

(44)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 139/92

New Delhi: this the 31st day of ~~August~~, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Virender Kumar,
S/o Sh. Om Prakash Sharma,
R/o Village Ardha P.O. Sarai Ghosi,
Distt. Bulandshahar, (UP) Applicant.

(by Advocate: Shri Shyam Babu)

Versus

1. Commissioner of Police, Delhi.,
Delhi Police Headquarters, MSO
Building,
IP Estate,
New Delhi.
2. Addl. Commissioner of Police,
Southern Range,
New Delhi.,
Delhi Police Headquarters, MSO Bldg.,
I.P. Estate,
New Delhi.
3. Addl. Deputy Commissioner of Police,
South Distt., Hauz Khas,
New Delhi. Respondents.

(By Advocate: Shri Rajinder Pandita).

ORDER

S.R. Adige, VC(A):

In this OA applicant impugns the order dated 13.3.89 (Annexure-C) placing him under suspension; the order dated 4.10.88 (Annexure-A) initiating departmental proceedings against him; the disc. authority's order dated 7.9.90 (Annexure-E) dismissing him from service; the order dated 3.12.90 (Annexure-F) rejecting the appeal; and the order dated 1.4.91 (Annexure-G) rejecting the revision petition. Applicant prays to be deemed to be treated in continuous service with consequential benefits.

2. Applicant was proceeded against departmentally vide order dated 4.10.88 (Annexure-A) on the allegation

75

that he had remained absent from duty on 6 different occasions ranging from 19 hrs. 10 minute to 62 days 20 hrs. and 30 minutes and on the 6th occasion had absented himself from 14.8.88 till date (4.10.88), which showed that he was a habitual absentee and an incorrigible type of constable.

3. Applicant was placed under suspension vide order dated 13.3.89 (Annexure-C).

4. The Enquiry Officer in his findings dated 30.1.90 (page 39-42 of OA) held the charge (Annexure-D) served upon applicant as fully proved.

5. Tentatively agreeing with the Enquiry Officer's findings, a copy of which had already been supplied to applicant, the Disciplinary Authority issued a show cause notice to him on 7.3.90 provisionally proposing to dismiss him from service, besides treating the absence period as leave without pay to which applicant submitted his reply.

6. Applicant submitted his reply, upon consideration of which the disciplinary authority after considering the other materials on record also dismissed applicant from service vide impugned order dated 7.9.90 (Annexure-E). While passing the aforesaid order dated 7.9.90 , the disciplinary authority recorded that he had also examined applicant's past service record which showed that in a short span of 8 years' service , he had been awarded punishment drills on eight occasions and withone major penalty for unauthorised absence from which he appeared to be an incorrigible type and habitual absentee who had shown no improvement.

76

7. Applicant's appeal petition was rejected by order dated 3.12.90 (Annexure-F) and his revision petition was rejected by order dated 1.4.91 (Annexure-G) giving rise to the present OA.

8. This OA was initially heard along with other OAs by a Coordinate Division Bench of the Tribunal, in which one of us (Shri S.R. Adige, VC(A).) was a party. By its order dated 20.3.98 that Bench referred those OAs to a larger Bench for adjudication as to whether, having regard to the provisions of Rules 8 and 10 Delhi Police (Punishment & Appeal) Rules, 1980

(a) Whether the disciplinary authority was required to record a specific finding that the delinquent official was guilty of grave misconduct rendering him unfit for police service before passing the punishment of dismissal or removal from service in terms of Rule 8(a).

(b) Whether Rule 8(a) only laid down a principle and following the judgment of the Supreme Court in Ashok Kumar Singh's case (supra), any unauthorised absence from duty of an official in a disciplined force automatically amounted to grave misconduct rendering him unfit for police service for which a punishment of dismissal or removal from service was justified; and

(c) Generally the above questions read with Rule 10.

9. The Full Bench in its order dated 28.7.99 answered the aforesaid reference as under

(i) The disciplinary authority was not required to record a specific finding that the delinquent official was guilty of grave misconduct

77

rendering him unfit for police service before passing the punishment of dismissal or removal from service in terms of Rule 8 (a) Delhi Police Rules. However, the order was required to indicate that the mandate of this statutory provision was borne in mind by the disciplinary authority while passing the order of dismissal of removal from service.

(ii) Rule 8(a), or the decision of the Supreme Court in Ashok Kumar Singh's case (supra) did not lay down that any unauthorised absence from duty of an official in police force automatically amounted to grave misconduct rendering him unfit for police service, or for that reason, the punishment of dismissal or removal from service was justified. Isolated one or two acts of unauthorised absence from duty for short duration s may not amount to grave misconduct. The misconduct of unauthorised absence was required to be continued misconduct indicating incorrigibility and complete unfitness for police service as provided in Rule 10, or such absence was required to be on several occasions, as held by the Supreme Court in Ashok Kumar Singh's case (supra), for holding unauthorised absence of a delinquent officer to be grave misconduct for purposes of inflicting the punishment of dismissal or removal from service.

