

IN THE CENTRAL ADMINISTRATION TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 831/93

This is the 16th day of October, 1996

HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A).
HON'BLE SHRI T.N. BHAT, MEMBER (J).

Shri Prakash Chand
Constable No. 1051/ND
R/o D-4/6/112, Third Dhallan,
Soniya Vihar,
Delhi-110093.
(By Advocate Shri N. Safaya)

..... Applicant

Versus

1. Commissioner of Police
Delhi Police,
Police Headquarters,
I.P. Estate,
New Delhi.
2. Additional Commissioner of Police,
New Delhi District, P.H.Q.
New Delhi Range.
3. Deputy Commissioner of Police
New Delhi District, P.H.Q.,
New Delhi. Respondents.

Order (Oral)

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

The applicant in this OA filed under Section 19 of the A.T. Act, 1985 was working as Constable in the Delhi Police when he allegedly absented himself from duty on 6.12.87. It was only on 27/28.8.1988 that he reported back for duty. Accordingly, a charge sheet was served upon him and an enquiry was conducted. After the enquiry the enquiry officer submitted the report. The disciplinary authority issued a

16-10-96

9

show cause notice to the applicant and annexed thereto a copy of the Enquiry Officer's report. Subsequently, by the impugned order dated 21.12.89 (Annexure 'B' to the OA) punishment of dismissal from service was imposed on the applicant.

2. The applicant preferred an appeal which too was dismissed by the appellate authority, namely, the Additional Commissioner of Police, New Delhi by the order dated 29.6.90. Aggrieved by the aforesaid two orders the applicant has come to the Tribunal praying for quashing of the punishment order as also the appellate order. He has further prayed for reinstatement in service with back wages and all consequential benefits.

3. The O.A. was filed on 6.4.93. The applicant has also filed an M.A. seeking condonation of delay.

4. The impugned orders are being challenged mainly on the ground that the punishment awarded to the applicant is in violation of Rules ⁴¹⁰ 8 of the Delhi Police (Punishment and Appeal) Rules. It is further alleged by the applicant that the disciplinary authority and the appellate authority had not applied their mind to the facts of the case.

5. The respondents contend that the applicant was granted adequate opportunity to defend himself and the impugned order of disciplinary authority as also the appellate authority are in accordance

h. k. /

10

with the provisions of the relevant rules. The respondents further contended that the applicant's MA seeking condonation of delay is liable to be rejected, and it has been stated that the copy of the appellate order was communicated to the applicant on his permanent home address.

6. We have heard the learned counsel for for both the parties and have also perused the material on record.

7. As regards the plea that the applicant was not afforded adequate opportunity to defend himself, we notice, as stated in the impugned punishment order, that the applicant had been afforded several opportunities to participate in the proceedings but he did not avail of the same. Not only that, but also the applicant failed to file reply to the show cause notice dated 9.11.89. He failed even to appear before disciplinary authority. The disciplinary authority was accordingly left with no option but to accept the report of the enquiry officer and impose punishment on the applicant.

8. However, we do find some merit in the contention of the learned counsel for the applicant that the applicant was awarded punishment without hearing him before imposing on him the extreme punishment of dismissal from service. We do not

By your order

11

propose to interfere with the punishment on the ground that it was too harsh but on the ground that according to the provision contained in Sub-rule (a) of Rule 8 of the Delhi Police Service (Punishment and Appeals) Rules, 1980 a specific finding is required to be given to the effect that the misconduct of which the delinquent official is found guilty is such as to render him unfit for police service. The question as to whether it is necessary to record such a finding is no longer res integra in view of the law laid by various Benches of the Tribunal.

9. We further notice that even under Rule 10 of the said rules it is only when the previous record of the charged officer is examined and it shows misconduct indicating incorrigibility and complete unfitness for police service that the punishment of dismissal from service is ordinarily to be awarded. In all other cases the punishment which should normally be awarded is reduction in rank. On this ground the impugned orders are liable to be quashed. However, in the instant case the question of reduction in rank would not arise, as the applicant was in the lowest rank of Constable. But it is open to the respondents to consider any punishment to be imposed on the

W. S. S.

the applicant except the extreme penalty of dismissal/removal from service.

10. An attempt has been made by the learned counsel for the applicant, on the strength of some judgements, that in the instant case the disciplinary authority had not acted properly, in that, the order passed in not a judicial order. However, as already mentioned, we find that in the show cause notice the disciplinary authority had made specific mention of the fact that from the enquiry officer's report and the other relevant records it had come to the provisional conclusion that the punishment of dismissal from service be imposed upon the applicant. There is similar mention in the punishment order dated 21.12.89 as well as in the appellate order. The appellate authority has stated in so many words that the said authority had gone through the enquiry file and the other relevant records in detail.

11. We are, therefore, not inclined to accept that this is a case of non-application of mind or one of contravention of the principles of natural justice. We also do not find any legal defect in the disciplinary proceedings that could vitiate the same.

12. In view of what has been held and discussed above we hereby quash the impugned

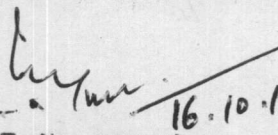
W. S. R.


13

orders to the extent these impose upon the applicant the punishment of dismissal from service, and we partly allow the O.A. We direct the respondents to take a fresh decision on the question of imposition of penalty on the applicant, though we are not inclined to give the respondents the liberty to record a finding afresh to the effect that the misconduct committed by the applicant is such as to render him unfit for police service. However, the respondents shall be free to impose any other punishment after considering the gravity of misconduct, which they shall do within a period of three months from the date of receipt of copy of this order. In the meantime the applicant shall be reinstated in service, unless the respondents decide to keep him under deemed suspension.

With the above order, the O.A. is disposed of, leaving the parties to bear their own costs.

RB


16.10.1996.
(T.N. BHAT)
M(J)


(K. MUTHUKUMAR)
M(A)