

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

11

O.A.No.113/2001

Hon'ble Shri V.K.Majotra, Member(J)
Hon'ble Shri Shanker Raju, Member(A)

New Delhi, this the 20th day of September, 2002

Hari Kishan Dahiya
s/o Shri Chandan Singh
r/o Vill. Dhanwapur
Distt. Gurgaon
Haryana.

... Applicant

(By Advocate: Sh. M.K.Bhardwaj)

Vs.

1. NCT of Delhi & Ors. through-
Chief Secretary
5, Sham Nath Marg
Delhi.
2. Commissioner of Police (DP)
Police Headquarters
I.P.Estate
New Delhi.
3. Joint Commissioner of Police (AP)
Armed Police
Delhi.
4. Dy. Commissioner of Police
IIrd Division, Vikas Puri
DAP, Delhi.
5. Asstt. Commissioner of Police
IIIrd Btn. DAP
Delhi.

... Respondents

(By Advocate: Proxy counsel of Shri Ram Kaur)

ORDER

By Shri Shanker Raju, Member(J):

Applicant, through this OA, has impugned respondents' order dated 14.9.1998 whereby a departmental inquiry was initiated against him and finding of the inquiry officer dated 27.3.1999 holding him guilty

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of the charge. Applicant has also assailed respondents' order dated 14.9.1998 dismissing him from service and also ^{the} appellate order dated 29.10.1999 maintaining the punishment. He has sought quashment of these orders and reinstatement in service with all consequential benefits.

2. Earlier on the issue of competence of Joint Commissioner to exercise the power as an appellate authority, OA was allowed on 19.10.2001 remanding the case to the appellate authority. Subsequently in view of the decision of the High Court of Delhi in CWP No.2660/2002 upholding the powers of Joint Commissioner, the matter has been remanded back for consideration on merits.

3. Applicant, who was enrolled as a Constable on 1.11.1968 on account of epilepsy and seizures since 1996 applied for voluntary retirement but the same was not acceded. A departmental inquiry was ordered against the applicant and he was proceeded against by issuance of summary of allegations where he has been alleged to have remained unauthorisedly absent for a period of six days and despite notice to undergo second medical examination to verify the genuineness of the medical record, The applicant refused to get the CT scan privately. It is further alleged that

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he was absent for a period of one hour and twenty minutes and had remained absent w.e.f. 20.4.1998. His previous bad record was also made as an allegation.

4. Despite service of the notices upon the applicant to come and collect the summary of allegations or to participate in the proceedings, applicant had not participated in the inquiry, with the result that an ex parte proceedings have been ordered seeking approval of the disciplinary authority and during the course of the inquiry ten prosecution witnesses were examined.

5. Applicant despite sending absentee notices and the service was affected legally, he had not participated in the proceedings, the inquiry officer through his findings dated 27.3.1999 holding the applicant guilty of the charge. Findings of the inquiry officer was served upon the applicant, who in turn filed his reply.

6. Disciplinary authority after meticulously going into the contentions and keeping in view the absence of the applicant and his past record, imposed upon him a punishment of dismissal and treated the period of absence as not spent on duty.

7. The aforesaid punishment was carried in an appeal ^{by} ~~made~~ by the applicant. Appellate authority

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by an order dated 26.8.2000 after going into the proportionality of punishment upheld the order of disciplinary authority, giving rise to the present OA.

8. Shri M.K.Bhardwaj, learned counsel appearing for the applicant, took the following grounds to assail the impugned orders.

8.1. According to him the ex-parte proceedings resorted to are in violation of Rule 18 of the Delhi Police (Punishment & Appeal) Rules, 1978 as the applicant had neither refused nor absented without any reasonable cause from the inquiry in fact as he was not keeping good health and undergoing treatment in the hospital requested the authorities to keep the inquiry in abeyance. The inquiry officer arbitrarily framed the charge and completed the proceedings which is not legally sustainable, in view of the decision of the Co-ordinate Bench in Jai Dev Vs. Union of India, 1991(2) ATJ 83.

8.2. It is stated that the applicant was neither unauthorisedly nor wilfully absented but was absent, incapacitated on account of seizures for which he was getting treatment from Govt. Hospital and recognised Doctors, under the CCS (Leave) Rules, 1972, the aforesaid medical record has not been paid heed to either by the inquiry officer or the disciplinary authority or the appellate authority.

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8.3. It is stated that the applicant was asked to discharge duties on his reporting back on 17.4.1998 and he had complied with the directions by reporting at RML Hospital but due to fault in the CT Scan machine, he was not subjected to second medical examination.

8.4. Regarding one hour twenty minutes absence, it is stated that he was posted twice on the same day and on the second deputation, he informed to RI that as the distance from his place to the duty place was long and it was difficult to reach there in view of the fact that he had already performed his duty from 6 AM to 5 PM, the charge is baseless.

8.5. In so far as the other absent is concerned, it is contended as he was sick and confined to bed, he was not in a position to attend the duty. It is stated that he was being taken out of town for treatment and the notices delivered to him in his absence, have been duly replied with.

