

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

HON. DR. A. VEDAVALLI, MEMBER (J)  
HON. SHRI R.K. AHOOJA, MEMBER (A)

(19)

O.A. NO.51/1992

NEW DELHI, THIS 29 DAY OF AUGUST 1997.

DALBIR SINGH  
S/o Shri jagdev Kumar Mann  
R/o Vill. & PO mehmood Pur  
P.S. Gohana  
District Sonapat  
Haryana

Ex. Const. No.2431/DAP III Bn.DAP  
New Police Lines  
Kingsway Camp  
Delhi.

...APPLICANT.

(By Advocate - Shri Shankar Raju)

VERSUS

1. Commissioner of Police  
Police headquarters, MSO Building  
IP Estate, new Delhi.

2. The Additional Commissioner of Police  
(Armed Police) Police Headquarters  
MSO Building, IP Estate  
New Delhi.

3. The Deputy Commissioner of Police  
III Bn. DAP, New Police Lines  
Kingsway Camp, Delhi.

4. Inspector Jai Pal Singh  
Enquiry Officer  
III Bn. DAP, New Police Line  
Kingswy Camp  
Delhi

(By Advocate - Shri D. Mukerjee, ..RESPONDENTS  
proxy counsel for Shri Anoop Bagai)

ORDER

R.K. AHOOJA, MEMBER (A)

A Departmental Enquiry (DE for short) was ordered under Section 21 of the Delhi Police Act 1978 against the applicant, a Constable of III Battallian in the Delhi Armed Police, vide order dated 4.4.1990 on the allegation that an accused child who was under the custody of the applicant

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escaped due to his gross negligence and misconduct. An FIR No.37/1990 under Sections 223/224 IPC was also registered against the applicant. The DE concluded that the charge against the applicant was proved. Thereupon the disciplinary authority issued a show cause notice proposing removal from service. After considering the reply of the applicant, the proposed penalty was confirmed and the applicant was removed from service vide order dated 15.10.1990 (Annexure A-1). The appeal filed by the applicant was also rejected by the Additional Commissioner of Police vide order dated 18.3.1991 (A-2). It is against these orders that the applicant has now approached the Tribunal. The main grounds on which the impugned orders are challenged are discussed below.

2. The applicant submits that the respondents have misconstrued the provisions of the Juvenile Justice Act 1986 (hereinafter referred to as Act), in as much as the juvenile who escaped from his custody was not an "accused". The child named Raju was in fact taken into charge by the personnel of Police Station Delhi Main under Section 13 of the Act as a neglected juvenile. He was thereafter produced before the Juvenile Board for taking appropriate action for his restoration etc. However, as the child was suffering from some infectious disease, he was admitted in the infectious diseases hospital, Mukerjee Nagar, from where he slipped away. Wrongly assuming that the child was an accused, a criminal case was wrongly filed at P.S. Mukerjee Nagar. The enquiry officer in the D.E. had not examined the witnesses concerned with the taking into charge of the child from the Railway Station and his production before the Juvenile Justice Board which remanded him to the Children Home. The applicant and another Constable had been given charge of two children admitted to the Infectious Diseases

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Hospital. The children were occupying adjoining beds when the applicant heard a lady crying for help because of an injury to her child. The applicant thereafter asking the other Constable to look after both the children went to help the lady. In the mean time, the children escaped. The D.E. being of a sketchy nature, all these facts were not brought out resulting in the unjustified impugned orders.

3. The respondents in reply state that the child Raju escaped from the lawful custody due to the gross negligence and misconduct of the applicant. This fact was proved by the D.E. and since the applicant had failed to discharge his official duty and the child escaped due to the fact that the applicant left his place of duty, the disciplinary authority passed the order of removal from service.

