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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1800/2002
MA No. 1444/2002

New Delhi this the 30th day of May, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

HC Sukhpal Singh
S/o Shri Ram Chander
R/o V& PO Bidhlan
PS Kharkhoda
Distt. Sonapat
Haryana.

...Applicant

(By Sh. Arun Bhardwaj, Advocate)

vs.

1. Commissioner of Police
PHQ, I.P. Estate
New Delhi.
 2. Jt. Commissioner of Police (Operations)
PHQ, I.P. Estate
New Delhi.
 3. Deputy Commissioner of Police
PCR Unit
Delhi.
-Respondents

(By Ms. Renu George, Advocate)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Sukhpal Singh) was a Head Constable in Delhi Police. The disciplinary authority vide the impugned order had removed the applicant from service and his appeal had been dismissed. By virtue of the present application, he seeks setting aside of the said orders and further prays that he should be reinstated with full consequential benefits.

/s/ Agg

2. The relevant facts are that the applicant had faced disciplinary proceedings and following charge had been framed:-

"I, Jagdish Kumar, Inspr./North Zone/PCR (E.O.), Delhi, charge you HC, Sukhpal Singh No.455/PCR (PIS No.28750432) that you proceeded five days medical rest vide D.D.No.24/SWZ/PCR, dated 23.8.96. Thereafter you sent intimation thrice regarding extension of your medical rest to ACP/SWZ/PCR. As per your last intimation you were supposed to report for duty on 4.9.96 but neither you reported for duty nor sent any intimation about your whereabouts. Thus you were marked absent vide DD.No.25/SWZ/PCR, dated 4.9.96. An absentee notice vide No.1964-65/R-ACP/SWZ/PCR, dated 17.9.96 was served upon you but you gave in writing on it that you were advised rest by the doctor till 20.9.96. As per your written statement on an absentee notice you were due back on 21.9.96 but neither you reported for duty nor sent any further intimation. Thereafter four absentee notices vide Nos.2172-73, 2583-84, 271 and 124/R-ACP/SWZ/PCR, dated 17.9.96, 8.10.96, 19.11.96 and 11.1.97 respectively were issued to you. But neither reported for your duty nor sent any intimation about your whereabouts. You resumed your duty vide D.D.No.8/SWZ/PCR, dated 9.2.97 after absenting yourself unauthorisedly for a period of five months & sixteen days violating the instructions contained in CCS Leave Rules-1972 as well as SO.No.111/88.

A scrutiny of your previous absentee record also reveals that you have been warned severally earlier for your unauthorised absence but you could not mend your ways of absenting yourself. You are also being dealt departmentally for your unauthorised absence vide order No.6584-6605/HAP (P-II)/PCR, dated 7.5.97.

The above act on your part amounts to grave mis-conduct of unbecoming a member of disciplined force which renders you H.C.Sukhpal Singh, No.455/PCR liable for departmental action under the provision of Delhi Police (Punishment & Appeal) Rules, 1980."

The inquiry officer returned the finding that the charge had been proved. The applicant had been

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absenting from duty unauthorisedly and further he had been warned several times in the past for the unauthorised absence also. It is as a result of the same that the abovesaid orders had been passed.

3. The respondents contested the application and pleaded that the applicant had proceeded on 5 days' medical rest vide Daily Diary No.24/South West Zone/Police Control Room dated 23.8.1996. He sent intimation thrice to Assistant Commissioner of Police/South Zone/Police Control Room regarding extension of his medical rest. As per the said intimation, he was supposed to report for duty on 4.9.1996. He neither reported for duty nor sent any intimation about his whereabouts. He was marked absent. An absentee notice was served upon the applicant. He gave in writing on the absentee notice that he was advised rest by the doctor till 20.9.1996. The applicant did not report for duty and four absentee notices were issued to him, but he did not resume his duty. The disciplinary proceedings are said to have been conducted in accordance with law and the procedure.

4. Along with the original application, Misc.Application No.1444/2002 has been filed seeking condonation of delay asserting that on 15.6.2001, he had received the order passed by the Commissioner of Police and the limitation expired

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on 15.6.2002. The Tribunal was closed for summer break and thereafter the applicant was sick and could not contact his counsel till 11.7.2002. Thus, it was prayed that the delay may be condoned. In this process, the delay that is prayed to be condoned is of about three weeks. While construing the same, necessarily one has to see as to whether there is just and sufficient grounds for condonation of delay or not. It is always necessary in this regard that certain explanation must be forthcoming. What is material is the intention to file the application is obvious. The totality of the facts has, therefore, to be seen and taking note of the same, we find no reasons as to why, the delay should not be condoned. We accordingly condone the same.

5. At the outset, the learned counsel for the applicant contended that under sub-rule (xi) to Rule 16 of the Delhi Police (Punishment and Appeal) Rules, 1980, once the previous conduct is mentioned in the charge, it speaks of the pre-determined mind to impose a severe punishment. Thus the said rule cannot be taken to be valid. The said argument indeed is devoid of any merit. Once it is felt that the past conduct of the defaulter officer has to be taken into consideration then the rules of fair play and justice require that it should be told to him. Otherwise the department cannot pass a severe punishment. It must, therefore, be taken

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to be unreasonable and there is no ground to uphold the said contention.

6. In that event, it was urged that the medical certificate of the applicant had not been considered because he was genuinely unwell. On behalf of the respondents, it was pointed that the charge was of unauthorised absence and otherwise also some of the medical certificates are forthcoming from a child specialist. In the first instance, it becomes necessary to mention that it is within the domain of the concerned authorities to see if the concerned person was unauthorisedly absent or not. Only if there is no material on the record or the findings are totally perverse, this Tribunal in judicial review would go into the same. In the present case in hand, the record for the abovesaid principle clearly shows that material did exist that the applicant was on unauthorised absence and, therefore, no further probing is necessary.

7. Another limb of the same plea is that though in the charge, it has been mentioned that previous conduct of the applicant was that he had been warned severally but he did not mend his ways and he was being dealt with for unauthorised absence vide order dated 7.5.1997. According to the learned counsel, it gives no details of the past absence and, therefore, necessarily should be

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ignored. Whenever such a contention is raised, the first and foremost principle that strikes is that whether any prejudice is caused to the applicant or not. The applicant's contention is not that he did not know the past absence and he was seeking the details of the same. In other words, when such information was not claimed, it must be deemed that the applicant was aware of all the facts and it is too late in the day to flout such a plea.

8. The only other plea thereupon which was raised was that the punishment is disproportionate to the alleged dereliction of duty because the applicant was sick. Once again since it is for the authorities to consider we are not going into the same. It is not such a unconscionable punishment that would prompt this Tribunal to interfere. Otherwise also, in a disciplined force like Delhi Police, a person cannot be permitted to absent himself at his will and keeping in view the repeated absentee notices which were served and the continuous absence which was unauthorised, we find no reason to interfere.

9. The last submission was that the procedure under Rule 16 of the Rules pertaining to departmental enquiries was unreasonable and, therefore, it was unfair and should be quashed. This Tribunal had considered this question in the case of **Rajeshwar Aggarwal v. Commissioner of**

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Police and Ors. in OA No.3414/2001 decided on 4.12.2002 and the said plea had been rejected. We hold accordingly.

10. Resultantly, the application being without merit must fail and is dismissed. No costs.

(Govindan S. Tampi)
Member (A)
/sns/

(V.S. Aggarwal)
Chairman