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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 106/2002

This the 31st day of July, 2002

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HON'BLE SH. KULDIP SINGH, MEMBER (J)

Jagminder Singh
Sub-Inspector (D.P.),
No. D-3459, Rosbud line,
P.C.R., Delhi.
(By Advocate: Sh. Yashpal Singh)

Versus

Govt. of NCT of Delhi, through


1. Chief Secretary,
Govt. of NCT of Delhi,
5, Sham Nath, Delhi.
2. Commissioner of Police,
P.C.R. Sarai Rohilla, Delhi.
3. Dy. Commissioner of Police,
P.C.R. Sarai Rohilla, Delhi.
4. Asstt. Commissioner of Police,
P.C.R. Sarai Rohilla, Delhi.
(By Advocate: Sh. Ajay Gupta)

... Respondents.

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicant who is a Sub-Inspector in Delhi Police as assailed the order passed by the disciplinary authority vide which the period of absence from duty from 28.8.2000 to 7.9.2000 for 11 days and from 13.9.2000 to 2.10.2000 for 20 days, i.e. total 31 days has been ordered to be treated as period not spent on duty. Since the applicant is stated to have absented himself without obtaining any leave or without giving any proper explanation to the show cause notice for his absence. The applicant in order to challenge the same submitted that during the relevant period he was not keeping good health and respondents had the knowledge of the same. Therefore, the act of the respondents treating him absent and treating the period as not spent on duty and withholding the salary for 31 days is violative of his rights and it is illegal and arbitrary. It is further submitted that the



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applicant had submitted medical certificates and in case the respondents had any doubt about the medical certificate applicant could have been referred to second medical opinion but respondents did not ask for the second medical opinion. It is also submitted that Resp.4 is not at all competent to impose any penalty on the delinquent officer having a rank of Sub-Inspector was not under the disciplinary control of ACP so on that account also this order is bad.

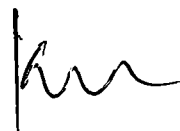
2. The OA is being contested by the respondents. Respondents in their reply pleaded that the applicant while working in East Delhi, was posted in CAW Cell he proceeded on two days casual leave for 24.8.2000 and 25.8.2000 with permission to avail 26.8.2000 and 27.8.2000 being Saturday and Sunday. He was due back on 28.8.2000 but instead of resuming duty informed his office that due to his illness he attended the CGHS dispensary where Doctor has advised him bed rest for 7 days. After that he attended the office on 8.9.2000 but again on 13.9.2000 he again made his departure for the hospital and availed 10 days medical rest which was extended for 10 days more upto 2.10.2000 and resumed his duties on 3.10.2000. On both the occasions he did not obtain permission from his senior officers to avail medical rest at his residence despite giving clear directions vide DD No.8 dated 28.8.2000, DD No.14 dated 4.9.2000 and DD No.13 dated 13.9.2000. In the meanwhile applicant was transferred to PCR Unit and ACP/CAW Cell recommended to decide the said period as leave without pay being present disciplinary authority due to violation of S.O.No.111. It is also submitted that show cause notice was also issued to the applicant for the period treated as not spent on duty. After considering his defence the competent



authority did not agree with the reply and confirmed the show cause notice. This was submitted that the order was passed after obtaining approval from the competent authority and not directly.

3. I have heard the learned counsel for the parties and gone through the record. Counsel for applicant referred to a judgment delivered in OA No.2485/98. In the said case the applicant had proceeded on sanctioned leave for 5+4 days which was duly granted on account of his illness and he was suffering from Typhoid and Jaundice and then he sent an information to the department through one of his relatives which information had not been refuted or doubted by the enquiry officer. Though the medical record was not accepted by the enquiry officer but was still accepted in the departmental record.

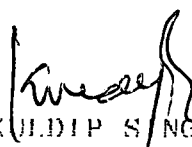
4. In this case I find that it is an admitted case of the respondents to the extent that the applicant had proceeded on 2+2 days casual leave and he was due back on 28.8.2000 and on due date he informed his office that due to illness he had to attend the CGHS dispensary where the Doctor has advised him 7 days bed rest. So he remained absent till 7.9.2000 in continuation of sick leave. Leave was duly sanctioned to him for 24.8.2000 and 25.8.2000 with permission to avail 26.8.2000 and 27.8.2000 being Saturday and Sunday. So to my mind the said period could not be treated as period not spent on duty and it cannot be converted into leave without pay. However, as regards the second occasion that is leave from 13.9.2000 to 2.10.2000 is concerned the applicant had not proceeded on any sanctioned leave. He just made his departure to avail medical rest. Since that period was not in continuation of prior



sanctioned leave and the applicant proceeded without prior sanction of leave so only that period could have been treated as period not spent on duty.

5. As regards the plea with regard to the competence of the authorities who had passed this order, no argument is addressed on the ground and on the contrary I believe the affidavit filed by the respondents that the authority who had passed the order was competent to pass. No other contention was raised.

6. In view of the discussion above, the OA is partly allowed for treating the period of 11 days i.e. from 28.8.2000 to 7.9.2000 as period spent on duty is held to be illegal and the period from 13.9.2000 to 2.10.2000 which is treated as period not spent on duty is held to be justified. Accordingly OA is partly allowed. Respondents are directed to treat the period from 28.8.2000 to 7.9.2000 as leave of the kind due and also to pay the salary for the same within a period of one month from the date of receipt of a copy of this order. No costs.


(KULDIP SINGH)
Member (J)

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