

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

(9)

OA No.1356/2002 Date of decision: 22.05.2003

Ex. Constable Chander Muni .. Applicants
(By Advocate: Shri G.S. Rana)

versus

Union of India & Ors. .. Respondents
(By Advocate: Shri Rishi Prakash)

CORAM:

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri A.P.Nagarath, Member (A)

To be referred to the Reporter or not? YES

lmp
(A.P.Nagarath)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1356 of 2002

New Delhi, this the 2nd th day of ~~March~~ April, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri A.P. Nagrath, Member (A)

Ex. Constable Chander Muni
Lastly posted in Delhi Police,
R/o Village-Makhan Pur Bengar,
P.O. Dankaur, Distt-Gautam Budh Nagar,
Uttar Pradesh. .. Applicant

(None for the applicant even on the second call)

Versus

1. Union of India
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Special Commissioner of Police,
Intelligence,
Police Head Quarters, I.P. Estate,
M.S.O. Building, New Delhi.
3. Dy. Commissioner of Police,
Special Cell (Special Branch),
Police Head Quarters, I.P. Estate,
M.S.O. Building, New Delhi .. Respondents

(By Advocate : Shri Rishi Prakesh)

O R D E R

Shri A.P. Nagrath, Member (A)

None present for the applicant even on the second call. We proceed to dispose of the present OA in terms of the provisions of Rule 15 of the CAT Procedure Rules, 1987.

2. The applicant, while posted as a Constable in Operation Cell, Lodi Road, New Delhi, was proceeded against departmentally, as he had allegedly absented himself without authority for a period of 47 days and also that his previous absentee record says that he absented himself on nineteen occasions prior to this and thus he is a habitual absentee. On conclusion of departmental enquiry, the disciplinary authority awarded the penalty of dismissal from service on the

applicant vide memorandum dated 11.3.1999. Against this, the applicant filed an appeal, which was rejected by the appellate authority vide order dated 25.5.1999. The applicant assailed these orders by filing OA No.1787/1999 before this Tribunal. By the judgement dated 3.8.2000, the said OA was allowed with the following directions:-

"the disciplinary authority which has expressed a note of dissent from conclusion given by the enquiry officer in regard to the absence of the applicant for 47 days (from 16.3.98 to 1.5.98) which decision has been arrived at without issuing a notice to him and without affording an opportunity to him to represent the proposed dissent is liable to be quashed on the ground that the same has been passed in violation of Rule 16 (xii) of the Delhi Police (Punishment & Appeal) rules, 1980. Aforesaid finding which has been arrived at by the disciplinary authority in violation of the principles of natural justice is accordingly quashed and set-aside. The present disciplinary proceedings are remitted back to disciplinary authority who will take further steps from the stage of the issue of the report of E.O. Disciplinary authority will be at liberty to pass appropriate order in accordance with law."

The orders passed by the disciplinary authority and the appellate authority were quashed and set aside and the applicant was directed to be reinstated in service. In pursuance of the orders of this Tribunal in the said OA, the applicant was reinstated vide order dated 18.11.2000. A show-cause notice was served on him noting therein that the disciplinary authority did not agree with the findings of the enquiry officer and mentioning reasons for such a disagreement. To this show-cause notice, the applicant submitted his representation on 28.11.2000. Vide order dated 15.12.2000 (Annexure B), the disciplinary authority again imposed the punishment of dismissal from service, with immediate effect, on the



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applicant. His absence period from 16.3.1998 to 1.5.1998 i.e. from the date of dismissal to the date of his joining has been treated as "period not spent on duty". In appeal, the order of the disciplinary authority has been upheld by the appellate authority i.e. Special Commissioner of Police, Intelligence, New Delhi and the applicant's appeal rejected.

3. By virtue of filing this OA, the applicant is challenging the orders dated 15.12.2000 passed by the disciplinary authority and dated 14.3.2002 passed by the appellate authority.

4. The case of the applicant is that his mother fell sick in the month of February 1998 and for that reasons he had to proceed on 4 days casual leave w.e.f. 24.2.1998 along with availing intervening holidays on 25 to 28 February, 1998 and 1.5.1998. He has stated that he himself fell sick and informed the department through his nephew and also by telephone. He resumed his duty on 2.5.1998 after, as he has stated, having been declared medically fit. During this period, he contends that no absentee notice was served upon him. According to him, he has been proceeded against on the allegation of wilful absence and for having remained absent on nineteen occasions earlier. For the earlier occasions, he has asserted that the periods of absence on all previous occasions were regularised by the competent authority by sanctioning leave. On this occasion, for which he has been charged for wilful absence for 47 days, he has submitted that he had produced the medical

certificates as a proof of his illness during that period, and in that background he contends the leave could not have been denied.

