering from Schizophrenia or not. The learned counsel for the respondent is not in a position to deny this statement made by the learned counsel for the applicant. Therefore, we are of the ^{ad}considerable ~~able~~ view that the facts and circumstances of the case would justify remittal of the matter to the appellate authority for a fresh disposal of the appeal of the applicant considering this aspect of the case.

In the light of what has been stated in the foregoing paragraphs, we dispose of this application with a direction to the Respondent No.3 to consider the appeal submitted by the applicant (at Annexure 'F') and dispose it afresh after considering the fact whether the applicant was really suffering from Schizophrenia or ~~mental~~ ^{depression} not during the period of his absence after giving him an opportunity of personal hearing. The Respondent No.3 shall, after consideration of the appeal afresh, dispose of the same with a speaking order within a period of three months from the date of receipt of a copy of this order. There will be no order as to costs.


(K. Muthukumar)
Member(A)


(A. V. Haridasan)
Vice Chairman(J)

dbc