

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri M.P.Singh, Member (Admnv.)
Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.23/2001

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

Head Constable (Driver) Kishan Kumar
(No.3892/PCR),
s/o Shri Sher Singh
presently posted at PCR West Zone
in Delhi Police
r/o RZ-31, N-Block, Gopal Nagar
Najaf Garh, New Delhi. ... Applicant
(By Advocate: Shri Sachin Chauhann with Shri Rajeev
Kumar)

Vs.

1. Union of India through its Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Addl. Commissioner of Police
PCR & Communication
Police Headquarters, I.P.Estate
MSO Building
New Delhi.
3. Addl. Dy. Commissioner of Police
Police Control Room
Sarai Rohilla
Delhi. ... Respondents
(By Advocate: Ms. Neelam Singh with ASI Ompal Singh,
Departmental Representative)

O R D E R(Oral)

By Shanker Raju, Member (J):

Heard both the parties.

2. Briefly stated the applicant has assailed an order imposing a major punishment of forfeiture of five years approved service cumulatively by an order passed on 13.9.1999 by the Additional DCP, Police Control Room, Delhi which was affirmed by the appellate authority by an order dated 24.1.2000. Initially the applicant has been proceeded against for remaining absent unauthorisedly without intimation for

11

a period of 63 days. On completion of enquiry the disciplinary authority imposed the punishment of removal from service by taking into consideration the previous record without following the laid down rules on the subject. By an order dated 10.3.1999, appellate authority set-aside the punishment and remanded the case back to the disciplinary authority for conducting the departmental enquiry afresh right from the beginning and during the course of the departmental enquiry, the evidence relating to the genuineness or otherwise of the medical certificates was to be brought on record and the applicant was placed under deemed suspension w.e.f. 3.11.1998. During the course of the Departmental Enquiry, the respondents examined prosecution to prove the charge against the applicant of unauthorised absence on duty as well as to prove the previous bad record.

3. At the outset, the learned counsel for the applicant has stated that as per Register No.16 maintained under Punjab Police Rules of 1934, the particulars of the applicant where he is presently residing has been incorporated which is at RZ-31, N-Block, Gopal Nagar, Najaf Garh, New Delhi whereas as per the testimony of PW-I the absentee notices have been served on permanent address, i.e. Vill. & PO Sureti, Jhajjar Distt. Rohtak (Haryana), where he was not residing as such he has not received any of the communication sent by the respondents. Further, it is stated that there has been non-application of mind by the enquiry officer as well as the disciplinary authority. As per the testimony of the PW-3, in cross-examination, it is admitted that brother of the

applicant had come to inform about the medical rest of the applicant but this was not allowed without the written permission of the A.C.P. It is further stated that despite examination of the Doctor, who has proved his medical record which is admissible as per 19 of the CCS (Leave) Rules 1972 his testimony has not at all been considered by the enquiry officer and the same was doubted and observed as not genuine without referring him to the second medical examination as envisaged under Rule 19(3) of the CCS (Leave) Rules ibid. In this back ground, it is stated that the applicant cannot be held guilty of unauthorised absence without intimation and the orders passed by the disciplinary authority as well as the appellate authority are liable to be set-aside. It is further stated that as regards the previous bad record, it is to be taken into consideration, for imposing the severe punishment, in the event the main charge is proved misconduct. In this back ground, it is stated that once the charge against the applicant has not been legally proved the previous bad record cannot be taken into consideration to award the punishment.

4. On the other hand, strongly rebutting the contentions of the applicant, the respondents, in their reply, have stated that absentee notices have been sent to the correct available address of the applicant. As the applicant was himself responsible to inform the department about the change of address. As regards the non-submission of the medical record and not subjecting the applicant to second medical examination, it is stated that the applicant has not informed the department and as per Rule 19(5) of the

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13

CCS (Rules), 1972 it was incumbent upon the applicant to send information. It is also stated that the address of the applicant of his native place is existed in the Personnel Branch, i.e., Service record and it was incumbent upon him to get address changed at the appropriate time. In this back ground, it is stated that the orders passed by the appellate authority and the revisional authority are reasoned and are legally sustainable and as such the OA is liable to be dismissed.

5. We have carefully considered the rival contentions of both the parties and also perused the material on record. As laid down under Rule 19 of the Leave Rules *ibid*, a non-gazetted Government servant even a certificate by the Registered Allopathy or Homoeopathy practioner, is to be accepted. The applicant got examined Dr. V.K.Dutta and proved the certificates issued by him as well as deposed that applicant was under his treatment and was unable to move. The Doctor has also been cross-examined by the Enquiry Officer, but no material has forthcome to establish that the medical record was not genuine. In the event the enquiry officer or the competent authority was of the opinion that the medical record produced by the applicant is not genuine they were free to exercise their discretion of subjecting the applicant to second medical examination in order to ascertain whether the medical record produced is genuine or not. Having failed to avail this opportunity the respondents cannot illegally question the genuinity of the medical record. Nothing has been brought on record to show the service of notices on

-5-

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the applicant or any information for second medical examination on the proper address. Further more, as admitted by them and proved by their own witnesses, i.e., Police officials, the Register No.16 which was even maintained at District Crime Centre contains the present address of the applicant at Nazaf Garh but the notices have been sent to him on his native place where he was not residing. In view of the above, we are of the considered view that the respondents have communicated the absent notices to the applicant at wrong address and there was no valid service of the communications.

6. The charge against the applicant is for remaining absent for a period of 63 days unauthorisedly without any intimation to the competent authority. From the perusal of the evidence recorded during the course of the Departmental Enquiry, PW-3 who has posted as Duty Officer has clearly stated in the cross-examination that brother of the applicant has intimated regarding illness of the applicant and his being under medical rest. Which has not at all been taken into consideration earlier by the enquiry officer or by the disciplinary authority. The contention that the applicant should have communicated through telegram and registered letter cannot be countenanced. Once an information is given to the respondents regarding illness of the applicant by one of his relatives the same should have been treated as an information and subsequent submission of the medical record would clearly show that the absent of the applicant was neither wilful nor unauthorised. The conclusion drawn by the enquiry officer is

15

perverse, mechanical and the evidence recorded during the course of the enquiry favouring the applicant has not at all been taken into consideration. The disciplinary authority has not relied on Dr. V.K.Dutta's certificate and has also not recorded any reasons for not subjecting the applicant for second medical examination. In this view of the matter, the impugned orders are not legally sustainable.

7. In the result, the OA succeeds. The order passed by the disciplinary authority as well as appellate authority are quashed and set-aside. The applicant is entitled for all the consequential benefits. The respondents are directed to comply the above directions within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

M.P. Singh
(M.P. SINGH)
MEMBER (A)

/RAO/