(iii) Generally speaking, if the punishment order of dismissal from service does not indicate continued misconduct indicating incorrigibility and complete unfitness for police service on the basis of the past service record of the delinquent officer, the punishment of dismissal or removal from service could be converted into a punishment of reduction in rank for a specified time as provided in Rule 10, except in cases like that of Constables where no reduction in rank

78

is possible, or cases of misconduct based on allegations creating criminal liability involving moral turpitude.

10. In the present case, as also in certain other cases before the Full Bench, although no specific finding was recorded that the delinquent police official was guilty of grave misconduct rendering him unfit for police service, the Bench was satisfied that the mandate of this statutory provision was borne in mind by the disciplinary authority while passing the dismissal order, and accordingly dismissed these OAs by order dated 28.7.99 noting that their unauthorised absence was on several occasions and their continued misconduct indicating incorrigibility and complete unfitness for police service was reflected in the impugned order, and even otherwise, applicants being constables could not be rendered to a lower rank under Rule 10.

11. Thereafter applicant filed RA No.58/2001 stating inter alia that while dismissing the OA, the Full Bench had not discussed the other grounds taken in the OA and praying that the impugned order dated 28.7.99 be set aside and the OA be remanded to a Division Bench for hearing on its merit.

12. Aforesaid RA No.58/2001 was placed before another Full Bench, which by its order dated 23.4.2001 while reiterating an earlier Full Bench order dated 23.3.2000 in RA No.37/2000 S.I.Bhola Ram Meena Vs. Commissioner of Police & Ors. and connected RAs disposed of the RA with a direction to Registry to place the present OA before the appropriate Division Bench for being disposed of on merits and in accordance with law.

79

13. Accordingly this O.A. came up for hearing before us, and we have heard applicant's counsel Shri Shyam Babu and Respondents' counsel Shri Rajinder Pandita.

14. Various grounds have been taken in the O.A. but an important ground which goes to the very root of the matter is that although in the charge (Ann. D) applicant's previous bad record does not find any mention, the Disciplinary Authority in Para 7 of its impugned order dated 7.9.90 has referred to applicant's past service record, wherein during a span of 8 years is said to have been awarded P.Ds on eight occasions and with one major penalty for his unauthorized absence. In this connection Rule 16 (xi) Delhi Police (Punishment & Appeals) Rules specifically 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 form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules. Applicant's previous bad record as referred to in Para 7 of the Disciplinary Authority's order does not find mention in the charge (Ann. D). Under the circumstances we are compelled to hold that there has been non-compliance of Rule 16(xi) Delhi Police (P&A) Rules which is an infirmity sufficiently serious as to warrant judicial interference in this O.A.

15. In this connection we are supported by order dated 22.8.2000 of this very Bench in O.A. No. 1199/94 Shri Jasbir Singh through Mrs. Anita (Legal Representative of the deceased applicant) Vs.

2

(90)

Commissioner of Police & Others, wherein also we had interfered upon finding that the previous bad record of that applicant had been taken into consideration, while imposing the punishment of dismissal from service, although the same did not form the basis of a definite charge. While doing so we had noticed that the Delhi High Court in its order dated April, 2000 in Delhi Administration & Anr. Vs. Ex-Constable Yasin Khan, wherein while upholding the Tribunal's order in that case, had held that it was difficult to say as to what extent Shri Yasin Khan's previous conduct had influenced the disciplinary authority's mind while awarding the penalty of dismissal from service and, therefore, the awarding of penalty, based on previous conduct without forming the subject matter of a specific charge had rightly been disallowed by the Tribunal.

16. As the O.A. is entitled to succeed in this ground we do not consider it necessary to discuss the other grounds taken by applicant's counsel.

17. In the result the O.A. succeeds and is allowed to the extent that the impugned order of the disciplinary authority dated 7.9.90, the appellate authority dated 3.12.90 and the revisional authority's order dated 1.4.91 are quashed and set aside. Following our own order in Jasbir Singh's case, as an order staying, quashing or setting aside the same has ~~not~~^{been} shown to us, we remit this case ~~back~~^{to} back to the disciplinary authority for passing fresh penalty orders, based on the finding of unauthorised absence which forms the basis of the

2

(81)

charge framed against applicant and excluding the previous bad record of applicant, which did not form the subject matter of the charge against applicant. These directions should be implemented within three months from the date of receipt of a copy of this order. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

S. R. Adige
(S. R. Adige)
Vice Chairman (A)

/ug/