

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

11

O.A./XXX. No. 735 of 1993

Decided on: 21.7.97

Shri Mahipal SinghApplicant(s)

(By Shri Shyam Babu Advocate)

Versus

Commissioner of Police and Ors.....Respondent(s)

(By Shri Arun Bhardwaj Advocate)

CORAM:

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

THE HON'BLE SHRI DR. A. VEDAVALLI, MEMBER (J)

1. Whether to be referred to the Reporter *yes*

2. Whether to be circulated to the other *X*
Benches of the Tribunal?

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO. 735 OF 1993

NEW DELHI THIS THE 24th DAY OF JULY, 1997

(12)

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALI, MEMBER (J)

Shri Mahipal Singh
S/o Shri Khachera Singh
R/o 321, South Gamri 'A' Block,
Bhajanpura,
Shahdara,
Delhi-110 053.

.....Applicant

By Advocate Shri Shyam Babu

Versus

1. Commissioner of Police,
Delhi,
Delhi Police Headquarters,
M.S.O. Building,
2. Additional Commissioner of Police
(Northern Range),
New Delhi,
Delhi Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police
(Central District),
P.S. Daryaganj,
New Delhi. Respondents

By Advocate Shri Arun Bhardwaj

ORDER

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

This application is directed against the order passed by the respondents dismissing the applicant from service as a Constable from Delhi Police following the departmental enquiry and against the appellate order rejecting his appeal. The allegation against the applicant was that he unauthorisedly absented himself from duty from 19.10.1990 to 1.11.1990 without any permission of the competent authority and had absented himself on earlier

W

occasions also on as many as 44 times. It was also alleged that he availed off medical rest without any permission in contravention of the rules. The Enquiry Officer after serving the summary of allegations alongwith the list of witnesses and documents, framed the following charge as applicant did not admit the allegations:-

"I, Inspector Mohan Singh SHO/Kamla Market, Delhi, charge you constable Mahipal Singh No.317/C u/s 21 of Delhi Police Act, 1978 in that while you were posted at PS/Paharganj, Delhi you remained absent for the period from 19.10.90 to 1.11.90 without prior permission of the competent authority.

The above mentioned act on your part constitute your gross misconduct rendering you unbecoming of a Government servant in violation of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964, which makes you liable to be dealt with departmentally u/s 21 of Delhi Police Act, 1978".

2. The Enquiry Officer concluded that the charge against the Constable stood proved beyond any shadow of doubt. He also observed that the applicant was a habitual absentee and absented himself as many as 44 times which had already been decided.

3. The applicant has contested this finding and the impugned orders on the following grounds:-

(i) Department enquiry was initiated without calling for the grounds of the so called absence in accordance with the provisions in this regard and consequently the respondents have violated the departmental

W

VA

uctions which has rendered the entire departmental proceedings and the punishment orders illegal and unconstitutional.

(ii) The applicant never absented himself from duty unauthorisedly or deliberately. He was advised medical rest and the concerned doctor had also been examined in the enquiry and, therefore, it could be said that he absented himself from duty without intimation. He proceeded on leave duly sanctioned by competent authority but had to overstay due to illness for which he had given the necessary medical certificates and he was also advised medical rest.

(iii) His previous punishments were not made as specific items of charge and, therefore, Rule 16(xi) of the Delhi Police(Punishment & Appeal) Rules, 1980 has been violated.

(iv) During the enquiry, the witnesses had not stated anything against the applicant. They only confirmed that the applicant had only proceeded on 5 plus 4 days casual leave which was duly sanctioned by the competent authority and that he resumed duty after a period of 13 days 21 hours and 5 minutes. Even the doctor of the Civil Hospital Shahdara to whom he had gone for treatment had confirmed the same in the evidence and this was ample truth that he had absented himself from duty unintentionally and, therefore, the Enquiry Officer was in error in holding him guilty of the charge, which was not based on any evidence.

