

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.352/2002

New Delhi, this the 8th September, 2004

27

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

Pradeep Kumar
Qr.No.216, Police Colony
IIT Gate, Huaz Khas, New Delhi

.. Applicant

(Mrs. Geetha Luthra, Advocate)

versus

1. Commissioner of Police
Police Hqrs., IP Estate, New Delhi
2. Joint Commissioner of Police
New Delhi Range, PHQ, Delhi
3. Additional DCP, North East Distt.
New Delhi
4. DCP, 4th Bn, DAP
Kingsway Camp, Delhi
5. Rohtash Singh, ACP
4th Bn., DAP, Kingsway Camp, Delhi

.. Respondents

(Shri Ram Kanwar, Advocate) (R-1 to R-4)

ORDER

Shri S.K. Naik

The applicant who joined service as Constable in Delhi Police on 15.7.1996 and was under training from the said date, was charge-sheeted vide order dated 9.10.1997 to the effect that while undergoing initial training in the 4th Bn, DAP he absented himself willfully and unauthorisedly on various occasions between 13.8.96 and 13.7.1997 and that he submitted medical reports for his absence only for two occasions i.e. 47 days and 20 days. A departmental enquiry (DE) was ordered. The Enquiry Officer after conducting the enquiry, submitted his findings concluding that "From the perusal of the statements of the PWs and record it is found that Ct. Pradeep Kumar had absented himself for 116 days 7 hours and 33 minutes including 47 days medical rest. This clearly shows that he is a habitual absentee but according to the statements of the DWs and his defence statement he was suffering from Piles or Orchits Rights continuously and doctor advised him not to perform running, standing, riding and hard work duties. Therefore charge leveled against defaulter P.Ct.Pradeep Kumar is partly proved as he was continuously suffering from disease". Based on the enquiry report, the

Pradeep

2

28

disciplinary authority vide his order dated 17.3.1998 imposed a penalty of removal from service on the applicant and ordered the absence to be treated as leave. Applicant preferred an appeal against this order which was dismissed by the appellate authority vide his order dated 3.5.1999 confirming the punishment awarded. Thereafter, he submitted revision petition on 6.7.1999 followed by reminder on 3.8.2001 in response to which he was informed that the Commissioner of Police has no reversionary powers and he is at liberty to approach the court. Thus, the applicant is before us challenging the aforesaid impugned orders and seeking a direction to the respondents to reinstate him in service with all consequential benefits.

2. Respondents have contested the application and justified the impugned order by stating in their reply that several opportunities were given to the applicant to mend his ways but he did not bother and continued absenting himself frequently of his sweet will. The applicant proved himself a habitual absentee during his short spell of service and such type of Constables leave a very poor impression on their colleagues. It is stated by them that a copy of the findings of EO was served on the applicant on 17.2.98 asking him to submit his representation within a fortnight. He, however, belatedly submitted his representation on 16.3.98. After going through the representation of the applicant, findings of EO and other material available on DE file and also hearing him in orderly room, the disciplinary authority awarded him the punishment of removal from service. Thereafter, the appellate authority after going through applicant's appeal and hearing him again in orderly room rejected the appeal. According to them, the applicant absented himself on 45 occasions of various duration and if he was genuinely ill, he could have got himself hospitalized in any of the hospitals and get proper treatment for his ailment and get himself cured so that he could rejoin training etc. but he failed to do so. It is further stated by them that the applicant is not entitled for any relief and the OA be dismissed.

3. We have heard the counsel for the parties.

4. The main grounds advanced by the learned counsel for the applicant in support of the reliefs prayed for in this application are that while the applicant was undergoing treatment for piles in CGHS Dispensary, Kingsway Camp, Delhi he was always accompanied by a Head Constable appointed by the CDI, who on his return used to lodge the details of the medical reports of the applicant and other recruits in the daily diary; even though the applicant was suffering from a terrible disease he was not allowed to go home but was made to stay in the barracks in violation of Standing Order No.III which stipulates that "No one be directed to avail medical rest in the barracks" and

baas

28

yet was marked absent; the disciplinary authority did not take into account the fact that the applicant had not attended PT and parade exercise due to medical reasons in support of which he had furnished the necessary medical records as borne out by the CGHS doctor whose evidence has ^{not been} been believed; and lastly when his absence had been treated as leave, applicant should not have been awarded the extreme penalty of removal from service thus amounting to double jeopardy. The counsel has also drawn our attention to the tabulation mentioned in the rejoinder giving details of dates/periods for which the applicant had been advised "PT/parade excuse" and also rest, along with photocopies of the CGHS prescriptions in proof thereof.

5. Counsel for the applicant has contended that since the applicant was suffering from Piles and as per medical advice he could not attend PT/parade and also was advised rest on certain days, respondents should not have treated such periods as absence. He submits that the applicant remained within the barracks but 'off-duty' on medical ground. The very fact that he had visited CGHS dispensary within the premises of Kingsway Camp goes to prove that the applicant did not go out of police battalion camp and therefore respondents have wrongly held that he remained habitually absent.

