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Central Administrative Tribunal, Principal Bench

Original Application No.494 of 2004

New Delhi, this the 12th day of August, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Ex.H.Constable Udman Singh No.160SW
S/o Shri Babu Lal,
R/o Village Saranth, PO Mai
PS Sadabad, District Hatras
U.P.

...Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India,

Through Its Secretary,
Ministry of Home Affairs,
North Block, New Delhi

2. Addl.DCP,
South West District,
Hauz Khas, New Delhi

3. Joint Commissioner of Police
South West District
P.H.Q., M.S.O. Building,
I.P.Estate, New Delhi

....Respondents

(By Advocate: Mrs. Renu George)

O R D E R (ORAL)

Justice V.S. Aggarwal, Chairman

The applicant was a Head Constable in Delhi Police. By virtue of the present application, he seeks to assail the orders passed by Additional Deputy Commissioner of Police dated 30.3.99 and of the appellate authority dated 11.3.2003. The penalty of removal from service has been imposed upon the applicant.

2. The short argument advanced was that extraneous factors pertaining to the previous absence of the applicant has been taken into consideration which was not a part of

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the charge.

3. The petition has been opposed.

4. The charge in the present case reads:

" I, Kailash Chand Insp. I.O.Addl. SHO Inderpuri, Delhi charge you HC Udam Singh No.1601 SW that while posted to PS R.K.Puram New Delhi, you was detained for Special duty on 19.10.96 from 12 Mid night, but you did not report for your duty and thus remained absent, vide D.D. No.4B dt. 19.10.96 PS R.K.Puram. You resumed your duty vide DD No.58B Dt.22.11.96 PS R.K.Puram after yourself for period of 33 days 16 Hrs. Similarly on 3.4.97 you were detained for here from 12 Mid night but did not report for your duty and therefore, absent vide D.D.No.76 B dt. 3.4.97 P.S. R.K.Puram, New Delhi. You resumed your duties vide D.D. No.68 B dt. 30.7.97 P.S. R.K.Puram after absenting your self for a period of 117 days and 19 hrs willfully and unauthorizedly.

The above act on your Part show to cross mistake disregard to your official deter earonessiolly and regards which renders you liable for Deptt action under Delhi Police (Punishment & Appeal Rules) Rules 1980.

Addl./DCP/I

Sd/- Kailash Chand E.O."

5. The disciplinary authority in this regard had taken his previous conduct pertaining to his absences into consideration and the same reads:

"The findings was also served upon him in the same fashion. He did not appear in O.R.despite noting the 'Parwana' for the same. Before initiating the D.E., the absentee notice was also served upon him yet he did not resume duties. His previous service record also indicates that he is a habitual absentee. His Fauzi Missal indicates that previously also, he remained unauthorizedly absent from duty on ten different occasions, for which he was punished also. But, he did not mend his ways

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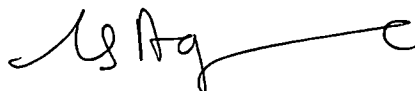
continued to behave in the same manner. Even after the initiation of D.E., he remained absent on the following different occasions:-

1. 65 days w.e.f. 3.8.97 to 6.10.97
2. 41 days w.e.f. 17.2.98 to 29.3.98
3. 20 days w.e.f. 10.4.98 to 29.4.98
4. 31 days w.e.f. 01.5.98 to 31.5.98
5. 101 days w.e.f. 27.9.98 to 7.1.99
6. Still running absent w.e.f. 13.1.1999.


This clearly shows that he is a habitual absentee, having no regard for service rules and regulation. Continuation of such person in disciplined force like police give rise to demoralisation and indiscipline and is also against the public interest. He has clearly proved by his conduct that he is an incorrigible type of person and no amount of warning will serve any purpose."

6.. Sub-rule (xi) to rule 16 of Delhi Police (Punishment and Appeal) Rules, in unambiguous terms provides that if it is considered necessary to award a severe punishment by taking into consideration his previous bad record, it should form part of the charge. This is based on well recognised principle that reasonable opportunity has to be granted. This flows from Article 311 of the Constitution. Once a fact is not in the charge, indeed it cannot be taken into consideration. In the present case, mistake has crept in the order of the disciplinary authority and his previous bad record which was not a part of the charge has been taken into consideration.


7. Resultantly, on this short ground, without expressing ourselves on any other controversy, we quash the impugned orders and direct that the disciplinary authority may pass a fresh order in accordance with law preferably



Within four months of the receipt of the certified copy of
the present order. O.A. is disposed of.


(S.A. Singh)
Member (A)

/dkm/


(V.S. Aggarwal)
Chairman