

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 41/93

New Delhi, this the 28th day of August, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Mahavir Singh (Constable, Delhi Police)
S/O Shri Umed Singh,
R/O village and P.O. Mitron,
P.S. Najaf Garh,
New Delhi.

(By Advocate: Sh. C.P. Pandey)

.... Applicant

Vs.

1. State (Delhi Administration), through Secretary, Department of Home, Delhi.
 2. Deputy Commissioner of Police, I.G.I. Airport, New Delhi.
 3. Additional Commissioner of Police (Operations), Delhi.
- (By Advocate: Sh. Rajender Pandita)

.... Respondents

ORDER

delivered by Hon'ble Shri T.N. Bhat, Member (J)

The applicant, while working as Constable in Delhi Police, was served with a chargesheet dated 7.5.91 on 26.5.91 with the following allegations:-

That the applicant on 13.11.90 fell ill and the doctor advised him 7 days medical rest but that during the period of medical rest, on the night on 17/18.11.90, the applicant went to the residence of one Major P.S. Bhinder where he shouted and created nuisance upon which he was taken to Police Station, Delhi Cantt. and was arrested by the Police under Sections 92, 93 and 97 of Delhi Police Act: that the applicant did not inform his superior

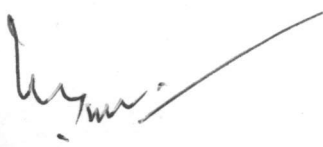
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officers about the aforesaid incident more particularly the fact that the applicant had been arrested by the police; that the applicant again sent an application for medical rest and when he was medically re-examined by the Civil Surgeon on 30.11.90 the Civil Surgeon certified the applicant to be fit to resume duty but even so the applicant waited for another day and eventually joined only on 1.12.90 and he was accordingly marked absent from 30.11.90 to 1.12.90; that on scrutiny of the applicant's past record it was found that he was a habitual absentee as he had absented himself on 12 occasions for which he had been awarded punishments but those punishments had no effect on the applicant who continued to be indisciplined and absented himself wilfully and unauthorisably.

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2. After a full dress enquiry, the enquiry officer submitted his report dated 17.6.91 holding the charge proved "partially". Acting upon the report of the enquiry officer the disciplinary authority, namely, the Dy. Commissioner of Police, I.G.I. Airport, New Delhi awarded the punishment of removal from service upon the applicant and also treated his absence from duty from 13.11.90, 1.12.90 as leave without pay. The period of suspension from 27.12.90 to 11.2.91 was left to be decided later.

3. The applicant filed an appeal against the order of punishment which was dismissed by the appellate authority by its order dated 11.12.91.



4. We notice that while the applicant has specifically assailed the order of his punishment no relief for quashing of appellate order has been prayed for in the OA. However, no objection in this regard seems to have been taken by the respondents in their counter.

5. The impugned order has been assailed on several grounds. It is averred that there was enough medical evidence to justify the absence of the applicant on medical grounds as the applicant was ill and was suffering from "epileptic type" disease for which he had been put in treatment. It is further contended that the charge even if assumed to be established is a minor one which could not justify imposition of the extreme penalty of removal from service. The finding of the Enquiry Officer is further assailed on the ground that the same is based upon conjectures and surmises and that the evidence on record does not prove the charge against the petitioner. Interestingly, it is further averred "that an equally possible view is possible on the facts of the case."

6. The respondents have contested the claim of the applicant by filing the detailed reply in which it is averred that the charge against the applicant was fully proved, and therefore, considering the gravity of the misconduct the applicant was rightly removed from service. In this regard emphasis is laid on the fact that on the scrutiny of the applicant's past record it is revealed that he is a habitual absentee as he had absented himself on as many as 12 occasions for which he was awarded punishments.

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7. We have heard the learned counsel for the parties at some length and have perused the material on record.

