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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 788/2004

New Delhi, this the 31st day of March, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

Ex. Ct. Ram Kumar, No. 1829/E
PIS No. 28902886
S/o Sh. Suraj Mal
r/o Village Bordha
P.O. Khas, P.S. Chaprauli
Distt. Meerut (U.P.). ... Applicant

(By Advocate: Shri U. Srivastava)

Versus

Govt. of NCDT,

1. The Chief Secretary
Govt. of N.C.T. Delhi
Delhi Secretariat
New Delhi.
2. The Commissioner of Police
Police Head Quarter
New Delhi.
3. The Joint Commissioner of Police
New Delhi Range
New Delhi.
4. The Additional Dy. Commissioner of Police
East District Delhi. ... Respondents

O R D E R (Oral)

Justice V.S. Aggarwal:-

The applicant was a Constable in Delhi Police.

A charge was framed against him which reads:

..... that on 05.05.2k1 he was detailed to perform back gate duty in East Distt. Line from 5 PM to 10 PM but he did not come for duty. Hence he was marked absent vide D.D.No.53 dt. 05.05.2k East Distt. Line since 5 PM and he resumed duty on 05.06.2000 vide D.D.No.24 dt. 05.06.2000 East Distt. Line, after absenting himself unauthorisedly and will fully without intimation to the department for a period of 30 days, 18 hours and 25 minutes and he was in drunken state when produce before Insp. R.P.Tyagi, RI/East on

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05.06.2K by Ct. Lalit Kr. No.689/E, in connection with his absent. When Insp. R.P. Tyagi, the then RI/East asked Ct. No.1829/E as to why he did not take proper leave from the department instead of absented himself from duty, Ct. Ram Kr. No.1829/E replied that "MEIN KABHI BHI CHOTTI NAHIN LETA HUN, MEIN TO ABSENT HEE HOTA HUN".

2. The inquiry officer returned the findings that the charge stood proved. On basis of the same, the disciplinary authority dismissed the applicant from service. He preferred an appeal which has also been dismissed.

3. By virtue of the present application, the applicant seeks to assail the abovesaid orders.

4. Learned counsel for the applicant, at the outset, urged that the appellate authority has taken into consideration certain extraneous factors while affirming the order of the dismissal against the applicant and therefore, the said order cannot be sustained. He particularly relied upon the following portion of the order passed by the appellate authority dated 19.6.2003:

"Record also shows that a criminal case was registered against him vide case FIR No.186/92 u/s 379 IPC PS/Mandir Marg, New Delhi and a DE was also ordered/conducted against him in the said case which was held in abeyance vide order No.5079-95/Estt.(ii)/Ist Bn. DAP dated 27.4.95 till the final verdict of the Hon'ble Court in the above said criminal case."

5. Perusal of the above quoted portion, would show that it is only a fact recorded that the

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disciplinary proceedings that were also initiated for some other act have been kept in abeyance. Till date no penalty has been imposed nor the applicant has been held guilty of any such offence. In that view of the matter, it is only a statement of fact which cannot be stated to be influencing the appellate authority.

6. This is for the added reason that the appellate authority subsequently records that the indisciplined conduct on the part of the applicant was serious and grave and therefore, the penalty awarded commensurates with his misconduct. It has further been recorded that the applicant remained absent unauthorisedly and wilfully even while resuming duty and that he had consumed alcohol. It is these facts which had prompted the appellate authority to affirm the order passed by the disciplinary authority. In that view of the matter, the argument so much thought of necessarily has to be rejected.

7. Totality of the facts indicate that disciplinary proceedings had been initiated against the applicant and from 8.1.2001 despite service of summons, he did not take part in the said proceedings. In this process, he cannot make a grievance that he had been proceeded ex-parte. The findings arrived at cannot be stated to be erroneous, perverse or based on 'no evidence'. Therefore, this Tribunal will not interfere.

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8. No other argument has been raised.

9. Resultantly, the O.A. being without merit
must fail and is dismissed in limine.

Upadhyaya

(R.K. Upadhyaya)

Member (A)

V.S. Aggarwal

(V.S. Aggarwal)

Chairman

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