8.6. It is stated that the orders passed by the respondents are without application of mind and are non-speaking. It is further stated that past record has already been regularised by awarding of punishment, the same cannot be taken into consideration and would amount to double jeopardy.

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8.7. Lastly, it is contended that the punishment imposed is highly excessive and is disproportionate to the charge, keeping in view the service of 30 years rendered by the applicant. He places reliance on a decision of the Apex Court in Syed Zaheer Hussain v. Union of India & Others, 1999(2) SC 106.

8.8. By referring to his telephonic message sent and other communications sent to the respondents as well as medical record annexed it is contended that he had been informing the department about his ill health and on one occasion, his son had gone to collect the papers but the same were not provided to him.

9. On the other hand, Sh. Ram Kaur, learned counsel for respondents denied the contentions and has stated that the applicant, after availing medical rest was asked to undergo second medical examination for which he was taken to RML Hospital on 30.3.1998, and was called on 31.3.1998. He was again called on 3.4.98, and on examination of his medical papers, he was advised to come on 17.4.1998 to get the CT Scan from CGHS approved clinic/hospital, as the CT Scan machine was out of order. Applicant at this movement showed his inclination and suggested to get his CT Scan done privately, which is reflected from RML's Memorandum dated

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14.5.1998 but thereafter he has not produced the CT Scan and thereafter he absented himself. Notices have been sent on 21.4.1998, 8.5.1998 and 12.5.1998 to the applicant but he has not responded to despite services. Finding no alternative, as the applicant was adopted dilatory tactics and without any reasonable cause, failed to attend the inquiry, the same was proceeded ex-parte. Witnesses have been examined and the applicant thereafter also through several notices intimated to participate in the proceedings which even after on receipt were not complied with by the applicant, and as a result, the inquiry officer held the proceedings ex-parte and after examination of witnesses, holding the applicant guilty.

10. The finding of the inquiry officer was agreed to by the disciplinary authority through a speaking order imposing upon the applicant a dismissal from service which was upheld by the appellate authority through a speaking order.

11. It is stated that ^{he} the applicant has failed to submit his medical papers and any information. Moreover, his past conduct also proves his incorrigibility. As the applicant had absented himself for such a long period, in a discipline force like Delhi Police, the misconduct

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is to be treated as grave and as per Rules 10 and 16(xi) of the Delhi Police (Punishment and Appeal) Rules, 1978, the only punishment which can be imposed, if the incorrigibility is proved through out continued misconduct, his dismissal from service.

12. It is further stated that applicant's son has reported that the applicant has gone in a marriage. *During* the DE proceedings, no medical papers were submitted by the applicant. Though the similar treatment was available at Delhi and being a resident of Gurgaon it is illogical and irrational for the applicant to have approached the State of Rajasthan for treatment, whereas the similar treatment is available in Delhi, which is nearer to his native place.

13. On legal issues, it is stated that the proper procedure was adopted as per the rules. As the applicant himself attended the inquiry and has not volunteered to produce his defence by participation in the proceedings, the orders passed cannot be found fault with.

14. Applicant, in his rejoinder, has reiterated the pleas taken by him in OA.

15. Shri Ram Kaur, learned counsel for respondents, has also produced the entire departmental inquiry record for our perusal.

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16. We have carefully considered the rival contentions of the parties and perused the material on record. We have also gone through the departmental record as well.

17. In so far as the contention of the applicant regarding challenged to the ex-parte proceedings is concerned, we find that after the inquiry was ordered against the applicant, he has been served upon notices by the respondents through post and through messenger. In one of the communications sent to the applicant on 22.4.1998 the absent notice was pasted in presence of two independent witnesses on the gate of the House of the applicant. In another case, one of the absent notices dated 9.5.1998 served through the Police officials, daughter of the applicant acknowledged that her father has gone with his brother to. Pataudi. In another communication dated 12.5.1998 as the applicant was not present, the notice was pasted on his door.

18. In another communication dated 14.10.1998, son of the applicant has stated that his father had gone to Balaji and would be back on 16.10.1998 and thereafter will present himself before the inquiry officer in connection with the conduct of the DE. In another communication dated 18.11.1998 son of the applicant informed that his father had gone in a marriage.

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17. The ex-parte inquiry was proceeded on 30.11.1998. However, we also find that son of the applicant has approached the inquiry officer for the documents and as the ACP was not available without waiting for his arrival, he abruptly left the place. This in fact is a brief back-ground to the efforts of the respondents to serve upon the applicant and also shows that on several occasions the communications have been received by the applicant.