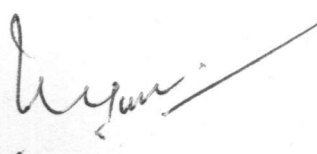
8. On going through the contents of the report submitted by the enquiry officer we find that the findings are based upon the depositions made by several witnesses which included Major P.S.Bhinder at whose residence the applicant is reported to have misbehaved and created nuisance. The only defence furnished by the applicant before the enquiry officer was that he was mentally upset and that his was a case of taking excess medicines prescribed by the doctor. This defence has rightly not been accepted either by the enquiry officer or by the disciplinary authority. We are, therefore, convinced that this is not a case of no evidence and the findings are based upon sufficient evidence.

9. The learned counsel for the applicant, however, takes us through the findings recorded by the enquiry officer wherein the charge has been found to be established only partially. The learned counsel also states that the chargesheet contains as many as 4 different articles though these have not been separately indicated. The first article of charge appears to be that the applicant, while on medical rest, went to the residence of Major P.S.Bhinder and misbehaved there. The second article of charge is that the applicant was arrested by the police on the night of 17/18.11.90. The third article is that the applicant did not inform his superior officers about his arrest and thereby concealed

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this fact. And the last article of charge is that though he was found fit to resume his duty on 30.11.90 he absented himself on that day and resumed duty only on 1.12.90 after absenting himself for one day, two hours and 30 minutes. We notice that the enquiry officer gave a finding that the composite charge containing the aforesaid 4 separate articles of charge had been proved only partially. It is not indicted as to which of the four articles of charge were established. That apart, the enquiry officer seems to be of the view that the applicant is perhaps a drug addict. He has further found support from the deposition of Major P.S.Bhinder, witness that at the time of the alleged incident the applicant was mentally disturbed/unbalanced.

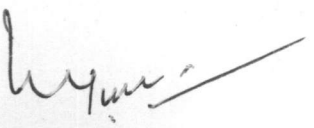
10. It is on these grounds that the learned counsel for the applicant prays that the impugned orders of punishment may be quashed. So far as the prayer for quashing the punishment order is concerned, we do not find ourselves in agreement with the learned counsel for the applicant. However, we do agree that the disciplinary authority has not properly applied his mind to the question of quantum of punishment, as it has been wrongly stated in the order of punishment that the charge has been fully proved against the delinquent constable. The disciplinary authority also does not appear to have considered the fact that the applicant was a proved patient of epilepsy as revealed by Dr. K.L.Sharma, Chief Medical Officer in his deposition before the Enquiry Officer a copy of which deposition has been annexed by the applicant as Annexure "G" to the OA.



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11. It is on the basis of the aforesaid facts that the learned counsel for the applicant rightly argues that this is a fit case where the respondents should be asked to consider the question of quantum of punishment afresh. We find ourselves in agreement with him. We are aware of the fact that ordinarily the Court/Tribunal is not supposed to order reduction in the quantum of punishment awarded or to go into the question as to whether the punishment awarded is commensurate with the alleged misconduct or not. But in our considered view where the disciplinary authority has not properly applied its mind to the question of quantum of punishment directions can be issued for reconsideration of the matter for that purpose. Here is a case where the enquiry officer held the charge only partially proved. But the disciplinary authority without recording any disagreement with the enquiry officer held the charge fully proved and passed the extreme punishment of removal from service. There were also some mitigating circumstances, as pointed out above, which do not seem to have been considered by the disciplinary authority while awarding the punishment.

12. In view of the above, while maintaining the finding that the charge against the applicant was proved, though partially, we remit this matter to the disciplinary authority, namely, the Dy. Commissioner of Police, I.G.I. Airport to reconsider the question of quantum of punishment in the light of the observations made by us hereinabove and to pass a fresh order after considering all the circumstances of the case. A detailed order shall be passed on this question within 2 months from the date of receipt of copy of this order. Depending



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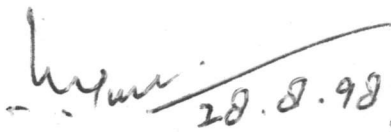
upon the nature of the fresh order so passed by the respondents the applicant shall be granted consequential benefits.

No costs.



(S.P. BISWAS)
Member (A) .

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(T. N. BHAT)
Member (J)