W

v) The applicant had already been punished by the respondents treating the period of alleged absence from 19.10.1990 to 30.10.90 as leave without pay and he has also been awarded extreme penalty of dismissal from service and as per the decision in the case of State of Punjab Vs. Chandan Singh, SLJ 1988 Vol.3 page 216, after treating the period of absence as leave without pay, no other punishment could have been awarded.

4. The respondents in their counter-reply have stated that the applicant proceeded on 5 plus 4 days casual leave with effect from 12.10.90 but did not report for duty on 19.10.90 and was marked absent and absentee notice was also sent to him on 1.11.90. He resumed his duty on 1.11.90 after absenting himself for 13 days 21 hours and 5 minutes and he also produced the necessary medical certificate for the period from 20.10.90 to 31.10.90. The applicant was served with a copy of the Enquiry Officer's report but he did not submit any representation against the findings. Taking into account the findings of the Enquiry Officer and the previous record of the applicant, the impugned punishment order was issued and his appeal was also considered by the appellate authority, who found that the punishment of dismissal was justified and accordingly, his appeal was also rejected. The respondents maintain that the applicant had failed to inform the department and did not obtain prior permission of the competent authority to avail medical rest at home as required under Rule 19(5) of the CCS (Leave) Rules and Standing Order No. 111. He was available in Delhi and could have informed the department and have obtained permission. The respondents further maintain that the departmental enquiry was conducted in accordance with the

W

relevant rules and there had been no violation of Rule 16(xi) of the Delhi Police (Punishment and Appeal) Rules, 1980. They also maintain that the applicant submitted his medical rest to cover up his absence period and after taking into account the findings of the Enquiry Officer and other record available in the DE file, the disciplinary authority had passed speaking order which was quite justified under the circumstances. The period of absence was regularised as period not spent on duty as he had not submitted any leave and this did not amount to any punishment and, therefore, there was no question of any double punishment in this case.

5. We have heard the learned counsel for the parties and have also perused the pleadings and we have also looked into the departmental file relating to the departmental enquiry in this case.

6. The learned counsel for the applicant relied on Union of India Vs. Giriraj Sharma, 1994 Supp.(3) SCC 755 to contend that the extreme punishment of dismissal was too harsh in the facts and circumstances of the case and, therefore, deserved to be set aside.

7. The ground taken by the applicant that the respondents should have ascertained the grounds of his absence before initiating departmental action, is not tenable. The applicant was served with a summary of allegations after being duly notified of his absence when he did not turn up for duty after his casual leave. As regards his contention that his previous absence and punishment are not made part of the charge, as required under Rule 16(xi) of the Delhi Police (Punishment & Appeal) Rules, 1980, we find

W

that this had been included in the summary of allegations. From the proceedings of the Enquiry Officer and the summary of allegations, it is clear that the previous bad record of the applicant was taken into consideration. In terms of Rule 16(xi) where it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record should form the basis of a definite charge against him and he shall be given opportunity to defend himself as required under the rules. From the charge, as drawn out by the Enquiry Officer, there is no reference to his previous bad record in the 'charge' as such and, therefore, there is some force in the contention of the applicant that the procedure outlined in Rule 16(xi) has not been followed. Without including his bad record as a part of the specific charge, the Enquiry Officer had merely concluded that the applicant was a habitual absentee and had absented himself on as many as 44 occasions. It was nothing but a reproduction of what was mentioned in the summary of allegations, which did not form part of the charge as such, as required under the rules. The disciplinary authority also had accepted the findings of the Enquiry Officer and had merely observed that the applicant was quite careless and did not like to say anything against the findings of the Enquiry Officer and that his failure to inform the department despite residing in Delhi and not obtaining prior permission to avail of medical rest, showed his intention not to obey the instructions contained in S.O. No.111 and the relevant rules and to remain absent unauthorisedly and wilfully. The disciplinary authority observed that retention of such police

official is a burden on the department and it would be in the larger interest of discipline of the force to weed out such elements.

