

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

(S)

OA No. 959/93

New Delhi: this the 27th day of July, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. P. C. KANNAN, MEMBER (J)

Dal Singh (435 North East), Ex. Constable, S/o Shri Bhagwan Sahai,
R/o Village & PO Bassi,
P.S. Khekra,
Distt. Meerut (UP)

..... Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. The Delhi Administration,
Delhi
through its Chief Secretary,
5, Shamnath Marg,
New Delhi.

2. The Commissioner of Police,
Delhi Police Headquarters,
I.P. Estate, New Delhi.

3. The Addl. Commissioner of Police,
(New Delhi Range),
Police Headquarters,
I.P. Estate,
New Delhi

4. Addl. Deputy Commissioner of Police,
North East,
Distt. Delhi Respondents

(By Advocate: Shri Vijay Pandita).

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns the inquiry report dated 31.5.91 (Annexure-H); the disciplinary authority's order dated 9.10.91 (Annexure-I) and the appellate order dated 17.12.91 (Annexure-J).

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2. Applicant was proceeded against departmentally vide order dated 28.1.91 (Annexure-B) on the ground that he was absenting himself unauthorisedly and wilfully since 22.11.90. The order further stated "scrutiny" that on ~~contingency~~ of his past record it was revealed that he had absented himself on 27 previous occasions, details of which, including the punishments imposed, was specifically stated in the order itself. The order went on to state that this showed that applicant was a habitual absentee and an incorrigible type of officer.

3. Prior to that applicant had been suspended by order dated 7.1.91 (Annexure-A), but was reinstated on 12.4.91 (Annexure-G).

4. The Inquiry Officer in his findings dated 31.5.91 held the charge against applicant of being absent wilfully and unauthorisedly since 22.11.90 and his being absent on 27 previous occasions which showed him to be habitual absentee, as fully proved.

5. The Disciplinary Authority's impugned order dated 9.10.91 states that applicant was served with a copy of the I.O's report vide Memo dated 2.7.91 which was received by him on 16.7.91 for reply, if any, which was to reach respondents by 31.7.91, but there was no response from him, and despite his being called to o.r. 5 times he did not turn up. These facts were not denied by applicant's counsel Shri Shyam Babu during hearing.

6. Accepting the Inquiry Officer's report the

(X)

Disciplinary authority imposed the penalty of dismissal from service vide impugned order dated 9.10.91, and applicant's appeal was rejected vide order dated 17.12.91 against which this OA has been filed.

7. Shri Shyam Babu has contended that there has been a violation of Rule 16(11) Delhi Police (Punishment & Appeal) Rules as applicant's previous bad record has been taken into account without it forming the basis of a definite charge to give him an opportunity to defend himself against the same.

8. We are unable to agree with this submission. Applicant's past instances of absences from duty with the punishment awarded in respect of each of them were detailed in the order dated 28.1.91 initiating departmental proceedings against him and his previous records of 27 absences also form part of the charge against him as it is clear from the text of the charge at page 3 of the I.O's findings. It was open to applicant in his defence to have denied the same if indeed he had not been absent on those occasions, but there is nothing to indicate that he did so.

9. Shri Shyam Babu also asserted that the impugned order was in violation of Rules 8 and 10 Delhi Police (P & A) Rules but manifestly that is not so. The order dated 28.1.91 itself states that applicant's conduct displays incorrigibility and he is a habitual absentee, and the charge specifically refers to applicant being a habitual absentee, which charge has been held proved in the D.E. Hence Rule 10

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Delhi Police (P & A) Rules has been complied with.

10. On behalf of applicant it was asserted that applicant's absences were necessitated because of illness, and certificates in support of the same were not considered by the authorities. If applicant was indeed so unwell as to be unable to attend duty, it was required of him that he apply for leave in the prescribed manner, and await orders on his application before absenting himself. Nothing has been shown to us to establish that he did so.

11. In the result, the OA warrants no interference and 1993(27) ATC 720 relied upon by Shri Shyam Babu does not help the applicant. The OA is dismissed. No costs.

Rheenu
(P.C.KANNAN)

MEMBER(J)

Antohi
(S.R.ADIGE)
VICE CHAIRMAN(A).

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