

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2580/92

199

T.A.No.

18

DATE OF DECISION 13-5-99

Kanta Prasad

....Petitioner

Sh.J.P.S. Sirohi

....Advocate for the
Petitioner(s)

VERSUS

Commissioner of Police
Delhi and others.

....Respondent

Sh. Amresh Mathur learned counsel
through proxy counsel Sh.
S.K. Gupta

....Advocate for the
Respondents.

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA 2580/92

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New Delhi this the 13 th day of May, 1999.

Hon'ble Shri S.R. Adige, Vice Chairman (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

In the matter of

Kanta Prasad
S/O Shri Bishan Chand,
R/O 4/60, Bagichi Madho Dass,
near Red Fort, Delhi-110006
Ex-Constable No. 341/DAP, Ist Bn.
DAP, New Police Lines, Kingsway Camp,
Delhi-9.

..Applicant

(By Advocate Shri J.P.S. Sirohi)

Versus

1. Commissioner of Police, Delhi
Police Headquarters, MSO Building,
I.P. Estate, New Delhi-2

2. Addl. Commissioner of Police
(Armed Police),
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.

3. Deputy Commissioner of Police,
Ist Bn. DAP., New Police Lines,
Kingsway Camp, Delhi-9

..Respondents

(By Advocate Sh. S. K. Gupta proxy counsel
for Shri Amresh Mathur)

O R D E R

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant, who was working as Constable is aggrieved by the order passed by the respondents dated 12.12.1990 dismissing him from service as well as the rejection of his appeal by the appellate authority's order dated 3.4.1991. Revision petition filed by him was also rejected by order dated 3.9.1991.

2. The above orders have been passed after holding a departmental proceeding against the applicant under Section 21 of the Delhi Police Act, 1978 on the charges that he had committed gross misconduct and dereliction in the discharge

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of his official duties while posted in first Bn.LAP on "Stand to" duty at Vijay Ghat on the night between 19/20 March, 1990, by being unauthorisedly absent and reporting back on 20.3.90 after being absent for a period of 7 hours and 10 minutes. Another charge that he was under the influence of liquor has not been held proved.

3. One of the main grounds taken by Shri Sirohi, learned counsel for the applicant, was that the punishment of dismissal from service awarded to the applicant on the ground that he had been wilfully absent from duty for a period of 7 hours and 10 minutes is extremely harsh and disproportionate. He had also submitted that the applicant has put in more than 20 years of service when the impugned dismissal order was passed which had not at all taken into account his past service. According to the learned counsel, this was the only incident of lapse on the part of the applicant and the respondents ought not to have imposed the extreme punishment of dismissal. His contention is that the applicant was in the vicinity when he was posted on duty at Vijay Ghat but we note from the averments in the application itself that the applicant has stated that he had unfortunately gone off to sleep during this period and reported back to duty only the next date i.e. 20.3.1990 in the morning.

4. Another submission was that he had been appointed by the DIG of Police and in the circumstances the impugned dismissal order having been passed by an authority which is lower in rank is liable to be quashed on this ground. However, during the hearing Shri Sirohi, learned counsel, did not press this point as he was not able to produce the appointment letter.

5. We have seen the reply filed by the respondents and heard Shri S.K.Gupta, learned proxy counsel. He has submitted

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that although the unauthorised absence of the applicant for a period of 7 hours and 10 minutes might not be so serious, the fact remains that the applicant was absent from duty along with the duty rifle and twenty rounds of ammunition on the night of 19/20th March, 1990 which could have led to serious consequences. He has, therefore, submitted that these facts must be taken together. He, however, frankly conceded that in case the Tribunal came to the conclusion that the punishment order is too severe and not commensurate with the misconduct, the case may be remanded to the appellate authority to pass a less severe punishment.

6. The impugned ^{punishment} order was passed on 12.2.90 and the date of enlistment of the applicant is 7.6.1971. At the time when the dismissal order was passed, the applicant had put in 19 years of service. It is not possible to say whether the contention of the learned counsel for the applicant that this was the only misconduct against the applicant is correct or not which is for the respondents to verify. The applicant has himself stated in the OA that although he did not intend to sleep but having gone to the tent of the other Company who were on duty in the same area, he had unintentionally fallen asleep and woken up on the next date at 7AM which explains his absence from duty for the period of 7 hours and 10 minutes. No doubt the gravity of the situation is increased because the applicant had absented himself from his place of duty with the service rifle and ammunition and it cannot, therefore, be equated with the absence from duty simpliciter. However, it is not the case of the respondents that during the period of 7 hours and 10 minutes absence of the applicant from his place of duty, he was involved in any other offence as he ^{himself} states that he went off to sleep in another tent of a Company in the same area.


JS


7. The O.A. succeeds and is allowed as under :

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Taking into account the totality of facts and circumstances of the case, we are of the view that this is a case where the punishment order of dismissal from service for applicant's unauthorised absence from duty for 7 hours and 10 minutes is disproportionately severe. Accordingly, following the judgement of the Supreme Court in B.C.Chaturvedi Vs. UOI (JT 1995(8) (SC) 65, we consider it proper to quash the revision order dated 3.9.1991 and appellate authority's order dated 3.4.1991 and remit the case to the appellate authority to reconsider the case and pass an appropriate order of punishment, other than dismissal or removal from service. He shall also take into account the past service record of the applicant while passing the punishment order and give him a hearing. This shall be done within three months from the date of receipt of a copy of this order.

No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)


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

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