4. We have heard the counsel on both sides. Shri Shankar Raju, ld. counsel for the applicant, argued that the child Raju was not accused in the meaning of Sections 223/224 IPC. At the time the impugned order of removal was passed, the criminal case was still pending. However, it has since been decided on 28.3.1992, resulting in the acquittal of the applicant. He produced a copy of the order of the Metropolitan Magistrate and pointed out that the criminal court had held that the prosecution had not been in a position to show as to how the custody of the escaped person was entrusted to the applicant as lawful custody or that the escaped person was charged with an offence or was a convict. It was also held that the domain of a child who is a neglected person is that of a parent. The ld. counsel argued that the criminal case having failed considering the grounds on which the decision of the criminal court had been reached, it could <sup>in</sup> no way be said that the applicant was

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guilty of grave misconduct justifying dismissal or removal from service. In this context, he relied on the judgement of a coordinate Bench of this Tribunal in O.A. No.76/1992 (BHOOP SINGH VS. COMMISSIONER OF POLICE & ORS.). In that case, relying on the decision of this Tribunal in O.A. No.802/1990 and subsequently the SLP No.(Civil) No.12208/95 (2265) which was dismissed by order dated 12.5.95, it was held that unless the provisions of Rule 8 and 10 of the Delhi Police (Punishment & Appeal) Rules 1980 are set aside and the disciplinary authority has recorded a finding that the charge against the person is one of grave misconduct "rendering him completely unfit" for police service, it is not enough and the penalty of dismissal/removal from service cannot be sustained. Shri Shankar Raju submitted that since the escaped child was not an accused and the offence did not fall under Section 223/224 IPC, any laxity on the part of the applicant could not be considered grave misconduct in terms of Rule 8 and since there was no history of any past misconduct on the part of the applicant, he could also not be considered unfit for police service under Rule 10 on the basis of his previous record. He also submitted that Rule 29 of the aforesaid rules also requires that if a person escapes from police custody, the concerned police officer immediately responsible shall forthwith be suspended from duty and a searching preliminary enquiry shall at once be held, the object of which shall be the elucidation of all circumstances connected with the escape and the determination of the issue whether the escape could have been prevented by the exercise of such vigilance and courage on the part of the police officer immediately responsible as might reasonably have been expected. In the present case, Shri Shankar Raju pointed out, no enquiry, to speak nothing of a searching enquiry, had been conducted before an FIR was lodged and the impugned disciplinary proceedings were initiated.

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5. Having carefully considered the above arguments and pleadings on record, we are unable to agree with the ld. counsel for the applicant. It is true that the criminal case filed against the applicant has been dismissed by the criminal court on the ground that the prosecution was not able to establish that the escaped child was an accused in the meaning of Section 223/224 of IPC. The question as to whether a criminal case against the applicant was justified is entirely different from the question of disciplinary proceedings on the basis of same facts and circumstances. The essential fact so far as the disciplinary proceedings are concerned is that the applicant was entrusted with the custody of the child and that the applicant was unable to discharge his duty regarding the custody of the child since he left his place of duty. It is immaterial in our view as to what was the status of the escaped child, i.e., whether he was an accused in the meaning of IPC. The child had been picked up by the Railway Police and daily diary entry was made. He was produced before the Board under the Juvenile Act, which remanded him to the Children Home. It was the duty of the police to ensure that the orders of the Board were implemented and the child was taken to the Children Home, and if he was to be taken to the hospital, to ensure that he did not escape. The essential point at issue is not the rights and status of the escapee but the duties assigned to the applicant and whether such duty was faithfully discharged or there was negligence amounting to grave misconduct on his part which resulted in the escape of the child assigned to his care. In a disciplined force, if a duty is assigned, to take charge of a person, the applicant is bound to carry out the order which a court or a board or a superior authority lawfully authorised to issue such instructions may have given. The essential thing in our view

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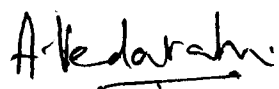
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is whether the applicant carried out the duty assigned to him. The gravity of the dereliction of duty is not reduced by the fact that the escapee was not an accused in terms of the IPC. The enquiry clearly established that the charge of the escaped child was with the applicant at the time the escape took place. The applicant was incharge of the child but he was not at his place of duty. We are also not persuaded by the argument of Shri Shankar Raju that since in the summary of allegations, the child has been referred to as "accused", the charges were unfounded since the child was not an accused and that hence the enquiry was ab initio invalid. Accused or not, the escaped child was in the charge of the applicant and he was to ensure that the orders of the competent authority to keep the child in the hospital and to take him to the Children Home were complied with. In this duty, the applicant failed due to his negligence.

6. In the facts and circumstances of the case, we find no justification to intervene in the matter. The O.A. is therefore dismissed. No costs.

  
(R.K. AHOOJA)

MEMBER (A)

  
(DR. A. VEDAVALLI)

MEMBER (J)

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