18. In the departmental inquiry applicant has been charged, for remaining absent, from 15.11.1997 for a period of six ~~days~~ days and also his absent after medical rest of upto 15.11.1997 to ascertain the genuinity of the medical certificates, applicant was called for second medical examination, and accordingly he reported to RML Hospital, where on few occasions, he was asked to come later on and ultimately on 17.4.1998, he has been asked to get the CT Scan from CGHS clinic on account of fault of the CT Scan machine at RML Hospital. Applicant has himself agreed to get this, done at his own which has reflected from the Memorandum dated 14.5.1998 issued by the In-charge certifying that the applicant has himself agreed to get the CT Scan done. As the applicant has failed to get the CT Scan done, and had never reported, thereafter, to the RML, deprived an opportunity to the

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department to get him medically examined for second medical opinion and the fact of his illness could not be ascertained.

19. In so far as the service of notices are concerned, the applicant was duly informed about medical examination and the inquiry proceedings were initiated to participate in the DE ordered on 14.9.1998. Despite a due service was effected upon him, applicant has not made any efforts to join the inquiry. As regards the ground of his illness is concerned from the perusal of the record it transpires that he remained away from his native place, on one occasion, on account of marriage and this belies the ground of his incapacitation or confined to bed. Moreover, we find that during this interregnum, applicant has never submitted his medical record and the communication allegedly sent by him to the inquiry officer on 26.10.1998 and 15.12.1998 have not been proved or established by production of the registered AD through which the same was communicated. Respondents denied the aforesaid communication.

20. In an ex-parte proceedings, it is to be seen where despite being accorded reasonable opportunities, if the delinquent official does not join the proceedings and having regard to Rule 18 of the Rules ibid, if it is a refusal to

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attend the inquiry to avoid it or there is not justification for the same, ^{there is} nothing illegal in resorting to ex-parte proceedings. From the perusal of the record, it transpires that sufficient opportunities have been accorded to the applicant to serve him to participate in the proceedings and the communications have been duly served upon him, despite this without any reasonable explanation his medical grounds have not been found truthful for want of second medical examination and in absence of request communicated to the inquiry officer along with medical record, the action taken by the respondents to resort to the ex-parte proceedings cannot be found fault with. If the applicant has himself abandoned the inquiry, he is to be ^{be} blamed for it, not the respondents. On perusal of the record, we are satisfied that sufficient procedural safeguards have been adopted by the authorities before resorting to these ex-parte proceedings.

21. In so far as the finding of the inquiry officer is concerned, we have carefully gone through the pleadings and we are of the considered view that allegations against the applicant of his remaining absence from duty without any reasonable cause and his failure to get the CT scan done and in absence of any second medical examination,

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the finding of the inquiry officer is reasoned, based on the evidence brought on record, conclusively pointed out towards the guilt of the applicant.

22. In so far as the ground that the orders passed by the disciplinary as well as appellate authority are without application of mind, without dealing with his medical record is concerned, we have carefully perused the impugned orders and find that the disciplinary authority has meticulously gone into each contention of the applicant and passed a reasoned order. Moreover, the appellate authority has also passed a reasoned order dealing with the proportionality of punishment, the finding arrived at is on the basis of a documentary evidence, which is not rebutted by the applicant despite accord of an opportunity, he has not even cross-examined the witnesses and produced his defence.

23. Moreover, leave cannot be claimed as a matter of right. A Government servant has to apply for the leave and to inform the concerned authorities in the case of serious sickness and to produce the medical record. This facilitates the verification of genuinity of medical record under Rule 19 of the CCS (Leave)

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Rules, 1972. Even on production of medical record, it is the discretion of the competent authority to grant leave or not.

24. In the present case though the applicant was a native of Gurgaon, which is nearer to Delhi, he preferred to undergo treatment at Rajasthan rather coming to Delhi. It is very strange that if the applicant can visit Rajasthan, what prevented him from coming to Delhi and informing the competent authority and producing his medical record.

25. We also find that during the course of the inquiry, applicant has not submitted his medical record nor sent any information to the inquiry officer apprising the seriousness and request to postpone the inquiry. The cumulative effect of this is that the absence of the applicant was not satisfactorily explained and the finding arrived at followed by the punishment cannot be found fault with.

26. In so far as the long years of service and proportionality of punishment is concerned, in judicial review, it does not lie within our jurisdiction to interfere in the matter of punishment unless it shocks our conscience.

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27. As the absence of the applicant is of 528 days, keeping in view of his previous bad record, where he has been punished number of times, this continued misconduct leads to the inference of his incorrigibility and ^{unfitness} ~~unfitness~~ for Police service.

28. In view of Rules 8(a) and 10 of the Delhi Police (Punishment and Appeal) Rules, 1978 the punishment is appropriate. Moreover, the appellate authority has already gone into the proportionality of punishment.

29. For remaining absent in a discipline force without any reasonable explanation and moreover ^{when} ~~when~~ the absence ^{of} ~~of~~ the applicant ^{when he was} ~~when he was~~ detailed for duty, with UTP Sh. Sushil Kumar, this makes the misconduct more severe and grave.

30. No other valid legal grounds have been raised by the applicant.

31. In the result and having regard to the reasons recorded above, we do not find any merit in the present OA, which is accordingly dismissed leaving the parties to bear their own costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

V. K. Majotra
(V. K. MAJOTRA)
MEMBER (A)

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