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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.3080/2002
M.A.NO.2618/2002

Tuesday, this the 2nd day of September, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S. K. Naik, Member (A)

Shri Gajraj Singh
Ex. Ct. No. 4768/DAP
s/o Shri Jeet Ram
R/o Village & PO Dabar, Delhi-73

..Applicant

(By Advocate: Shri L.C. Rajput)

Versus

1. The Govt. of NCT of Delhi
through Commissioner of Police, Delhi
PHQ IP Estate, New Delhi
2. The Addl. Commissioner of Police
Armed Police, Delhi
3. The Dy. Commissioner of Police,
Vth Bn. DAP, Delhi

..Respondents

(By Advocate: Shri Ram Kanwar)

O R D E R (ORAL)

Justice V.S. Aggarwal:

The applicant was a Constable in Delhi Police. Disciplinary proceedings had been initiated against him. The charge framed against the applicant pertaining to the dereliction of duty on his part was long and reads:-

"I Inspector Tej Pal Nagar No. D-I/575, 5th Bn. DAP, Delhi charge you Const. Gajraj Singh No. 1307/SW (Now 4768/DAP) PIS No. 28890330 that while posted in South West DBH, New Delhi and were performing duty at Police Station, Jaffar Pur Kalan proceeded 5+2 casual leave vide DD No. 45B dated 18.5.98 PS Jaffar Pur Kalan. You were supposed to resume your duty on 26.05.98 but you did not turn up. Thus you were marked absent vide DD No. 21-B dated 27.05.98 PS Jaffar Pur Kalan. An absentee notice vide No. 10271/SWD (D-II) dated 27.07.98 was issued at your home address with the direction to resume your duty at once failing which departmental action will be initiated against you. But vide DD No. 17-B dated 2.2.99 PS Jaffar Pur Kalan after absenting yourself for a period of 8 months, 6 days and 22 hours

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(2)

unauthorisedly and wilfully which is the clear violation of CCS(Leave) Rules, 1972 and S.O.No.III of Delhi Police.

You Const. Gajraj Singh No.1307/SW (Now 4768/DAP) are further charged that you were relieved on transfer from PS Jaffar Pur Kalan, South West Distt. vide DD No.41-B dated 15.4.99 PS Jaffar Pur Kalan to 5thBn. DAP in pursuance of PHD order No.20160-192 (P.Br. PHQ dated 25.08.98. But you resumed/joined your duty in 5th Bn. DAP vide DD No.56 dated 28.04.99 5th Bn. DAP after absenting yourself for a period of approximately 13 days unauthorisedly and wilfully.

You Const. Gajraj Singh No.1307/SW (Now 4768/DAP) further charged that while posted in 5th Bn. DAP were detailed for duty from 8.00 AM to onwards on 24.05.99 at the residence of the then DCP-5th Bn. DAP, but you did not resumed your duty. Thus your absent was recorded vide DD No. 11 dated 24.05.99 5th BN DAP. Three absentee notices dated 28.5.99, 7.6.99 and 23.6.99 were sent to your home address through DCP/South West Distt. as well as R1 5th BN DAP with the direction if you are running such, you be directed to report to Civil Surgeon of your district. But you neither reported to civil surgeon nor sent any information in this regard and remained absent wilfully and unauthorisedly. The absentee notices dated 28.5.99, 7.6.99 and 23.6.99 were delivered through Const. Devender Singh No.4938/DAP to you on 3.6.99, 26.6.99 and 28.6.99 respectively. But you did not resume your duty. You resumed your duty on 6.4.2000 vide DD No.22 of 5th BN DAP after absenting yourself for a period of 10 months, 13 days, 2 hours and 35 minutes, which is the clear violation of CCS (Leave) Rules, 1972 and S.O No.111 of Delhi Police.

Your past record shows that you are a habitual absentee and had absented yourself on the following 30 different occasions unauthorisedly. Various minor/major penalties had no effect on you. This shows that you are a habitual absentee and incorrigible type of person and not interested in Government service:-

S.I.	Date of No. absent	Period of absent	Decision
		Days Hrs. Min.	taken after absence
1.	14.10.96	- 02 10	Awarded 3 days PD
2.	29.09.90	03 11 50	CL & 5 days PD
3.	12.12.90	- 23 10	CL & 5 days PD

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(3)

