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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 206/2002

This the 28th day of October, 2002

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.A.T. RIZVI, MEMBER (A)

Const. Charanjeet Singh
PIS No. 28892828
R/o B-127, Fateh Nagar,
Tilak Nagar, New Delhi

Presently Posted in
PCR, South Zone
New Delhi.

... Applicant.

(By Advocate: Sh. Anil Singhal)

Versus

1. Commissioner of Police,
Police Head Quarters,
IP Estate, New Delhi.
2. Sp. Commissioner of Police
(Intelligence), PHQ,
IP Estate, New Delhi.
3. D.C.P. Special Cell (SB)
PHQ, IP Estate, New Delhi.

... Respondents.

(By Advocate: Sh. Ram Kaur)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicant assails the summary of allegation Annexure A-1, charges framed against him Annexure A-2 findings recorded by the enquiry officer Annexure A-3, final order of punishment Annexure A-4 and the appellate order Annexure A-5 and revisional order Annexure A-6.

2. The facts in brief as alleged by the applicant are that applicant was proceeded departmentally on the following allegations:-

"It is alleged that Constable Charanjeet Singh, No. 363/SB (PIS No. 28892828) posted in Operation Cell, Lodi Colony, New Delhi, remained on Medical Rest w.e.f. 18.12.97. He has to resume duty on 6.1.98 but he did not resume

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duty. Hence, he was marked absent vide DD No. 40 dated 6.1.98. He resumed his duty on 28.3.98 after absenting himself for a period of 82 days unauthorisedly. On arrival he submitted his Medical papers to cover up the absent period, which is in violation of S.O.No.111/88 as well as CCS (Leave) Rules, 1972.

From the perusal of his past records of service, it is found that he had absented himself on 19 different occasions also, which shows that he is an habitual absentee.

The above act on the part of Const. (Dvr.) Charanjeet Singh No.363/SB amounts to gross misconduct, negligence, dereliction in the discharge of official duties which renders him liable for departmental action under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

3. A regular enquiry was held. The enquiry officer returned the findings vide Annexure A-3 holding the charge stands proved beyond all shadow of doubt against the applicant on the basis which the disciplinary authority passed the impugned order Annexure A-4 awarding the penalty of reduction by two stages from Rs.3200/- p.m. to Rs.3050 p.m. temporarily in the time scale of pay for a period of 2 years. It is also submitted that he will not earn increments during the period of reduction and on the expiry of period of reduction will not have effect of posponing the future increments of pay. His absence period from 6.1.98 to 27.3.98 was also decided as dies non on the principle of no work no pay. Applicant preferred an appeal against the said order. Appeal was also rejected. Though a revision petition was preferred but the same was not entertained.

4. In the grounds to challenge impugned order the applicant submitted that before conducting the regular enquiry the department itself has conducted a preliminary enquiry which formed the base of the chargesheet. But during the preliminary enquiry conducted by the department itself it was revealed to the department that the applicant had been

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undergoing medical treatment from Govt. dispensaries as the statement were so made by the Govt. doctors itself during the preliminary enquiry conducted by PW-4. Thus, the applicant submitted that basically there was no material on record on the basis of which the department should have proceeded with the departmental enquiry. It is also submitted that rules also reveals that once a person is on medical rest he could not resume unless he is declared medically fit. In this case, preliminary enquiry itself reveals to the respondents that the applicant was still under treatment. So there is no question for applicant to resume duty as he was continuing the treatment. Thus, it is submitted that the applicant was not under unauthorised absence but by virtue of forced circumstances he was absent and he could not resume his duties. On this ground that the issue of charge sheet itself is bad but findings recorded by the enquiry officer are also perverse.

5. We have heard the learned counsel for the parties and had gone through the record.

6. Counsel for applicant had invited our attention to the statements recorded by the department during preliminary enquiry which go to show that the applicant was under treatment for the alleged absence period. Once it had come in preliminary enquiry that the applicant was under treatment, so to our mind the issue of chargesheet itself was bad. It is not expected that a person who is unfit should be compelled to resume duties. So he could not be said to have gone absent in an unauthorised manner. There do not appear to be any violation of CCS (Leave) Rules also as alleged in the summary of allegations.

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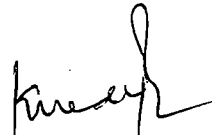
7. On going through the findings recorded by the enquiry officer, we also find that the enquiry officer had held that the 3 medical certificates which had been produced by the applicant have been managed separately just to cover his absence period and from those certificates the enquiry officer had further drawn a conclusion that the applicant has visited those places from which it follows that his condition was not at all critical that he could not go to the office. He could have can very well visited the office and informed the department. So only two reasons have been assigned by the enquiry officer to hold him guilty that the medical certificates produced by the applicant have been managed separately to cover the absence. If he can visit those places then he could also inform the department. But the fact remains that during the preliminary enquiry when the certificates were verified, those doctors were contacted by the officer deputed by the department and from their statements which has been placed on record, it is clear that the applicant had been getting treatment from those doctors. Even PW-2, who was deputed to go to DDU Hospital to verify whether the applicant was admitted in the Hospital for the surgery to be carried on but he met the applicant at Fateh Nagar where he was informed by the applicant that his operation has been postponed because he was having high blood pressure, that also shows that the applicant was suffering from disease which required surgery also. So it is not a case that the applicant was fit to resume duties, nor any conclusion could be drawn by the enquiry officer about the unauthorised absence of the applicant. Thus, the finding recorded by the enquiry officer appear to be perverse and cannot be sustained.

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8. Consequently, the orders based on these findings passed by the disciplinary authority and the appellate authority also seems to be passed without proper application of mind and cannot be sustained. As such we are of the considered opinion that the findings as well as the orders passed by the disciplinary authority as well as by the appellate authority are liable to be quashed and we hereby quash the orders. The pay of the applicant be restored within a period of 3 months from the date of receipt of a copy of this order.



(S.A.T. RIZVI)
Member (A)



(KULDIP SINGH)
Member (J)

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