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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./XXXX No.78 of 1992

Decided on: 26/7/1996

Shri Bhoop Singh ... Applicant (s)

(By Shri Shanker Raju Advocate)

Versus

Commissioner of Police & Ors. Respondent (s)

(By Shri Amresh Mathur Advocate)

CORAM:

THE HON'BLE ~~XXX~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

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

1. Whether to be referred to the Reporter Yes
or not?

2. Whether to be circulated to the other Benches
of the Tribunal? No


(K. MUTHUKUMAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

U.A. NO.78/92

(8)

New Delhi, this the 26th day of July, 1996

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

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

Bhup Singh
s/o Shri(late) Datta Ram
r/o Village & P.O. Kanwali,
District Riwari,
Haryana.

... Applicant

By Advocate: Shri Shanker Raju

Vs.

1. Commissioner of Police Delhi,
Delhi Police Headquarters
M.S.O. Building, I.P. Estate,
New Delhi.

2. Additional Commissioner of Police
(Operations) Delhi,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.

3. Deputy Commissioner of Police,
I.G.I. Airport, New Delhi.

... Respondents

By Advocate: Shri Amresh Rathur

ORDER

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

This application has been filed by the applicant
against the order dated 14.1.91 passed by the respondent
No.3 removing him from service and the order dated 15.5.91
passed by the Appellate Authority i.e. respondent No.2
rejecting his appeal.

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2. The brief facts of the case are that the applicant was appointed in Delhi Police as Constable on 17.1.73. On 13.8.90 he was issued a chargesheet (Annexure A- 2). The charges related to his absence without leave for various periods as detailed therein. In the chargesheet it was mentioned that -

"your past record also revealed that you are a habitual absentee as you have absented yourself for 21 times in the past, for which you had been punished. You obviously had no effect on you and continued to be indisciplined negligent and absented wilfully and unauthorisedly and thus violated the rules and instructions regarding leave and S.O. No.111 of Delhi Police."

It was further mentioned that -

on
"the above act /your part constitute to gross misconduct, negligence and irresponsible behaviour which renders you liable for departmental action punishable under section 21 of the Delhi Police Act, 1978."

After holding the departmental enquiry, the impugned order of removing the applicant from service had been passed on 14.1.91.

3. Shri Shanker Raju, learned counsel for the applicant has submitted that the order of dismissal passed against the applicant is not in accordance with the Delhi Police Act, 1978 read with Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as the Act and Rules). The learned counsel submits that under Rule 8 of the Rules,

the punishment of dismissal or removal from service can be given to an official for the ~~act~~ of "grave misconduct" rendering him unfit for Police service. He has referred to the impugned order and submits that no such finding has been given by the competent authority. What has been recorded in the order is as follows -

"Such indisciplined conduct besides bad in itself is also a bad example to others and could not be tolerated in a disciplined force. Keeping in view the above discussion, an indisciplined person like the defaulter is unfit to be retained in Police department. Therefore, constable Bhoop Singh, No. 527/P is awarded the penalty of removal from service with effect from the date of issue of this order."

4. The learned counsel also refers ^{to} Rule 10 of the Rules and submits that unless the competent authority has applied his mind and recorded that the applicant's continued misconduct indicates incorrigibility and "complete unfitness" for police service, a person should not be dismissed / removed from service. In this case, he submits that the second part of Rule 10 is also not applicable because there has been no finding by the competent authority that the applicant is completely unfit for police service or unfit for a particular rank so as to award him punishment of reduction in rank. The learned counsel submits that in the absence of a specific finding by the competent authority that the applicant is

(11)

guilty of "grave misconduct" and because of his continued
which "misconduct" indicates incorrigibility and complete unfitness
for police service", no such order of removal from
service can be passed against the applicant, as it is
contrary to Rules 8 and 10 of the Rules. He relies on
the judgement of this Tribunal in Dalip Singh Vs.
UOI & ors. (O.A. No.802/90) decided on 23.9.94 by the
Principal Bench. The S.L.P. filed by the respondents against
that decision to the Supreme Court (SLP Civil No.12208/95
(2465)) was dismissed by order dated 12.5.95. (Both
these orders are placed on record). The learned counsel
submits that following the judgement of the Supreme
Court and having regard to the provisions of Rules 8 and
10 of the Rules, the impugned order should be set aside
and the applicant should be reinstated in service.

