
(2000) 04 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Petition No. 4225 of 1999

Delhi Administration and Another

APPELLANT

Vs

Constable Yasin Khan

RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 16(11)

Citation : (2000) 4 AD 721 : (2000) 86 DLT 144 : (2000) 54 DRJ 905

Hon'ble Judges : R.S. Sodhi, J;Chander Mohan Nayar, J

Bench : Division Bench

Advocate : Mr. Vijay Pandita, for the Appellant; Mr. Shankar Raju, for the Respondent

Judgement

R.S. Sodhi, J.—The petitioners seek to challenge the judgment of the Central Administrative Tribunal" Principal Bench, New Delhi (for short "the Tribunal") dated 17th March, 1990 in O.A. No. 1514 of 1993 whereby the learned Tribunal has allowed the O.A., quashed the impugned order of punishment as well as the appellate order and directed the petitioners herein to reinstate the respondent while directing that the respondent will not be entitled to any wages for the intervening period though he will be entitled to count the period between the date of passing of the impugned punishment order and the date of reinstatement for all other purposes.

2. Brief facts of the case are that the respondent a Constable in Delhi Police, was served with the Memo of Charge under the Delhi Police (Punishment and Appeal) Rules (for short "the Rules") on 26th June, 1991 on the allegation that he had absented himself unauthorisedly from 6th December, 1990 to 10th May, 1991 intermittently. An Enquiry Officer was appointed who, after giving the respondent an opportunity and completing all other formalities, submitted a report holding the charges proved against the respondent. The disciplinary authority accepted the report of the Enquiry Officer and, also taking into consideration the earlier alleged incidents of unauthorised absence, imposed

upon the respondent penalty of dismissal from service vide order dated 25th September, 1992. The respondent filed an appeal against the order of the disciplinary authority which was dismissed by order dated 24th March, 1993. Aggrieved by both the orders the respondent moved the Tribunal by way of an Original Application No. 514 of 1993.

3. Before the Tribunal it was the case of the respondent that the initiation of departmental proceedings itself is bad as the Deputy Commissioner of Police was not competent to order holding of a departmental inquiry. The second contention, that the order of punishment itself treats the absence as "leave without pay" and, Therefore, cannot be considered as a "leave without pay" and, Therefore, cannot be considered as a "default". Thirdly, it was contended that the charge of previous acts of remaining absent were not included in the Memo of Charges and, Therefore, could not have been taken into consideration for the purposes of awarding penalty. Arguments were raised before the Tribunal in support of the above three contentions. The Tribunal by its order dated 17th March, 1999, came to a finding that the Deputy Commissioner in Delhi Police is competent to appoint officials even to the rank of Sub-Inspector and, Therefore, was competent to initiate departmental proceedings against the respondent. As regards the contention of the respondent of non-inclusion of previous record in the charge-sheet, it was held by the Tribunal that a bare reading of the Memo of Charges shows that previous conduct was not included as one of them. Rule 16(11) of the Rules makes it obligatory for the disciplinary authority to specifically include the previous bad record in the Memo of Charges itself as a definite charge if it is to be considered while awarding punishment and adequate opportunity to the delinquent official to defend himself against that charge is required to be given. The absence of a specific charge regarding past conduct cannot be relied upon by the disciplinary authority while awarding punishment. As such the order of punishment was bad on this count. The last contention, namely, that the period of absence having been treated as "leave without pay" ipso facto set at naught any misconduct, found favor with the Tribunal which relied upon the judgment of the High Court of Punjab and Haryana in *State of Punjab Vs. Charan Singh* and, therefore, held that the observation of the punishing authority treating the period of absence to be "leave without pay" amounted to regularising the absence which view was also followed by the Delhi High Court in *Satya Pal Yadav Vs. Union of India and Others*, and further by the Supreme Court in *The State of Punjab and Others Vs. Bakshish Singh*, and, consequently, went on to allow the O.A. with the directions as already stated.

4. We have heard learned counsel for the parties and gone through the record of the case, considered the precedent cited at the bar. We are in agreement with the Tribunal inasmuch as Rule 16(11) of the Rules makes it obligatory for the disciplinary authority to specifically include the previous bad record in the Memo of Charges as a definite charge in the event the disciplinary authority wishes to rely upon it for the purposes of imposing penalty. In the present case, the absence of specific charge to the effect that the respondent has previously also

been absenting himself without leave, could not have been relied upon by the disciplinary authority while awarding punishment of dismissal from service. It is difficult to say as to what extent the previous conduct of the respondent influenced the mind of the disciplinary authority and, Therefore, the awarding of penalty, based on previous conduct, has rightly been disallowed by the Tribunal. As regards the question of treating the period of absence as "leave without pay", recorded in the dismissal order, is, to our mind, only by way of completing service record, as has been held in the case of State of M.P. Vs. Harihar Gopal 1969 SLR 274.

5. We have already held in C.W.P. No. 2611 of 1999 (Deputy Commissioner of Police Vs. Jorawar Singh & Another) that the order of dismissal does not get vitiated merely because the absence from duty has been converted to "leave without pay". We have held that Supreme Court's judgment in Harihar Gopal's case is the law to be followed. In this view of the matter, the finding of the Tribunal to the contrary is set aside. The respondent having been held guilty by the Enquiry Officer, it would be open to the disciplinary authority to award penalty commensurate with the misconduct. This we hold in view of the fact that the findings of the Enquiry Officer have not been interfered with neither by the Tribunal nor by us. The misconduct, therefore, remains and can be dealt with by the disciplinary authority. For this we draw upon the wisdom of the Supreme Court in State of Punjab and Ors., Vs. Dr. Harbhajan Singh Greasy 1996 (4) SLR 30. With these observations, the writ petition is disposed of. No order as to costs.