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5. He has also claimed that this period of absence cannot any more be treated as unauthorised absence specially when he was permitted to resume his duties on 2.5.1999 and had received the salary for the period of alleged absence of 47 days. For the past absence on a number of occasions, he had stated that it was because of his wife's serious sickness as she is stated to be a cancer patient and that in any case every absence in the past had been regularised by sanctioning leave.

6. In support of his contention that the action of the disciplinary authority and the appellate authority is not sustainable legally, he has raised the ground that in the departmental enquiry, enquiry officer had not found him guilty of unauthorised absence for the period of 47 days and he had accepted that for this period of absence, the applicant had duly informed the concerned authorities. He has questioned the other findings of the enquiry officer about his habitual absenteeism by stating that for the earlier occasions, he had been sanctioned leave and in that view, these occasions cannot be treated as periods of unauthorised absence. The applicant has also alleged violation of Rule 19 of the CCS (Leave) Rules, 1972 (hereinafter referred to as 'the Rules) and more specially of sub Rule 3 of Rule 19 of the Rules. He stated that the disciplinary authority could not have rejected the medical certificates produced by him in support of his

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illness. He has further alleged non-compliance of procedure prescribed in SO 111/88. He contends that if the disciplinary authority had doubt about his sickness then he could have proceeded to obtain second medical opinion as provided under Rule 19.3 of the Rules. The applicant has also raised a plea that he has not been given adequate opportunity to defend his case before the appellate authority, as the relevant documents, which were vital for his defence, were not supplied to him even after specific demand made under sub Rules 4 and 5 of Rule 23 of the Delhi Police (Punishment & Appeal) Rules, 1980.

7. The respondents have contested the prayer of the applicant by repelling various contentions raised by the opposite side. It has been stated that the orders passed earlier by the disciplinary authority and the appellate authority were quashed by this Tribunal on the ground that while the disciplinary authority had disagreed with the findings of the enquiry officer, no reasons in regard to the disagreement were recorded and intimated to the applicant. In pursuance of the directions of the Tribunal, a fresh show-cause notice was served on the applicant in which the reasons of disagreement were very specifically brought out. The applicant was also given an opportunity of personal hearing. After taking into account his representation against the said show-cause notice, and also after hearing him, the respondents contend that the disciplinary authority passed a reasoned order imposing the penalty of dismissal on the applicant. It has been denied that the impugned orders have been passed by taking into account any extraneous material.



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The respondents have emphasised that mere receipt of medical certificates is not sufficient by itself, but based on the facts and circumstances of the case, it is for the concerned competent authority to take a decision whether leave in a particular case could be sanctioned or not. Regarding seeking second medical opinion, the case of the respondents is that it is for the leave sanctioning authority to decide as to how to proceed in a particular case. It has been admitted that applicant's previous absence of nineteen occasions had been regularised but they have stated that it was done with a hope that the delinquent employee would improve himself and all these opportunities were afforded to him. But he had shown no improvement and that it is established that he is a habitual absentee. The respondents' case is that for the reasons in the detailed order of the disciplinary authority, the medical certificates submitted by the applicant were not found acceptable. The disciplinary authority has considered it appropriate to impose the penalty of dismissal on the applicant. It has been contended that in a disciplined force, such an unauthorised absence needs to be totally discouraged. The respondents have asserted that the orders passed by the disciplinary authority and the appellate authority are strictly in accordance with rules and instructions and there is no infirmity in the entire process.

8. We have had no assistance from the applicant as none appeared on his behalf as we have mentioned in the very beginning of this order. We have heard learned counsel for the respondents Shri Rishi Prakash



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and perused the documents brought on record in the OA, reply of the respondents and rejoinder filed by the applicant.

9. The scope of judicial interference in the matters of departmental proceedings is extremely narrow and limited. However, if the findings of guilt is of no evidence or if it would be perverse finding, the matter would be amenable to judicial scrutiny. The Tribunal cannot re-appraise and re-evaluate or create any evidence and substitute its own finding. Of course, judicial interference shall also be warranted in case the authority imposing punishment takes into account some extraneous matters.

