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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.**

O.A./~~XXX~~ No. 3056 of 1992

Decided on: 6/20/92

Shri Ganesh Bahadur

....Applicant(s)

(By Shri Shanker Raju

Advocate)

Versus

Deputy Commissioner of Police &Respondent(s)
Another

(By Shri D. Mukherjee, proxy counsel Advocate)
for Shri Anoop Bagai

CORAM:

THE HON'BLE SHRI DR. JOSE P. VERGHESE, VICE CHAIRMAN

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *yes*
2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 3056 of 1992

New Delhi this the 6th day of October, 1997

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Ex. Constable GAnesh Bahadur
S/o Shri Budh Singh,
R/o Quarter No. 164, Type-I,
P.T.S. Malviya Nagar,
New Delhi.

...Applicant

By Advocate Shri Shanker Raju.

Versus

1. Deputy Commissioner of Police,
7th Bn. DAP, PTS Malviya Nagar,
New Delhi.
2. The Deputy Commissioner of Police
(Headquarters III)
Police Headquarters,
M.S.O. Building,
I.P. Estate, ... Respondents

Shri D. Mukherjee, proxy counsel for Shri Anoop
Bagai, Counsel for the respondents.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant, a Constable in Delhi Police prays for quashing of the order of dismissal from service which was imposed on him after departmental enquiry. The summary of allegations annexed in the application shows that the applicant was proceeded with departmentally on the ground that he unauthorisedly absented himself for 14 hours and 40 minutes on 25.7.1990 and was marked absent and subsequently again absented unauthorisedly on 3.8.90 and thereafter for a period of 29 days 9 hours and 15 minutes from 31.8.90. It was also shown in the summary of allegations that the applicant was absent from duty wilfully and



unauthorisedly on the aforesaid days. It was also alleged that he absented himself from duty on previous occasions and his past record showed that he was a habitual absentee. The applicant preferred an appeal but till the date of filing of the application, the appeal was not decided by the appellate authority. The case, having been admitted ex-parte, came up for hearing in its turn.

2. The main grounds taken by the applicant are as follows:-

(i) The departmental proceedings were initiated and the impugned order of punishment was imposed on him by an incompetent authority. It is stated that the applicant was appointed by a Deputy Inspector General of Police under the Punjab Police Rules, 1934 whereas the impugned punishment order was passed by the Deputy Commissioner of Police of the rank of Superintendent of Police, who is a lower authority.

(ii) The disciplinary authority had not considered the medical certificate produced by him and he was not subjected to any second medical examination.

(iii) The alleged previous bad record of the applicant was not made a specific charge and the Enquiry Officer and the disciplinary authority had not adopted proper procedure and the applicant was also not given opportunity to defend the allegation against his bad record.



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(iv) The enquiry was held ex-parte as the applicant was at that time absent on medical grounds and his explanation had not been taken into consideration by the Enquiry Officer. The Enquiry Officer had not recorded reasons for his finding on any Article of Charge.

(v) The dismissal is in violation of Rule 8(a) and Rule 10 of the Delhi Police (Punishment & Appeal) Rules, 1968, as there is no finding regarding his complete unfitness for service in Delhi Police. His absence for 29 days was due to sickness and in regard to the other days, he was very much present in his Head quarters and attended the roll calls but he was marked absent due to the negligence on the part of another Constable Ranbir Singh, who failed to communicate the applicant about his duty hours.

3. The respondents have raised the preliminary objection about the maintainability of the application on the ground that the appeal had not been decided and the application is, therefore, premature in view of Section 20 of the Administrative Tribunal's Act, 1985. The respondents assert that the applicant was proceeded with under the rules and the enquiry was also conducted in accordance with the rules and procedure laid down in this behalf under the Delhi Police (Punishment & Appeal) Rules, 1980. The Enquiry Officer after cross examining

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the witnesses framed the charge duly approved by the disciplinary authority and the applicant had been given in writing on 4.9.91. that he would submit the list of defence witnesses within 3 days and prefer his defence statement within 10 days but neither he had submitted the defence witness or nor had filed defence statement till February, 1992. In view of this, the Enquiry Officer submitted his findings after appraising the evidence on record and holding the applicant guilty of the charge. The respondents further assert that the applicant remained absent on 14 different occasions wilfully and unauthorisedly for considerable long periods and had absented himself on 49 different occasions previously. In the light of this, the Enquiry Officer had held him guilty of the charges and the disciplinary authority had rightly imposed the punishment of dismissal from service and, therefore, the order passed was quite legal and justified.

