



2025:DHC:8993-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 08.10.2025

+ W.P.(C) 16365/2023 & CM APPL. 65808/2023
GOVERNMENT OF NCT OF DELHI AND ORS.....Petitioners
Through: Mr. Ripudaman Bhardwaj,
CGSC with Mr. Kushagra
Kumar and Mr. Amit Kumar
Rana, Advs.
ASI Intikhab Alam, Pairvi
Officer, Delhi Police.

versus
VINOD KUMARRespondent
Through: Mr. Sourabh Ahuja, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed, challenging the Order dated 04.09.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in O.A. No. 138/2021 titled ***Constable (Exe.) Vinod Kumar v. GNCT of Delhi & Ors.***, disposing of the O.A. filed by the respondent herein with the following directions:

“15. In view of the above facts, discussion and law, the present OA is partly allowed with the following order:-

*(i) The impugned orders dated 19.6.2019 (Annexure A/4) and 21.10.2020 (Annexure A/5) are set aside;
and*



(ii) The respondents shall be at liberty to proceed, if they so decide in the matter afresh in the matter from the stage of submission of report by the inquiry officer and take a decision in accordance with the provisions of rules and law on the subject within a period of two months from the date of receipt of a copy of this Order.”

2. The respondent had been proceeded against departmentally on a charge of being wilfully absent from duty with effect from 04.10.2017, while being posted in the 5th Bn. DAP for attending the Refresher Course (Batch No. 28), and not joining the duty in spite of three absentee notices being issued to him at his residential address with the direction to resume his duty and warning him that else strict disciplinary action will be initiated against him.
3. The Inquiry Officer, *vide* his Report dated 26.06.2018, found the above charge to be proved against the respondent.
4. Pursuant thereto, the Disciplinary Authority issued a Show Cause Notice dated 29.06.2018 to the respondent, directing him to submit his written representation/reply against the findings of the Inquiry Officer within a period of fifteen days from the receipt of the same.
5. Admittedly, the respondent was taken into judicial custody on 17.07.2018 and remained in custody until 05.04.2020 due to a matrimonial dispute, because of which he could not submit his response to the aforesaid notice.
6. The Disciplinary Authority, *vide* Order dated 19.06.2019, imposed the punishment of dismissal from service on the respondent.



In the said order, the Disciplinary Authority also took note of the fact that the respondent had a previous record of being absent and had been dealt with departmentally and visited with major punishments six times for remaining absent from duty.

7. The appeal filed by the respondent against the said order was also rejected, *vide* Order dated 21.10.2020.

8. Aggrieved thereby, the respondent filed the above O.A., which has been allowed by the learned Tribunal *vide* the Impugned Order, primarily on two grounds:

(i) Non-compliance with Rule 16(xi) of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as, 'Rules'); and

(ii) The respondent not having had an opportunity to submit his reply to the Show Cause Notice issued by the Disciplinary Authority pursuant to the Inquiry Officer's report.

9. The learned counsel for the petitioners submits that no infirmity can be found in the Order dated 19.06.2019 passed by the Disciplinary Authority, as it was based on the previous conduct of the respondent, which is a matter of record. He further submits that, even otherwise, the allegation of absenteeism against the respondent stood proved and the respondent, in spite of opportunity given, did not lead any evidence to disprove the same.

10. As far as the notice is concerned, he submits that adequate notice had been given to the respondent, however, since he failed to give any response to the same, therefore, the order of punishment



cannot be set aside as being in violation of the principles of natural justice.

11. On the other hand, the learned counsel for the respondent submits that Rule 16(xi) of the Rules requires the petitioners to frame a specific charge against the delinquent employee in case it seeks to rely upon the previous conduct of the employee for the purpose of imposing a punishment. In support, he places reliance on the Judgment of this Court in **Delhi Administration & Anr. v. Constable Yasin Khan** 2000 SCC OnLine Del 318.

12. He further submits that as the respondent was in judicial custody, he could not give a response to the Show Cause Notice issued by the Disciplinary Authority and, therefore, never had an opportunity to even put forth his case against the proposed punishment. He submits that, therefore, no infirmity can be found in the Impugned Order.

13. We have considered the submissions made by the learned counsels for the parties.

14. From a bare perusal of the Order dated 19.06.2019 passed by the Disciplinary Authority, it is evident that the Disciplinary Authority has taken into consideration the major punishments awarded to the respondent on six previous occasions due to the respondent remaining absent.

15. Rule 16(xi) of the Rules reads as under:

“(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 be defend himself as required by rules.”

16. The above Rule, therefore, mandates that in case the Disciplinary Authority considers it necessary to award a severe punishment to the defaulting employee by taking into consideration his previous bad record, the previous bad record has to form the basis of a definite charge against the defaulting employee, and he has to be given an opportunity to defend himself on the same.

17. This Court in **Constable Yasin Khan** (supra), taking into consideration the above Rule, has held as under:

“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...”

18. It is further not denied that the respondent was in custody



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because of which he could not give his response to the Show Cause Notice.

19. In the given facts of the present case, therefore, we find no infirmity in the Order passed by the learned Tribunal, remanding the matter back to the Disciplinary Authority for a fresh consideration after taking into account his response, if any, to the finding of the Inquiry Officer.

20. The petition, along with the pending application, is, accordingly, dismissed.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

OCTOBER 8, 2025/b/k/HS