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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1437/93

New Delhi, this 11th day of March, 1999

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

Ex-Constable Sunil Kumar
9/116, Ramesh Nagar .. Applicant
New Delhi

(By Ms. Jaswinder Kaur, Advocate - not present)

versus

1. Commissioner of Police
Police Hqrs., IP Estate, New Delhi
2. Deputy Commissioner of Police
10th Bn, DAP, Delhi
3. Assistant Commissioner of Police
AP/Delhi .. Respondents
IP Estate, New Delhi

(By Shri Amresh Mathur, Advocate)

ORDER(oral)

Hon'ble Shri T.N. Bhat

None for the applicant even today. On the previous date of hearing also ~~no~~ none appeared for the applicant. This OA has been on board since the month of October, 1998 but none has been appearing for the applicant. The last occasion when the counsel for the applicant appeared was on 23.3.94, when the OA was admitted and was directed to be listed for final hearing in its turn.

2. This OA being an old one, having been filed in 1993, we do not consider it appropriate to further adjourn the hearing. We have accordingly heard Shri Amresh Mathur, learned counsel for the respondents and have also

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perused the material placed on record by both the parties. The contents of the pleadings have also been gone through by us.

3. In this OA, the applicant, who was working as Constable in Delhi Police, is aggrieved by the order dated 27.7.92 passed by the Dy. Commissioner of Police, 10th Bn DAP, Delhi, by which punishment of removal from the service has been awarded to the applicant. The other order which is impugned in this OA is the one passed by the Addl. Commissioner of Police on 18.11.92 by which the appeal filed by the applicant was dismissed.

4. A number of grounds have been taken in the OA for challenging the impugned orders. It is, firstly, averred that the impugned order of dismissal is illegal, arbitrary and unjustified. Secondly, that there were mitigating circumstances, as the applicant and his parents were seriously ill. The applicant further contends that the quantum of punishment is excessive. According to the applicant, the impugned orders have been passed without application of mind.

5. Respondents have filed their reply in which it is stated that during his short stay of four years as a Constable, the applicant had absented himself from duty on as many as nine occasions and that too for several days or even months at a stretch. Further, during the pendency of the departmental enquiry also, the applicant is reported to have absented himself and thus his conduct has been considered to be incorrigible.

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6. The applicant has filed rejoinder in which the averments made in the OA have been reiterated.

7. A bare perusal of the impugned order passed by the disciplinary authority would reveal that a detailed enquiry was held under the Delhi Police (Punishment & Appeal) Rules, 1980 and the applicant was afforded reasonable opportunity to defend himself. The inquiry officer submitted his report after completion of the enquiry in which the charge against the applicant was found to be proved. We further find that the evidence upon which the findings of the enquiry officer, as accepted by the disciplinary authority, is based was itself sufficient to hold the applicant guilty of the alleged misconduct of remaining absent from duty unauthorisedly. As already mentioned, it was not on one occasion that the applicant had absented himself. There were several occasions on which the applicant remained absent for more than 30-40 days and at one time the absence was for 50 days at a stretch. We therefore find that it is not a case of no evidence. We also do not find any illegality in the manner in which the enquiry was conducted. The question as to whether the evidence would be sufficient to hold the applicant guilty is not for us to decide. If there was some evidence against the charged official, the disciplinary authority would be competent to give punishment to the applicant on the basis of that evidence.

8. We also do not agree with the contention that the punishment of removal from service was excessive under the circumstances. Furthermore, it is now well-settled

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that the court/Tribunal cannot go into the question as to whether or not the punishment was commensurate with the nature of misconduct.

9. For the foregoing reasons, we find no merit in this OA and the same ^{is} accordingly dismissed, but without any order as to costs.



(S.P. Biswas)
Member (A)



11.11.99
(T.N. Bhat)
Member (J)

/gtv/