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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2636/2001

New Delhi this the 7th day of February, 2003.

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)

Harender Singh,
S/o Shri Tim Raj Singh,
R/o Vill. Alamgirpur Badhla,
PS Parikshit Garh,
Meerut (UP)

-Applicant

(By Advocate Shri Arun Bhardwaj)

-Versus-

1. The Commissioner of Police
(Armed Police), P.H.Q.,
M.S.O. Building,
I.P. Estate,
New Delhi.
2. The Joint Commissioner of Police,
(Armed Police), P.H.Q.,
M.S.O. Building,
I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
1st. Bn. DAP,
NPL Kingsway Camp,
New Delhi.

-Respondents

(By Advocate Shri George Paracken)

O R D E R (ORAL)

By Mr. Justice V.S. Aggarwal:

By virtue of the present application, applicant, Harender Singh, seeks quashing of the order purported to have been passed by the disciplinary authority dated 30.6.97, whereby keeping in view the defaults of applicant and holding that he is incorrigible type he has been dismissed from service. His appeal has also been dismissed by the Joint Commissioner of Police. Applicant seeks quashing of the said order.

2. To keep the sequence of events complete, it is necessary to mention that earlier on 4.10.2001 this Tribunal had quashed the said order and remitted the same



to the authority concerned, holding that the Joint Commissioner was not competent to act as an appellate authority. Admittedly the said order passed by this Tribunal has been set aside by the High Court of Delhi and hence the present application has been put for re-hearing.

3. Applicant has been dismissed from service on the fact that he remained absent from 102 days without any sanctioned leave. His past act of continued absence has also been taken note of, which culminated into the order, dismissing him from service.

4. For disposal of the present application we are not dwelling into other pleas that are raised at the Bar because learned counsel for applicant urged that in the summary of allegations the past absence of applicant was not mentioned. Pertaining to the same there was no document ~~for~~ list of witnesses but the Enquiry Officer acted on the instructions of the disciplinary authority and thereupon framed a charge in violation of sub rule (iv) of Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980 and that the contention so raised has been so controverted.

5. The summary of allegations against applicant referred to his absence from duty of 102 days referred to above reads as under:

"It is alleged against Const. Harender Singh No.916/DAP that while posted in Ist Bn. DAP, Delhi, he was required to resume his duty at 9.00 AM on 4.6.96, after availing medical rest but he did not turn up. Hence he was marked absent vide DD No.30-A dated 4.6.96. An absentee notice was sent to his home address through regd. post vide this office No.4629-30/ASIP/Ist Bn.DAP dated

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11.6.96 with the direction to resume his duty in Ist Bn. DAP N.P.L. Delhi immediately failing which necessary departmental action would be taken against him, but till date neither he has resumed his duty in this Bn. nor sent any intimation regarding his absence to the office. Thus he is still running absent wilfully and authorisedly and without information/permission of the competent authority.

The above act on the part of Const. Harender Singh No.916/DAP amounts to neglect of duty, misconduct and negligence which renders him liable for departmentally action under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

6. The list of witnesses referred to the statements of ASIP Ist Bn. Delhi Armed Police who was to prove the issuance of absentee notice in respect to the absence of 102 days. The other witness mentioned was Head Constable Kishan Singh, who was required to prove the report dated 6.6.96, requesting issuance of absentee notice to applicant and the last witness was Constable Ishwar Singh to prove DD entry No.4-A dated 28.5.96. They all pertained to the said absence of 102 days of the year 1996. The list of documents also was confined to the said act and take the liberty to reproduce the same:

- "1. Absentee notice No.4629-30/ASIP/Ist Bn. DAP dated 11.6.96.
2. Report dated 6.6.96 of CHM A Coy Ist Bn. DAP.
3. Roznamcha dated 28.5.96 (DD No.4-A) Ist Bn. DAP, N.P.L.
4. Roznamcha dated 4.6.96 (DD No.30-A) Ist Bn. DAP, N.P.L.
5. Entry No.4629 dated 11.6.96 regarding sending the Absentee notice by regd. post.
6. Receipt No.4780 of Post office GTB Nagar, Delhi."

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7. However, when the charge was framed by the Enquiry Officer applicant was told that he is a habitual absentee and incorrigible type and his past absence had also been mentioned in the enquiry report. The Enquiry Officer mentions:

"The details of previous absences of the Constable which do not find place, either in DE order or in summary of allegation or in the statement of any PW have been including in the charge as above at the instance of punishing authority."

8. It is a settled principle of law that when the Enquiry Officer is so appointed he has to conduct the enquiry only as an independent person without bias and prejudice. He has to act fairly without influencing by any extraneous factors. There has to be no outside factors in this regard while the enquiry is conducted.

9. The reproduced portion of the enquiry report reveals that the Enquiry Officer was conscious that the details of the previous absences did not find place in the order for departmental enquiry or in the summary of allegation or in the statements of witnesses but he has included it in the charge at the instance of punishing authority. Seemingly, the disciplinary authority has, in this process, influenced the Enquiry Officer and thereupon he had cared to add the previous alleged absence of applicant in the charge that was framed. Once it is so the long arm of law will not approve the same. This is for the added reason that there is no order placed on the record which had been conveyed to applicant whereby any supplementary summary of allegations, statement of witnesses had been added. Therefore, we have no hesitation in concluding that the said acts have been incorporated in

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the peculiar facts without any basis or material on record. Once the Enquiry Officer acts not independently, as noticed above, necessarily the reasoning and the report cannot be sustained.

10. For these reasons, we quash the impugned orders and also the enquiry report. The authorities, may pick up the loose thread and if deemed appropriate, may take necessary action in accordance with law. We deem it necessary to mention that nothing said herein will be treated as an expression on the merits of the matter, i.e., absence of applicant. Applicant be re-instated and may be dealt with in accordance with law.

11. OA stands disposed of accordingly. No costs.



(V.K. Majotra)
Member (A)



(V.S. Aggarwal)
Chairman

cc.