6. Contending further, the counsel has stated that the respondents have taken an adverse view of the prolonged treatment in the CGHS dispensary as is evidenced from the order of the appellate authority wherein it is stated that "*If the individual was genuinely ill, I am surprised that he did not get himself hospitalized in any of the well known and major hospitals such as the AIIMS or Safdarjung or R.M.L. etc. to get proper treatment for his ailment and to get himself cured so that he could rejoin training etc. During the entire period, he has confined himself to be treated as an Out Door Patient in the CGHS dispensary, Kingsway Camp. Interestingly, DW-4, who was the S.M.O., I/C CGHS dispensary, Kingsway Camp, has stated that he had referred the patient to the Ayurvedic Medical Hospital, Lodhi Colony. It is indeed amazing that a CGHS dispensary's doctor did not refer a patient to one of the hospitals aforementioned but to a Ayurvedic Hospital in Lodhi Colony*". The counsel submits that it was not for the applicant to suggest to the Medical Officer as to where he should be referred to but since in the opinion of the Senior Medical officer, the treatment was possible in the Ayurvedic Medical Hospital of the CGHS at Lodhi Colony he was so referred. There was nothing abnormal for the appellate authority to be surprised in the matter. This, the learned counsel says, speaks of the mind-set of the respondents not to accept the contention of the applicant that he had indeed been confined to the barracks under medical advice and unable to

7/2000

join the PT/parade and also physical exercise due to his illness and the period should not have been treated as unauthorized absence from duty as it was beyond the control of the applicant. Further, when the respondents themselves have treated the period of absence as leave without pay and thus regularized the absence, therefore the charge of absenteeism and the extreme penalty of removal from service thereof would not be justified.

7. The counsel in support of his case has relied upon the recent decision of the Supreme Court dated 16.3.2004 in **Bhagwan Lal Arya Vs. Commissioner of Police, Delhi 2004(2) AISLJ 460**, wherein in a case pertaining to a Delhi Police recruit whose services had been terminated under similar circumstances and the same was upheld both by the Tribunal and the High Court, the apex court felt that the absence was for reasons beyond the control of the petitioner therein and since the leave was sanctioned, it could not be taken as a grave misconduct to warrant termination of service and set aside the judgement of the High Court and thereby directed reinstating the petitioner in service. The counsel contends that the case of the applicant in hand quite fits in to the facts of the case decided by the apex court.

8. The counsel has submitted that even though the applicant does not admit that he was absent, as he was confined to the barracks on medical advice, but even if it is held that he was absent, the same was for the reasons beyond his control as has been already explained. Besides when the respondents themselves have regularized the absence by treating the period as leave without pay, his case would be fully covered under the above decision of the Supreme Court and his removal from service would not be justified.

9. We are aware of the legal position that the Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty imposed unless the same shocks its conscience (see **B.C.Chaturvedi V. UOI JT 1995(8) SC 65**). In the case in hand, while the respondents did not deny that the applicant was suffering from Piles and further when the enquiry officer himself has opined that the applicant was continuously suffering from the disease, we are not in a position to appreciate as to why the authorities have taken exception to the medical advice of treatment when they say that the applicant did not get himself treated in a major hospital such as AIIMS, RML etc. As a matter of fact, if the respondents had any apprehension that the applicant was deliberately avoiding proper treatment of his illness, they could have themselves ordered for a medical check up of the applicant by a Medical Board, which they have failed to do. If the applicant was referred to the Ayurvedic Medical Hospital by the SMO in-charge of the 7th

(31)

CGHS and when the Ayurvedic Medical Hospital also belongs to CGHS, we fail to see how a view can be taken that the applicant was not genuinely ill. On the contrary from the prescriptions of the medical authority on record we find that the applicant had been advised exemption from PT/parade and also medical rest on various occasions for the period he had been alleged to have absented himself unauthorisedly.

10. When the respondents have not denied that the applicant had remained in the barracks even during the period of medical advice and when they have themselves regularized the so-called period of unauthorized absence as leave without pay, it was not proper for them to have treated this to be a misconduct and imposed the extreme penalty of removal from service. As has been rightly pointed by the learned counsel for the applicant, his case would be fully supported by the apex court decision (supra) keeping in view that the period treated as unauthorized absence by the respondents was beyond the control of the applicant. Besides, it could not be treated to be a grave misconduct to warrant removal from service.

11. Resultantly, we allow the present OA and quash the aforementioned impugned orders. However, keeping in view the fact that the applicant was only under training, he would not be entitled to any benefit of the past service and he would have to be reinstated as a **fresh recruit** to complete the unfinished part of training. We order accordingly but without any order as to costs.

~~Naik~~
(S.K. Naik)
Member(A)


(V.S. Aggarwal)
Chairman

/gtv/