4.	27.02.91	-	01	25	Warned
5.	04.04.91	-	02	35	Awarded 5 days PD
6.	17.05.91	-	01	-	10 days PD
7.	27.10.91	-	21	30	One day C/L and warned
8.	01.09.91	-	21	-	- do -
9.	22.08.94	16	03	-	LWP
10.	12.09.94	02	06	40	Two days EL & warned
11.	06.07.94	-	02	30	Advisory Memo
12	13.06.94	01	02	30	One day C/L & warned
13.	18.08.94	-	02	25	Filed.
14	27.03.94	01	07	10	Two days LWP
15	21.07.94	01	01	-	3 days EL & 10 days PD
16	29.07.94	01	11	15	3 days EL & 10 days PD
17.	18.07.94	02	02	-	3 days EL & 10 days PD
18	22.07.96	01	04	30	One day c/l deducted
19	06.04.96	-	24	25	One day c/l same
20.	03.05.96	-	17	-	- do -
21.	18.03.96	-	05	-	Awarded 5 days PD
22	24.02.96	01	-	30	Same. One day C/L
23.	18.12.95	01	04	35	Same. One day C/L
24.	24.12.96	02	01	-	Two days C/L deducted
25	24.10.96	01	-	20	Warned
26	17.02.97	08	06	50	LWP
27	03.03.97	15	-	30	LWP
28.	12.07.96	02	23	35	Censured & Dies non

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12
(4)

29. 13.10.94 340 04 45 Dies non &
Five years
approved
service forf-
eited.

30. 13.05.99 - 14 15 One day C/L
same"

2. The inquiry officer, who had been so appointed, had returned the findings that the charge stood proved. The disciplinary authority acting on the said charge accepted the findings and imposed a penalty of dismissal from service on the applicant. The operative part of the order reads:-

"Keeping in view of overall facts and circumstances I have left no option except to take exparte decision in the departmental enquiry. The charge of unauthorised absence stands proved and found him totally unfit to be retained any more in a disciplined force. I am of the opinion that he deserves the deterrent punishment. Therefore, I Ujjawal Mishra, Dy. Commissioner of Police/V Bn. DAP hereby order to Dismiss Constable Gajraj Singh, No.4768/DAP from the force with immediate effect. His above mentioned absence period is also decided as 'Dies-Non' in view of Principle of 'No Work No Pay' which will not regularised in any manner."

3. The applicant preferred appeal which has also been dismissed on 7.11.2001. By virtue of the present application, he seeks quashing of the orders passed by the disciplinary as well as the appellate authorities, with consequential benefits.

4. The application has been contested.

5. Along with the application, a petition has been filed (MA-2618/2002) about the delay in re-filing of the Original Application. The ground taken is that the

18 Ag



(5)

re-filing was not done in time because the applicant was not able to contact his counsel. In the facts of the present case, once we have noted that the application had been filed in time, it clearly shows the intention to prosecute the Original Application and delay in re-filing is, therefore, condoned.

6. Learned counsel for applicant assails the order referred to above on various grounds.

7. It was contended that the alleged dereliction of duty took place while the applicant was working in South-West Police District but the disciplinary proceedings have been initiated by Deputy Commissioner of Police, 5th Bn. If, on facts, it had been established that the applicant at the relevant time was posted when the disciplinary proceedings were initiated in South-West District, the contention so raised could be accepted, but in the present case, it will not be possible to accept the said contention. The reason being that the applicant at the relevant time was posted in the 5th Battalion of the Delhi Police. Therefore, the Deputy Commissioner of Police of the said Battalion would be the disciplinary authority and he had the jurisdiction to initiate the departmental action.

8. The another limb of the argument of the learned counsel was that the inquiry has considerably been delayed and, therefore, the proceedings are liable to be quashed.

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9. We do not dispute the proposition that if there is any inordinate delay in initiation of the departmental proceedings, in that event, except when delay is explained, the same can prove fatal in the facts of that particular case. This is based on the settled principle of law that a reasonable opportunity has to be given to the delinquent to contest the proceedings. If there is an inordinate delay, the delinquent may not remember all the facts which may have become stale and, therefore, he will not get a reasonable opportunity to contest the proceedings. We hasten to add that it varies with the facts and circumstances of each case as to whether as a result of the inordinate delay any prejudice is caused to the concerned person or not.

10. In the present case before us, the position when examined in the light of the aforesaid would be totally different. The main allegation against the applicant is his alleged absence for a period of eight months, six days and twenty two hours in the year 1998-99. Thereafter, the disciplinary proceedings had started and the inquiry officer was appointed even in January, 2000. These facts show that there is no inordinate delay in initiation of the disciplinary proceedings. In these circumstances, the plea loses all its significance.

11. Learned counsel for applicant in that event highlighted the fact that there were non-supply of material documents to the applicant and, therefore, he was handicapped in defending the proceedings against him. Our attention was drawn by the learned counsel to his

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(7)

application dated 26.2.2001 addressed to the Deputy Commissioner of Police, 5th Bn., DAP in which he had asked for certain documents and statements that had been recorded.