10. Primarily, in the instant case, the applicant's plea is that he was compelled to remain away from duty because of his sickness and for which period he had produced the medical certificates. We have carefully perused the order of the disciplinary authority, we find this aspect has been dealt with in detail, which reads as under:-

"Besides, the medical papers regarding his illness and treatment from Mittal Clinic, Ballapgarh shows that he was suffering from Pneumonia from 3.3.98 to 7.3.98. Thereafter from Bhatia Nursing Home, Ballapgarh he submitted medical certificate that he was suffering from fever and was advised medical rest from 8.3.98 for one week. Subsequently, he submitted two medical certificates from Dr. K.L.Singhal, Raghurpura, Bullandshahar, UP that he was suffering from Hepatitis, one from 15.3.98 to 30.9.98 and another from 31.3.98 to 17.4.98. Then he submitted another medical certificate from Primary Health Centre, Jawar, Bullandshahar, UP that he was suffering from Hepatitis from 18.4.98 to 1.5.98.

It is extremely surprising a note that he had requested for grant of CL for treatment of his mother and then submitted medical certificates



regarding his own illness of Pneumonia, fever and Hepatitis from different doctors and two different states, Ballapgarh in Haryana and from Bullandshar in UP. It is crystal clear that he had obtained medical certificates from different Doctors from different States for different types of deceases to cover up his absence. It is obvious that the medical certificates are manipulated. Thereby Const. has violated Rule 19.5 of CCS (Leave) Rules, 1972 and provisions of S.O.No.111/88. He had remained absent for the period of 47

clearly shows that the defaulter is an incorrigible type of Constable."

10. Obviously, the disciplinary authority did not find these medical certificates acceptable. Sub Rule 5 of Rule 19 of CCS (Leave) Rules stated in following terms:-

"(5) The grant of medical certificate under this rule does not in itself confer upon the Government servant concerned any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited."

Thus in the circumstances of this case, if the competent authority had not considered these medical certificates acceptable such a decision cannot be interfered with by this Tribunal.

11. The other plea of the applicant is that the second medical opinion must have been sought by the competent authority, has also no basis as sub Rule 3 of the Rules clearly states that it is the discretion of the authority who is to grant leave to secure the second medical opinion.

12. In respect of non-production of relevant documents, we find that his prayer had been duly considered and these documents were not found relevant. We are not inclined to go into this aspect

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of the matter further. In so far as the procedural part is concerned, in view of what has been discussed by us in paragraphs above, we see no lacuna or infirmity. However, advertiring to the order of the punishment as passed by the disciplinary authority, we notice that in that order the following observations had been made:-

"Habitual absenteeism in a disciplined force is a grave act of indiscipline which can not be tolerated". (emphasis supplied).

13. While arriving at final decision to impose the punishment, chronic absenteeism again has been mentioned, which reads as under:-

"His service record shows that he is a chronic absentee. The Department on all such occasions had given him opportunities to improve himself. But instead of improving he continued to act in an indisciplined manner".

14. This does not leave us in doubt that while deciding the quantum of punishment, the disciplinary authority has also kept in mind that the applicant was a habitual absentee. The respondents have themselves admitted that on the previous occasions the period of absence had been regularised as leave due. Obviously, the cause of absence must have been found acceptable by the leave sanctioning authority. Having done that, the disciplinary authority could not have treated the applicant as a habitual absentee. We cannot ignore this aspect of the matter that while taking decision on quantum of punishment, the disciplinary authority did take into account the factum of unauthorised absence of earlier occasions which absence no more remained unauthorised. In fact, incorporating this charge in the statement of allegations itself was



incorrect after regularised earlier absence as leave.

To that extent, the order of punishment, in our considered view, stands vitiated. It does tantamount to taking extraneous factors into consideration while imposing the punishment. Having regard to this aspect of the matter, we find that the order of the disciplinary authority is not sustainable and is liable to be quashed. So also, the order of the appellate authority upholding the order of the disciplinary authority deserves to be set aside.

15. Consequently, we quash and set aside the impugned orders dated 15.12.2000 and 14.3.2002. The applicant is directed to be reinstated in service forthwith. However, we wish to make it clear that this shall not restrain the disciplinary authority from passing any fresh order in the matter taking into account our observations made supra in respect of the alleged past absence of the applicant, but only within a period of three months from the date of receipt of a certified copy of the present order. The orders in regard to the period from the date of dismissal to the date of re-instatement shall also be passed by the respondents as per rules during the same period of three months. No costs.

Apns

(A.P. Nagrath)
Member (A)

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(V.S. Aggarwal)
Chairman

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