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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1357/2001

New Delhi this the 1st day of January, 2002.

HON'BLE MR. M.P. SINGH, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Jagdish Kumar,
Const. No. 422/DAP
(PIS NO. 28860740)
Kingsway Camp,
New Police Lines,
Delhi-110009.

-Applicant

(By Advocate Shri Sama Singh)

-Versus-

1. Commissioner of Police,
Delhi Police Headquarters,
MSO Building, I.P. Estate,
New Delhi-110002.
2. Addl. Commissioner of Police,
Armed Police, Delhi,
New Police Lines, Kingsway Camp,
Delhi-110009.
3. Dy. Commissioner of Police,
Ist Bn. Delhi Armed Police,
New Police Lines, Kingsway Camp,
Delhi-110009.

-Respondents

(By Advocate Shri Ajay Gupta)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

The applicant, a Constable in Delhi Police, has assailed an order dated 3.11.99 whereby on remaining absent from duty unauthorizedly for a period of 15 days and not reporting even after relieving from Rashtrapati Bhawan to Ist Bn. DAP a major penalty of temporary forfeiture of one year approved service for a period of one year with reduction in pay and loss of increment has been imposed which has been affirmed by the appellate authority by an order dated 12.6.2000. Both these orders are assailed in this OA.

2. The applicant who remained absent

unauthorizedly with effect from 13.1.99 to 20.1.99 by an order dated 26.7.99 the period from 13.1.99 to 19.1.99 has been treated as dies-non. The remaining absent period has been ordered to be dealt with in another DE. The applicant who joined on 20.1.99 vide DD No.58 has been further directed to report for duty as a Care Taker to Nursing Home where in pursuance of the PHQ order dated 13.1.99 he has been relieved to Ist Bn. DAP and in his place Constable Shiv Raj was deputed who went to inform him at the place of his duty at Vidhyasagar Nursing Home but has not found the applicant, as such the applicant has been charged for not reporting to Ist Bn. after being relieved on 20.1.99 and for remaining absent for 15 days wilfully and unauthorizedly. The previous record of 23 occasions in the past was also made a charge. The Inquiry Officer has held the applicant guilty after going through his defence and by observing that he has taken medical rest in violation of standing order No.111 as the medical rest should have been permitted before availing the same. The disciplinary authority on the basis that no information has been given by the applicant and despite sending information as he was not found and to avoid transfer he created the defence imposed the punishment which has been affirmed by the appellate authority. The learned counsel for the applicant stated that the witnesses examined are only formal witnesses. The applicant on account of his injury has already been under treatment in the Government hospital and he has informed the department regarding his illness by reporting to duty officer on 14.1.99 and also on 20.1.99 to record the information of medical rest but the information was not recorded at the behest of Inspector Suresh Kumar. It is also stated that the applicant has not been informed

about his relieving and transfer to 1st Bn. DAP and only when he reported at Rastrapati Bhawan he was apprised of his transfer to 1st Bn. and he immediately joined there. In this backdrop it is stated that he has not committed any misconduct and the DD entries have been forged and manipulated by the department. According to him, as the earlier absence of six days w.e.f. 13.1.99 to 19.1.99 had already been decided as dies non, as such the present absence on the same medical ground cannot entail punishment. It is also stated that from the perusal of the DD entry No.58 information regarding relieving has not been communicated and it was incumbent upon the authorities to have got the signature of the applicant in the DD entry, failing which the information would not be valid. Placing reliance on Standing Order No.111 and Rule 19 of Leave Rules, 1972 it is stated that the medical certificates are very much admissible and in the instant case those pertain to Government hospital. It is also stated that Constable Shiv Raj has never informed him about the transfer and the medical rest is not mandatory to be permitted by the authorities. It is also stated that the applicant has never been sent on care taker's duty. It is also stated that for such a misconduct of absence on account of illness the punishment imposed is highly excessive and amounts to multiple punishment, as envisaged under Section 21 of the Delhi Police Act, 1978.

3. On the other hand, strongly rebutting the contentions of the applicant, the learned counsel for the respondents Shri Ajay Gupta stated that by PHQ order dated 18.1.99 the applicant has been transferred to 1st Bn. after absenting wilfully and unauthorizedly. It is stated

that the applicant's plea that the duty officer has not written his information is not correct as it was open for him to send intimation through postal communication. Having failed to do so this clearly shows that the defence which he is now taking is an after thought. As per Rule 19 of the Leave Rules ibid leave cannot be claimed as a matter of right. It is for the delinquent official to apply for the same and after intimating the competent authority attaching medical record he has to wait for its decision. The applicant has himself joined on 20.1.99 and thereafter was deputed to nursing home but when the care taker who has relieved him was sent to inform him he was not present there shows that he wanted to avoid his transfer despite knowledge. It is further stated that the applicant has absented from duty on his ^{own} ~~own~~ ^{he} will the punishment awarded is commensurate with the misconduct. The orders passed by the disciplinary authority as well as appellate authority are legal and within the purview of the rules on the subject. The period of absence has been treated as dies non on the basis of no work no pay, which does not amount to regularisation. It was the prime duty of the applicant to have remained present at the nursing home for looking ailing constables, but in the absence of any valid justification the absence of the applicant from the date of relieving to the date of joining is neither explained properly nor is justified and as such the OA is liable to be dismissed. The applicant has reiterated his pleas taken in the OA by way of filing rejoinder

4. We have carefully considered the rival contentions of the parties and perused the material on record. The present DE for absence of the applicant for 15

days w.e.f. 20.1.99 has been held independently of the decision to treat the six days absence as dies non. The applicant who has admittedly joined on 20.1.99 has been deputed to nursing home and was relieved to Ist Bn. information of which was sent through reliever Constable Shiv Raj but he was not found at the place of posting. He has failed to show that these entries are fabricated or forged. As a common practice prevalent under the Punjab Police' Rules and still in vogue it is not mandatory to get the signature of the person on the DD entry recorded on day-today basis at the Police Station or place of posting. The applicant has been informed of the transfer and relieving but his absence from duty on 20.1.99 without any intimation to the competent authority and without production of medical record does not vest him a right to be accorded leave as per Standing Order No.111 as well as Rule 19 of the Leave Rules. It is for the Govt. servant to apply for the leave alongwith an application attaching medical record and to wait the decision of the competent authority. The contention of the applicant that on the dictate of Inspector Suresh Kumar, Duty Officer has failed to record this information does not hold water as even if it is accepted nothing prevented the applicant from making such a request and sending intimation through postal communication. Having failed to do so mere production of medical record would not suo moto entitle him for grant of leave. From the circumstances it appears that the applicant has been informed of the transfer and relieving and just to avoid he has made the pretext and as an after thought procured medical certificate. The findings arrived at by the inquiry officer is correct to the extent that the applicant has been guilty of the charge as he could have

got the medical rest permitted but having failed to comply with the rules the claim of the applicant that his absence was neither wilful nor unauthorized, cannot be countenanced. From the perusal of the orders passed by the disciplinary authority as well as the appellate authority we find that the contentions of the applicant have been taken into consideration but failure of the applicant to seek prior permission and the fact that he was avoiding transfer clearly points out towards his guilt conclusively. The orders passed are reasoned dealing with the proportionality of the punishment and other factors. Remaining absent from duty, particularly when the applicant had past bad record clearly shows his incorrigibility and continued misconduct. The punishment awarded is commensurate with the misconduct.

5. In the result and having regard to the reasons recorded above we do not find any justification or reasons to interfere in the matter. The OA fails and is dismissed. No costs.


(Shanker Raju)
Member(J)

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(M.P. Singh)
Member(A)