
(2002) 05 DEL CK 0081

In the Delhi High Court

Case No : CWP 151 of 1998 and 4953 of 1999

Union of India (UOI) and Another

APPELLANT

Vs

Ex. Constable Ganesh Bahadur and Constable Harish Chander

RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Constitution of India, 1950 — Article 311

Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 10, 16, 8

Citation : (2002) 05 DEL CK 0081

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Geeta Luthra and Deepak Bharti, for the Appellant; Devash Singh and Rajeev Kumar, for the Respondent

Judgement

S.B. Sinha, C.J.—Both these writ petitions involving common questions were heard together and are being disposed of by this common judgment. However, the facts of the matter are noticed from CW No. 151/98.

2. This writ petition is directed against a judgment and order dated 6th October 1997 passed by the Central Administrative Tribunal, Principal Bench in OA No. 3056/92 whereby and whereunder the Original Application filed by the respondent herein was allowed.

3. Allegedly, the respondent absented himself from duty unauthorisedly and willfully on several occasions and despite notice, he did not perform his duties properly. A departmental enquiry was initiated against him. The Enquiry Officer appointed in this behalf submitted his report holding the petitioner guilty of the charges leveled against him. The respondent was dismissed from service by an order dated 7th September 1992. He, thereafter, filed the said Original Application. The said Application, inter alias was filed on the following premise:

(i) The order of removal having been passed by an authority subordinate to the appointing authority, the impugned order is bad in law. The alleged previous bad

record having not been made a part of the specific charges, relying thereupon by the Inquiry Officer was bad in law.

(ii) Despite existence of sufficient grounds for respondent's absence, the enquiry was held ex-parte.

(iii) The order of dismissal was in violation of Rules 8(a) and 10 of the Delhi Police (Punishment and Appeal) Rules, 1968, as no finding has been recorded to the effect that the petitioner is unfit to continue in service in Delhi Police force.

4. The said contentions of the respondent found favor with the learned Tribunal.

The Original Application was allowed directing:

"(i) The impugned order is quashed. The respondents are directed to reinstate the applicant within 2 months from the date of receipt of a copy of this order.

(ii) The disciplinary authority, shall within this period, pass a fresh order of penalty other than dismissal/removal from service on the basis of the charge that has been proved, in accordance with law.

(iii) The respondents are also directed to pass appropriate orders regarding the intervening period from the date of dismissal to the date of reinstatement in accordance with law."

5. The learned counsel appearing on behalf of the petitioner would submit that the learned Tribunal committed a manifest error in passing the impugned judgment and order in so far as it failed to take into consideration that habitual absenteeism on the part of the respondent was borne out from the materials placed on record. The learned counsel would urge that as the statutory rule specifies the disciplinary authority, it could not have been held by the learned Tribunal that the respondent has been dismissed by an authority subordinate to the appointing authority.

6. In support of the said contention, reliance has been placed on Ram Kishan v. Union of India and Ors. 1995 (6) SLR 52 Balwant Singh Mangat v. State of Punjab and Anr. , 1996 (5) SLR 279.

7. The learned counsel for the respondent on the other hand, would submit that having regard to the phraseology used in Rules 8 and 10 of the said Rules, the impugned judgment is unassailable. The learned counsel would contend that in lieu of the provisions contained in the statutory rules, a right conferred upon an employee under Article 311 of the Constitution of India cannot be violated.

8. The learned counsel has relied upon an unreported decision of the apex court in Lt. Governor of Delhi and Ors. v. Dilip Singh , disposed of on 12th May 1995 in Special Leave to Appeal (Civil/CW) No. 12208/95.

9. Having regard to the facts and circumstances of this case, we are of the opinion that it is not necessary to go into all the contentions raised by learned counsel for the parties herein.

10. However, before we embark upon the controversy raised in the matter, we may notice the following provisions of the rules:

"8(a) dismissal/Removal.-The punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service."

"10. Maintenance of discipline- The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank."

"16(xi) If 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 shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules."

11. A bare perusal of the above-mentioned Rules would clearly go to show that it was incumbent upon the petitioner to bring home specific charges against the Respondent as regards past mis-conducts committed by him, if any.

12. Past absenteeism should have been formed part of the charge. It was not done. The Enquiry Officer as also the Disciplinary Authority despite the same relied thereupon.

13. In terms of Rule 16(xi) of the Rules, such allegation should have formed a part of definite charge. The same having not been done, we are of the opinion that the order of dismissal passed by the disciplinary authority cannot be sustained.

14. Having regard to the provisions contained in Rule 10 and other relevant provisions of the Rules, as noticed hereinbefore, there cannot be any doubt that a finding, as to whether a person has become completely unfit for police service or he has become unfit for holding a particular rank, must be arrived at by the Competent Authority.

15. In absence of such a finding, the order of dismissal could not have been passed straightway particularly in view of the fact that the disciplinary authority had taken into consideration the past misconduct on the part of the delinquent officer which, in view of finding afore-mentioned, should have been made the subject matter of a definite charge.

16. The question as to whether in a given case, the requirements of Rules 8 and 10 of the Rules are satisfied or not, must be left to the discretion of the disciplinary authority. The High Court or the Tribunal, in exercise of its power of judicial review cannot interfere therewith.

17. However, the question as to whether the Deputy Commissioner has the

jurisdiction to act as a disciplinary authority, has been considered by this court in CW 6689/2001 (Joint Commissioner of Police v. Sube Singh), decided on 30.04.2002 and in that view of the matter, we need not dilate further on the subject.

18. We, however, are of the opinion that the learned Tribunal could not have issued the direction to the effect that the disciplinary authority must not pass the order of dismissal or removal from service against the delinquent officer. The Tribunal exceeded its jurisdiction in issuing the said direction.

19. Furthermore, if and when the charges are proved against the respondent the respondent can raise all contentions before the disciplinary authority including the question of jurisdiction.

20. In this view of the matter, the impugned order of dismissal has rightly been held by the Tribunal to be not sustainable.

21. These writ petitions are allowed in part and that part of the orders whereby and whereunder the learned Tribunal directed the disciplinary authority not to impose punishment of dismissal or removal, is set aside. No costs.