

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2635/93

NEW DELHI THIS THE 24TH DAY OF DECEMBER, 1993.

SHRI JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
SHRI B.N.DHOUNDIYAL, MEMBER(A)

Shri Gopi Ram
S/o Shri Nand Bahadur
R/o H-54, P.S.Lodhi Colony,
New Delhi-3. Applicant

BY ADVOCATE SHRI P.T.S.MURTHY.

VS.

1. The Commissioner of Police,
Indraprastha Easte
New Delhi.

2. Addl.Dy.Commissioner of Police,
Indraprastha Estate,
Central District.

Respondents

ORDER

JUSTICE S.K.DHAON:

The applicant, an ex-Cook in the Delhi Police, was subjected to disciplinary proceedings. An inquiry officer was appointed. That officer submitted his findings to the disciplinary authority. The disciplinary authority on 14.5.91 passed the order of punishment dismissing him from service. On 28.10.91, the appellate authority dismissed the appeal of the applicant. On 23.11.1992, the revisional authority rejected the revision application of the applicant. The three orders are being impugned in the present OA.

2. The gravamen of the charge is that the applicant absented himself from duty wilfully and unauthorisedly. He was detailed for mess duty on 26.10.1989 but he did not turn up and absented from duty without any intimation or permission of the competent authority. He was marked absent with effect from 26.10.89. He resumed his duty on 19.11.89 after absenting himself for 23 days, 18 hours and 5 minutes. He proceeded for 15 days' Earned Leave. He was due to be back on 16.2.90 but he did not turn up. He was marked absent

with effect from 16.2.90. He resumed his duty on 3.3.90 after absenting himself for 15 days and 15 minutes. On 3.3.90, he again absented himself from duty without any intimation or permission of the competent authority. He was marked absent with effect from 3.3.90. An absentee notice was sent at his permanent home address directing him to resume his duty at once but he did not comply with the directions. He resumed duty on 5.6.90 after absenting himself for a period of 3 months and 2 days. The excuse he gave was that he could not resume duty on account of illness but he failed to submit any medical certificate in support of his illness.

3. The disciplinary authority has observed that from the perusal of the past service record of the applicant it is evident that he is a habitual absentee and had absented himself on as many as 8 times prior to the aforementioned absences. Award of warning/granting him leave without pay had no effect on him.

4. According to the disciplinary authority, a copy of the inquiry officer's report was sent to the applicant on 11.12.1991 and the same was received by him on 7.3.1991. He was required to submit his explanation on or before 22.3.1991 but he did not do so. Thereafter, two reminders were sent to him to submit his representation but he failed to do so. The applicant was required to appear before the disciplinary authority on four occasions but he did not turn up. The disciplinary authority has also recorded a finding that during the entire absence

of the applicant he did not prefer any application for leave or intimated the department about his whereabouts. His past record shows that he is a habitual absentee. He appears to be prone to absentism and has not improved himself despite giving warnings/reprimands in the past.

5. The appellate authority observed that the applicant sought to challenge the order of punishment on the ground that his medical certificate on two out of three occasions was lost and on one occasion he had produced medical certificate from a private medical practitioner. It is noted that in the present departmental enquiry which covered a period of nearly 138 days in three spells, the applicant remained absent without any ground.

6. The revisional authority recorded a finding that the medical certificate submitted by the applicant for his absence from 12.2.90 to 1.3.90 was one given by a medical practitioner of Nepal and the same was a procured one.

6. In the memorandum of revision, a true copy of which has been filed as Annexure-IV to the OA, it is averred that on receipt of summary of allegations, the applicant had pleaded guilty and all the prosecution witnesses were formal pertaining to the D.D. entries of absences. It is also stated that the applicant did not join the departmental enquiry because he had already submitted his explanation regarding absence. The enquiry officer submitted his finding holding the applicant guilty of the charge of which he

served with a memorandum which had been lost and he could not submit his reply to the enquiry officer due to depression and mental agony.

7. In support of this OA, it is contended as follows. None of the letters sent by the department to the applicant was received by him. The medical certificate produced by the applicant had been lost. The enquiry was ex parte. Since it has been found that the applicant joined duty on 3.3.1990, the question of his disappearing did not arise. The applicant being a class-IV employee, the CCS(CCA) Rules were applicable to his case. Therefore, the entire proceedings stand vitiated.

8. In view of the finding of fact recorded by the three authorities below, it will be difficult, if not impossible for us, to re-appreciate the evidence and substitute our own findings. In departmental proceedings, the rule of evidence applicable is preponderance of probabilities. Applying this rule, we have no option but to uphold ~~that~~ the findings of the three authorities below.

9. The last contention does not advance the case of the applicant. Admittedly, a chargememo was given; an inquiry officer was appointed; he was given due opportunity to defend himself in the proceedings and thereafter the orders were passed. We are satisfied ^{that} substantial compliance of the provisions of the CCS(CCA) Rules, even if applicable to the case of the applicant, was done.

10. In any view of the matter, the applicant having accepted his guilt in the memorandum of revision is not entitled to any relief. The OA is dismissed summarily.

11. Since we have considered the OA on merits and dismissed it summarily, we do not consider it necessary to pass any order on MA No.3652/93 wherein the prayer has been made for condonation of delay in filing of the OA. The MA shall be consigned to record.

B.N.Dhundiyal
(B.N.DHUNDIYAL)

MEMBER(A)

S.K.Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)

SNS