4. The learned counsel for the applicant relied on a decided case in O.A. 78 of 1992 to contend that there is no clear finding of complete unfitness of the applicant in service in Delhi Police on which ground alone, the extreme penalty of dismissal would be imposed on the applicant in terms of Rule 8 of the Delhi Police (Punishment & Appeal) Rules, 1980. Thus, there was clear violation of the aforesaid rules. He also raised the question that the proceedings were bad *ab initio* inasmuch as the punishment was imposed by an incompetent authority.

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5. We have heard the learned counsel for the parties and have perused the record.

6. It is first necessary to dispose of the question of non-maintainability of the application raised by the respondents. The applicant filed an appeal against the impugned order of punishment on 23.9.92 and the applicant filed this application on 23.11.1992. Since the application was admitted by the Tribunal on 25.11.1992, the appellate authority could not have possibly proceeded to make any further order as after admission, every proceeding in relation to the subject matter of the application pending immediately before such admission, shall abate unless otherwise directed in terms of the Rule 19(4) of the Central Administrative Tribunal (Procedure) Rules, 1987. We then turn to the main ground taken in this application regarding the illegality of the order passed by the respondents on the grounds of incompetence of the authority which passed the order. In reply, the applicant has submitted that he had been appointed by the Deputy Inspector General of Police in 1974 under the Punjab Police Rules, 1934. This fact has been admitted by the respondents in reply to para 4.1 of the application. Although the respondents in the later part of the reply assert that the Deputy Commissioner of Police was competent to dismiss an employee from service under the Delhi Police (Punishment & Appeal) Rules,



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as framed by the respondents did not specifically include the previous absence on 49 different occasions as a specific charge, as required under Rule 16(xi) of the Delhi Police (Punishment & Appeal) Rules, 1980. On this ground also, the proceedings can be said to have been vitiated.

8. 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

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1980, we find that this assertion is not supported by any statutory notification insofar as it relates to the case of the applicant. The Tribunal had occasions to examine this question in the case of Shri Bhim Singh and Another vs. U.O.I. & Others - O.A. 1707 of 1987 where the applicants in that case were appointed in 1957 and 1974 respectively by the DIG of Police. After going through the various notifications issued by the Delhi Administration from time to time, it was held that only by Notification dated 5/6-5-1976, the District Superintendent of Police which included Superintendent of Police, the Commandant and the Additional Superintendent of Police were notified as officers to exercise all the powers of District Superintendent of Police. Thus, it would appear that the applicant who is stated to have been appointed by the Deputy Inspector of Police which fact has been admitted by the respondents, cannot be proceeded with and punished by an authority lower in rank. We, therefore, have to uphold this ground taken by the applicant.

7. Regarding the other ground that the respondents have not included the past conduct as the basis of the charge, we find that while this formed part of the summary of allegations, on our perusal of the departmental proceedings file, we find that the charge

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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.

9. In the light of the above discussion, we dispose of the O.A. with the following directions:-

(i) The impugned order is quashed. The respondents are directed to reinstate the applicant within 2 months from the date of receipt of a copy of this order.

(ii) The disciplinary authority, shall within this period, pass a fresh order of penalty other than dismissal/removal from service on the basis of the charge that has been proved, in accordance with law.

(iii) The respondents are also directed to pass appropriate orders regarding the intervening period from the date of dismissal to the date of reinstatement in

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accordance with law.

No costs.


(K. MUTHUKUMAR)
MEMBER (A)


(DR. JOSE P. VERGHESE)
VICE CHAIRMAN

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