8. In disciplinary matters, it is necessary for the respondents to follow the principle of natural justice and they have also to follow the procedure outlined in Rule 8 of the Delhi Police (Punishment & Appeal) Rules, 1980 for inflicting penalties. In terms of aforesaid Rule 8 it has been provided that the punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering an employee completely unfit for police service. When his previous habitual absence was not made a specific charge and when he was not given an opportunity to defend himself against this, it cannot be said that the departmental proceedings have been conducted in accordance with the rules and procedure in this behalf. On a perusal of the charge in this case, there is no specific mention about the past conduct of the applicant. We, therefore, cannot ignore the assertion of the learned counsel for the applicant that the provisions of Rule 16(xi) has not been specifically followed in this case. Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 is a statutory rule and it outlines the procedure to be followed in departmental proceedings. As per Rule 16(i), a copy of the summary of misconduct has to be given to the accused officer with the list of prosecution witnesses. If he admits the misconduct as detailed in the summary of allegations, then the Enquiry Officer has to proceed to frame charge. If he does not admit the misconduct,

the Enquiry Officer has to proceed to record evidence in support of it as it is necessarily available to support the charge and where evidence in support of the allegations has been recorded, the Enquiry Officer has to proceed to frame a formal charge and has to explain the same to the accused officer and thereafter, the accused officer has to name the defence witnesses and thereafter, the Enquiry Officer proceeds to record the findings. It is specifically provided in Rule 16(xi) of the aforesaid rules as follows:-

"If it is considered necessary to award a severe punishment by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by the rules".

9. From the aforesaid it is clear that it would not be enough if mention is made in the summary of allegations before actual charge was framed. In the instant case, there is no definite charge against the applicant in regard to his previous bad record, as is seen at Annexure A-3, but the penalty order, however, has taken into account his habitual absence on earlier occasions on as many as 44 times. This aspect of the matter was considered by the appellate authority also. The appellate authority has observed as follows:-

"The appellant has not absented himself only on this occasion. As a matter of fact, he has absented himself on 44 previous occasions. Although the departmental enquiry has been held only on the basis of the current absence but while arriving at the conclusion of awarding extreme punishment of dismissal, disciplinary authority is required to look into

W

20

previous record of the appellant. Since the previous record of appellant indicating that he has been absent on as many as 44 previous occasions, there was no redeeming features of ground under which a lenient punishment would have been merited. The judgment of dismissal has not been arrived at by the disciplinary authority on the ground of his previous absences but his previous absences have been taken into consideration to see whether there is any possibility of taking a lenient view. Under these circumstances, there is no need to mention previous absences in the charge".

10. We are unable to accept this reasoning of the appellate authority. When a specific procedure is provided under the statutory rules governing the departmental enquiry, this requirement cannot be overlooked particularly when it is considered necessary to award a serious punishment to defaulting officer by taking into consideration his previous bad record. Non-observance of the statutory procedure, naturally vitiates the enquiry. The Apex Court in the case of State Bank of Patiala Vs. S.K. Sharma, JT 1996(3) SC 722 observed as follows:-

"An order passed imposing a punishment on an employee consequent upon a the impugned orders cannot also be upheld on this ground.

11. In the result, we are constrained to conclude that the enquiry held against the applicant was not in accordance with the statutory rules and, therefore, the enquiry proceedings, the orders of the disciplinary and appellate authorities are quashed and set aside. As observed by their Lordships in State of Punjab and Others Vs. Dr. Harbhajan Singh Greasy, (1996) 9 SCC 322." It is now a

W

settled law that when the enquiry was found to be faulty, it would not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law". Accordingly, we direct the respondents to hold a fresh enquiry starting from the stage of issue of a charge sheet in accordance with law and complete the same within a period of 3 months from the date of receipt of a copy of this order, and we also direct that the applicant should fully cooperate with the aforesaid enquiry. The consequential benefits, if any, would depend on the result of the enquiry and order passed thereon.

12. The application is disposed of with the above directions. There shall be no order as to costs.


(DR. A. VEDAVALLI)
MEMBER (J)


(K. MUTHUKUMAR)
MEMBER (A)

Rakesh