12. The documents are supplied to a person facing departmental inquiry in accordance with the principle that a person must get the fair chance to defend and is not prejudiced. In the present case in hand, while the inquiry was proceeding against the applicant, he did not ask for any of the documents. We do not dispute the right of the delinquent to ask for the documents which are necessary for his defence. Defence would be taken when proceedings are pending against him. If during the course of the inquiry, he does not ask for the documents to be supplied and wakes up after he has been dismissed after the departmental inquiry, in that event, it is too late in the day to ask for supply of the documents.

13. Otherwise also, the documents which, according to the learned counsel, were not provided, were pertaining to his past absences, namely, the past record of the applicant of absenting himself on almost thirty occasions. At the risk of repetition, it is mentioned that at the relevant time the applicant had not asked for any of such documents regarding which he required any information. Even during the course of inquiry, the Department had produced PW-4 Constable Rakesh Kumar, who had brought the past record of the applicant. The applicant had not cross-examined the said witness. In other words, when evidence even was produced, the

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applicant did not avail of the opportunity to get any clarifications and, therefore, the present plea that the documents were not supplied and a prejudice has been caused to him, on facts of the present case, must fail.

14. Our attention has also been drawn to the fact that the disciplinary authority had taken into account the pendency of the criminal case against the applicant while it was not a part of the charge. However, perusal of the order passed by the disciplinary authority reveals that the pendency of the criminal case against the applicant was not a tilting factor or weighing in the mind of the disciplinary authority. A reference to the same has been made in the order passed by the disciplinary authority which reads:-

"In the meantime he was involved in case FIR No.70/2000 U/S 376/506 IPC P.S.- Jaffar Pur Kalan and was sent in judicial custody. He had sent an application requesting therein that he will submit his representation after releasing on bail. His request was considered and his D.E. was kept in abeyance till he released on bail vide this office Order No.5446-5475/HAP - V Bn DAP dated 23-10-2000 after obtaining the opinion of LA to C.P., Delhi. He released on bail on 23-11-2K and his D.E. was re-opened vide this office Order No.6495-6530/HAP V Bn DAP dated 5-12-2K. Accordingly, he was directed to submit his representation vide this office No. 6809/HAP V Bn. DAP dated 8-12-2K but he did not submit the same. Hence two reminders were issued to him to submit his representation, if any which were received by him on 10-1-2001 and 17-1-2001, but he did not bother to submit the same."

15. It clearly shows that in the sequence of the facts that were being mentioned the pendency of the criminal case against the applicant was referred to because of the case punishable under Section 376 read

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with Section 506 of the Indian Penal Code. The applicant had sent an application requesting that he would submit his representation after he is admitted to bail. It is only in this backdrop that this fact has been mentioned. There is no reference thereafter, which could reveal that the disciplinary authority was in any way influenced by the pendency of the criminal case pending against him. The plea must fail.

16. It was further urged that the final order has been passed ex-parte. According to the learned counsel, no specific order proceeding ex-parte against the applicant has been passed, nor was it conveyed to him. Even on this count, we have the least hesitation in concluding that the plea has to be stated to be rejected. We have referred to in the preceding paragraphs that the applicant had submitted an application that he would be sending his representation after he is admitted to bail. Thus, the applicant was aware of the pendency of the departmental proceedings and that he had to submit his representation to the disciplinary authority. Thereafter, he had been sent a notice by the disciplinary authority but the applicant did not submit his explanation. The necessary result would be that he had to be proceeded ex-parte. It is not necessary that whenever the ex-parte proceedings are taken even that fact should be communicated to the delinquent again.

17. It was in that event urged that it is not a case of wilful and deliberate absence. The circumstances about the absence were not inquired into and, therefore,

Ms Ag

18

(10)

the punishment awarded was disproportionate to the alleged dereliction of duty.

18. Whenever there is an absence without prior approval of the authority, in that event to show that it was not wilful or deliberate, the onus would be on the delinquent. It was for him to show that circumstances were such that prevented him from attending his duty. It has not been shown. Otherwise also, it is within the domain of the concerned authority to come to conclusion on appreciation of facts. No such fact is established. It is not shown that findings are erroneous for this Tribunal to interfere.

19. As regards the penalty being disproportionate to the alleged dereliction of duty, suffice to say that the applicant was a member of a disciplined force. Continuous long absence of more than eight months coupled with his past records of about thirty occasions on different dates, when on certain occasions he was warned also, shows that the dereliction of duty was not one in which any other view could be taken.

20. Resultantly, we find that application is without merit. It fails and is accordingly dismissed.

S. K. Naik

(S. K. Naik)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

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