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Central Administrative Tribunal, Principal Bench
Original Application No.2507 of 2001

New Delhi, this the 5th day of September, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member (A)

Ex. Constable Narender (No. 2989/DAP)
S/o Shri Kapoor Singh,
R/o Vill. & P.O. Farman Badshahpur,
P.S. Meham, Dist. Rohtak,
Haryana

.... Applicant

(By Advocate: Shri Mohit Madan, proxy for Mrs. Avnish
Ahlawat)

Versus

1. Commissioner of Police (Delhi)
Police Headquarters,
M.S.O. Building, New Delhi
2. Addl. Commissioner of Police,
Armed Police,
I.P. Estate, M.S.O. Building,
Delhi.
3. Dy. Commissioner of Police,
III Bn. DAP, Delhi
New Police Lines, Vikas Puri,
New Delhi

.... Respondents

(By Advocate: Shri George Paracken)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant was a Constable in Delhi Police. Departmental proceedings were initiated against him on the allegations that while he was posted in 3rd Battalion of Delhi Police, he was required to report for duty on 19.11.95 but he did not do so. Several absentee notices were issued. The applicant was directed to resume duties and in case of sickness, to report to Chief Medical Officer, Rohtak for second medical opinion. He did not report for duty nor appeared before the Chief Medical Officer, Rohtak for second medical opinion. He resumed his duties only after absenting himself for a period of 278

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days and 8 hours. The charge had been framed pertaining to the abovesaid fact and that on 25 different occasions, the applicant had otherwise also absented himself from duty. The enquiry officer returned the findings that on the past 14 occasions, the applicant had absented himself from duty without sanction of the leave. The disciplinary authority ignored the past absences but removed the applicant from service holding:

"Unauthorised absence is one of the severest forms of indiscipline. It has the effect of lowering the efficiency and discipline of police service, which is against public interest. Firstly I take no cognizance during previous absences as most of absences had been sanctioned E.L. L.W.P etc. The defaulter Ct. absented himself for such a long period in utter defiance of Rule-25 of C.C.S. Leave Rules, 1972 and S.O. No. III of Delhi Police. Such a severest/gravest misconduct renders the defaulter absolutely unfit for retention in a police force. Therefore, I, Naresh Kumar, DCP/III Bn. DAP do hereby remove Ct. Narender No.2989/DAP,4045/DAP from service with immediate effect. His absence period mentioned above is treated as "NOT SPENT ON DUTY" (DIES-NON) for all intents and purposes.

2. The applicant preferred an appeal. The appellate authority recorded again that the applicant earlier absented on 25 occasions before the absence of 278 days and 8 hours. He failed to improve his conduct and further was involved in a case of attempt to murder and conspiracy registered at Police Station Roop Nagar. The appeal was dismissed. The findings of the appellate authority had been upheld in revision which was decided on 21.9.2000.

3. Learned counsel for the applicant contended that the appellate authority was in error in taking note of the 25 absences on the past occasions and also taking into

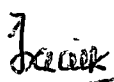
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consideration extraneous factors pertaining to his having been involved in a criminal case referred to above and, therefore, the said order cannot stand scrutiny.

4. We have carefully considered the said submission. It cannot be ignored, the reason being that though the appellate authority has a right to differ from the findings of the disciplinary authority but in that event, the procedure required under law must be followed. We have already pointed above that the enquiry officer had only returned the findings that on 14 earlier occasions, the applicant had remained absent. Without setting aside the said finding, a mistake has occurred in the order of the appellate authority in recording that there were 25 occasions in the past when the applicant remained absent. In addition to that, extraneous facts which were not part of the charge like involvement in a criminal case of attempt to murder, should not have been taken into consideration.

5. Resultantly, we quash the orders passed by the appellate authority and the revisional authority. The matter is remanded to the appellate authority to pass a fresh order in accordance with law. In view of the above observations, we are not expressing ourselves on any other pleas raised in the application. O.A. is disposed of.


(S.K. Naik)
Member (A),


(V.S. Aggarwal)
Chairman,