

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2298/92

(b)

New Delhi, this the 2nd day of December, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri N. Sahu, Member (A)

Ex. Constable Ishwari Prashad No. 737/P
S/o of Shri Sumer Chand,
R/o Village Khawas Pur,
Post Office: Chola Railway Station,
Distt. Bulland Shahr-3203 (U>P>)

Petitioner

(By Advocate: Shri Shankar Raju)

-Versus-

1. The Additional Commissioner of Police,
(Operation) Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.
2. The Deputy Commissioner of Police,
Indra Gandhi International Airport,
New Delhi.

Respondents

(By Advocate: Shri Vijay Pandita)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J).SP2

The petitioner in this case is challenging the order passed by the Disciplinary Authority on 25.5.1990 by which he was removed from service and also the order passed in appeal dated 10.9.1991.

2. The petitioner was a constable and on 25.10.1991 proceeded on 15 days earned leave and was due back from leave on 12.6.1990 and reported on duty on 26.6.1990 after overstaying the leave for about 17 days. A regular departmental enquiry was conducted and on the basis of the report submitted by Inquiry Officer the Disciplinary Authority dismissed him from service even though it was stated that the petitioner is not being punished for his absence in the past. It was also noticed

that in the past the petitioner was absent on 14 occasions during his service with respondents for 9 years.

(X)

3. Aggrieved by the said order the petitioner filed appeal to the Additional Commissioner of Police and the same was dismissed on 10.9.1991 and the appellate order according to the petitioner is not a speaking order

4. The main two grounds raised by petitioner is that under rules the appellate authority is bound to give an order with reasons and that the order of the Disciplinary authority is not in accordance with the Rule 10 to the extent that the Disciplinary authority has not recorded any finding of complete unfitness for police service. According to rules, when complete unfitness for police service is not established but unfitness for a particular rank is proved the punishment shall normally be reduction in service and in the absence of a finding in the order of the Disciplinary authority regarding complete unfitness, the respondents could not have passed a dismissal order rather could have given him any other punishment including reduction in rank or forfeiture of service, short of removal or dismissal.

5. The learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the matter of Lt. Governor of Delhi & Ors. Vs. Dalip Singh & Ors. By an order dated 12.5.1995, the Hon'ble Supreme Court had dismissed the appeal filed against the order of the CAT in the said case and stated that in such circumstances the only penalty that could be imposed upon the said petitioner was any other penalty other than dismissal or removal from service. Relying upon the said decision, this court had

AN

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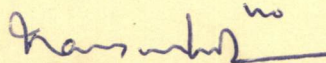
passed a number of orders and a decision of this court dated 6.10.1997 passed in OA No. 3056/92 has been cited before us Para 8 of the said order is reproduced herebelow:


"The other ground taken by the applicant is about the absence of finding of grave misconduct and complete unfitness for Police Service as required under Rule 8 of the Delhi Police Rules (Supra). It is provided in the rules that the punishment of dismissal shall be awarded for act of grave misconduct rendering him unfit for Police service. It is also provided in Rule 10 of the aforesaid Rules that if the previous record of an officer against whom charges have been proved, shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness is not established, the respondents can resort to other penalties like reduction in rank etc. The disciplinary authority concluded that the applicant can never become a good Police Officer and will remain a burden on the force. The fact, however, remains that his complete previous bad record had never been made a specific charge and no opportunity was given to the applicant to defend against that charge. To this extent, we find that the disciplinary proceedings have not been conducted in accordance with the prescribed statutory rule and, therefore, any order passed on the basis of these proceedings cannot be upheld. On similar ground, the Tribunal had already quashed the penalty of dismissal from service in Dalip Singh Vs. U.O.I. & Others - O.A. 802 of 1990 and, more recently, in Bhoop Singh Vs. Commissioner of Police & Others - O.A. No. 78 of 1992."

6. Moreover, the appellate order as well has been passed without assigning any reasons. The appellate authority dismissed the appeal stating "I have gone through the report of inquiry, finding, the appeal and the comments thereon. I do not find any reason to set aside the punishment." We are afraid that the said appellate order is not in accordance with the rule 25.2 of the Delhi Police

(Punishment & Appeal) Rules, 1980. In the circumstances this OA is allowed to the extent stated hereinbelow and the following directions are being issued:

1. Order dated 25.5.1990 and appellate order dated 10.9.1991 are quashed and the respondents are directed to reinstate the applicant within six weeks from the date of receipt of this order.
2. Disciplinary Authority is given liberty to pass fresh order of penalty other than dismissal/removal from service on the basis of the chargesheet in accordance with law.
3. The respondents are also directed to pass appropriate orders regarding the intervening period from the date of dismissal till the date of reinstatement, after they decide the course of action as per (2) above.

no order as to cost.

(N. Sahu)
Member(A)


(Dr. Jose A. Verghese)
Vice Chairman (J)

Mittal