5. We have seen the reply filed by the respondents
and also heard Shri Amresh Mathur, learned counsel.
With regard to the arguments of the learned counsel for
the applicant, Shri Amresh Mathur has submitted that in
the summary of allegations (Annexure A-1), it has been
stated that the above act amounts to "grave misconduct" and
order is,
the impugned/therefore, in accordance with the rules. He
has submitted that from the portion of the impugned order
of removal from service reproduced in para 3rd above, it is clear

that the competent authority had applied his mind and come to the conclusion that the applicant is an indisciplined person who is unfit to be retained in the police department which is a disciplined force. Therefore, Shri A. Methur, learned counsel, submits that reading these words together, it shows that the disciplinary authority has come to the conclusion that the applicant is guilty of "grave misconduct" and "completely unfit" for being retained in the police force which should be taken as sufficient compliance with the requirements of the provisions of Rules 8 and 10.

6. We have carefully considered the arguments of both the learned counsel for the parties and perused the record.

7. The main ground taken by Shri Shankar Raju, learned counsel for the applicant is in respect of the penalty imposed on the applicant. He submits that the extreme penalty of removal from service which has been imposed on him has been done in violation of Rules 8 and 10 of the Rules. His contention is that under Rule 8(a), the punishment of dismissal or removal from service can be awarded only for the act of "grave misconduct" rendering the applicant unfit for police service. Further, under Rule 10 where the previous records of the officer have been taken into account, the disciplinary authority must come to the conclusion regarding his complete unfitness

for police service. These rules have been made under the provisions of the Delhi Police Act, 1978. Section 21 of the Act empowers the competent authority to impose the punishments mentioned therein, including -

(a) dismissal and

(b) removal from service

subject to the provisions of Article 311 of the Constitution.

Therefore, and the rules. L the provisions of Rules 8 and 10 made under the Act will be relevant.

8. Rule 8(a) provides that the punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service.

In the present case, we find that the disciplinary authority in the impugned order has nowhere concluded that he is guilty of grave misconduct although he has mentioned that he is an indisciplined person/could not be tolerated in a disciplined force and unfit to be retained in the police department. In other words, the disciplinary authority has not given a finding that the charge proved against the defaulter is one of "grave misconduct rendering him unfit for police service" as required under Rule 8(a).

9. In this case, the chargesheet included reference to the previous bad record of the applicant as part of the charge, in accordance with Rule 16(xi) of the Rules. Rule

(14)

10 of the Rules provides as follows :-

"The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the complete unfitness awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank."

(emphasis added)

From the above, it is evident that the disciplinary authority can look into the previous record of an officer against whom charges have been proved and if it shows continued misconduct indicating incorrigibility and complete unfitness for police service then he can award the penalty of dismissal from service. When complete unfitness for police service is not established then normally the punishment to be awarded will only be reduction in rank.

In the impugned order the disciplinary authority has not recorded that the defaulter is completely unfit to be retained in police service and hence this rule read with rule 8(a) has also not been complied with. The Tribunal in Dalip Singh Vs. Lt. Governor and ors. (O.A. No. 802/90) had quashed the penalty of dismissal from service in a similar situation where Rules 8(a) and 10 had not been complied with. In the SLP filed by the respondents against the decision of the Tribunal, the Hon'ble Supreme Court by order dated 12.5.95, while confirming the decision of the Tribunal, has held as follows :-

" Delay condoned. (15)

In the light of Rule 10 which says, "when complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank" and in the absence of a finding in the order of disciplinary authority regarding complete unfitness of the respondent for the services, we cannot say that the Tribunal's order is wrong. It is obvious that Rule 10 **constricts** the discretion which a disciplinary authority otherwise possesses. Learned Addl. Solicitor General requested that the **restriction** placed by the Tribunal that while passing fresh order with respect to penalty viz. that only a penalty other than dismissal or removal should be awarded, is not justified in the circumstances of the case. We are also not satisfied on this score, because we cannot permit the disciplinary authority to fill lacune by recording a finding to that effect. In the circumstances, we are not able to say that the order of the Tribunal is wrong. The Special Leave Petition is accordingly dismissed."

