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Court : Central Administrative Tribunal CAT Delhi

Decided On : May-11-2012

Judge : The Honourable Dr. Veena Chhotray, Member (a) & the Honourable Dr. Dharam Paul Sharma, Member (J)

Appeal No. : Application No.906 of 2011

Appellant : Ashok Kumar

Respondent : Commissioner of Police, Police Headquarter, I.P. Estate, New Delhi

Advocate for Pet/Ap. : For the Applicant : Shri Raju Gupta, Advocate. For the Respondents : Shri Amit Anand, Advocate.

Judgement :

By Dr. Veena Chhotray:

The applicant, an Ex-Constable in Delhi Police has been removed from service on grounds of being a habitual and willful unauthorized absentee. In pursuance of initiation of departmental proceeding dated 22.2.2008 and the charges being 'proved beyond doubt' during the enquiry, the aforesaid penalty has been imposed vide the Disciplinary Authority's order dated 17.7.2008. The appeal against this order has been rejected by the Appellate Authority vide its order dated 8.3.2010.

Seeking quashing and setting aside of the impugned orders, the OA seeks directions for his reinstatement in service, as he is on the verge of retirement. As an alternative prayer, it has been submitted:

.."in case is there is any hesitation by the department to reinstate the applicant back on duty with continuity of service in that case keeping in view the condition of applicant, the applicant offers voluntary retirement, so that the applicant can get the benefit of retirement benefit after serving for life for the Police Department."

2. Briefly stated, the DE had been initiated against the delinquent official with the allegations of unauthorized and willful absence (i) During his posting in DAP North District, between the period 23.3.2007 to 8.6.2007, on 8 different occasions for 53 days. (ii) During his posting in the 2nd Battalion DAP, on 12 different occasions for 76 days from 21.8.2007 to 21.2.2008. Further, his previous habitual absence had also been referred. On 190 different occasions he had absented himself from duty for which he had been awarded warnings, censure, LWP, dies-non etc.

3. The charges had been proved during the enquiry. After giving an opportunity to the charged official to file his reply to the findings of the EO, the order of the DA was passed. Considering the enquiry report as well as the records available on the file, holding the delinquent as an incorrigible type of person, whose continuance in a disciplined force like Delhi Police was not desirable, the DA found it appropriate to award the penalty of removal.

The Appellate Authority, after considering the main contentions in the appeal, did not find it a fit case for interference with the orders of the Disciplinary Authority.

4. Shri Raju Gupta, the learned counsel for the applicant would seek to explain the background of the case. It would be submitted that in the year 1992, while on duty at the PS Welcome, the applicant had been attacked by a bad character of the area and had sustained head injuries, resulting in permanent damage. The fact of the condition of the applicant being known to the departmental officials including the seniors and therefore, being assigned very light duties, including the permission to go back home after marking attendance would also be submitted. While several submissions would be made, the learned counsel would seek to

highlight the most the harshness of the punishment in the present case. It would be the submission of the learned counsel that given the known condition of the applicant, the extreme penalty of removal from service, was against the principles of equity inasmuch as it would even deprive his family of the retiral dues.

5. The claims in the OA have been opposed by the respondents in their Counter Affidavit. These would be reiterated by the respondents' learned counsel, Shri Amit Anand.

6. Without undermining the gravity of the charge of unauthorized and habitual absence, we find a merit in the submission of the applicant's learned counsel. Even before the Appellate Authority such pleas had been raised. While listing the main contentions by the appellant, the AA had inter alia recorded:

“(vi) the punishment awarded to him is too harsh, and (vii) the appellant has further stated that he has completed more than 30 years of service and in the verge of retirement; he has requested to set aside the punishment order considering his absence due to sickness and also submitted photo copy of medical certificate issued by a private doctor.”

However, these specific aspects are not found to have been considered by the AA, while passing its order upholding the penalty of removal.

7. In the above context, we also note the alternative prayer made by the applicant in para 8 (ii) to enable the respondents to consider an alternative course in which the punishment imposed remains short of depriving the official and his family of the retiral dues.

8. As determining the quantum of punishment is admittedly within the legitimate domain of the administrative authorities, we would not like to intrude into that domain. However, considering the peculiar facts of the case where the rigour of law needs to be mellowed by considerations of equity and compassion; the OA is disposed by remitting the matter to the Appellate Authority for reconsideration of this aspect of the applicant's appeal and the alternative prayer in the OA, as taken note in the foregoing paragraphs. Under the circumstances, the Appellate

Authority's order in its present form is set aside. The AA is directed to reconsider the matter regarding the quantum of punishment and pass a fresh reasoned and speaking order within a period of three months from the date of receipt of a copy of this order. The parties would bear their respective costs.

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