10. In this connection, we may refer to two other decisions of the Full Bench of the Tribunal in Shagirath Singh Vs. Delhi Administration and ors. (CAT(PB) 0.A.2372/90 decided on 4.8.93) and Hari Ram Vs. Delhi Administration & Ors. (CAT(PB) 0.A.No.1344/90 decided on 4.8.93, reported in Full Bench Judgements (1991-1994) Bahri Brothers, Vol.III Pages 235 - 240), have dealt with the provisions of Rule 3(e) and Rule 10 of the Rules. In Shagirath Singh's case, the learned counsel for the applicant had urged that unless the disciplinary authority applies its mind to the statutory

requirements under the rules and records a finding that the petitioner has committed a grave misconduct rendering him unfit for police service, it would not be justified in passing an order awarding punishment of dismissal from service. The Full Bench of the Tribunal held, [¶] after purusing the show cause notice wherein it was mentioned that the previous conduct of the petitioner of being absent from duty for nearly 11 occasions constitutes gross misconduct and negligence rendering him unbecoming of a Govt. servant in violation of Rule 3(i)(iii) of the CCS(Conduct) Rules,1964, made him liable for punishment under section 21 of the Delhi Police Act. The Tribunal held that implicit in the show cause notice is the tentative opinion formed by the disciplinary authority that the conduct of the petitioner which has been held proved justified the inference of gross misconduct and negligence for the punishment of dismissal. [¶] rendering him unbecoming of a Government servant. After considering the cause shown by the petitioner, the disciplinary authority has stated in the impugned order that the petitioner is still running absent and he is a habitual absentee and an incorrigible type of a Police Officer. In the circumstances, it was mentioned that he had no option except to dismiss the petitioner from service after confirming the show cause notice issued to him. In these

circumstances, the Full Bench of the Tribunal came to the conclusion that there is sufficient indication of the mind of the disciplinary authority from what he has recorded that he found the misconduct against the petitioner duly proved rendering him unfit or unworthy to continue in Police service. Further the Full Bench held ^{that is} though the disciplinary authority has not stated in so many words that the misconduct of the petitioner which is duly proved is such as to render him unfit or unworthy to continue in Police service, the nature of the misconduct held proved, sufficiently justifies such an inference.

11. In the other case of Hari Ram(supra), the Full Bench of the Tribunal has held as follows:-

"It was lastly urged by the learned counsel for the petitioner that the disciplinary authority has not applied its mind to the provisions of Rule 8(a) of the Delhi Police(Punishment and Appeal) Rules, 1930 which says that the punishment of dismissal or removal from service shall be awarded only for the act of grave misconduct rendering him unfit for the police service. The impugned order does indicate that the mandate of this statutory provision was borne in mind by the disciplinary authority. We say so for the reason that the disciplinary authority has in categorical terms recorded a finding to the effect that the

petitioner is unworthy and unfit for retention in service. It is further recorded that the petitioner is a habitual absentee and an incorrigible type of constable the punishment of removal from ^{the} service being the most appropriate punishment. Having regard to these findings we have no hesitation in holding that the disciplinary authority was satisfied that the petitioner was guilty of grave misconduct rendering him unworthy and unfit for retention in service. Hence, there is no substance in this case."

12. As can be seen from the decisions of the Full Bench referred to above, these are contrary to the decision of the Supreme Court in Lt. Governor of Delhi & Ors. Vs. Dalip Singh (supra). The Supreme Court by order dated 12.5.95 has confirmed the decision of the Tribunal in O.A.802/90 wherein it has been held that unless the provisions of Rule 8(a) and Rule 10 of the Rules are satisfied and the disciplinary authority has recorded a finding that the charge proved 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. Therefore, the views expressed in the Full Bench contrary to the decision of the Supreme Court have to be considered to be impliedly overruled.

13. Following the judgement of the Supreme Court in ^{since} Dalip Singh's case, the disciplinary authority has failed to comply with the provisions of Rule 8(a) and Rule 10 of the Rules

in respect of the charge framed against the applicant, ^{the} impugned orders dated 14.1.91 and 15.5.91 imposing the penalty of removal from service are quashed and set aside.

13. In the result, the O.A. is disposed of with the following directions -

- i) Respondents are directed to reinstate the applicant within two months from the date of receipt of a copy of this order.
- ii) The disciplinary authority shall within the same period pass a fresh order of penalty other than dismissal/ removal from service. He shall also pass appropriate orders regarding the intervening period from the date of dismissal till the date of reinstatement, in accordance with the law within the same period .

No order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

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