

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA NO. 414/2001

New Delhi, this the 5<sup>th</sup> day of ~~February~~ <sup>March</sup>, 2002

HON'BLE SH. M.P. SINGH, MEMBER (A)  
HON'BLE SH. SHANKER RAJU, MEMBER (J)

Khushi Ram (Ex-Constable No.10944 DAP)  
R/O V & P.O. Turkiyawas  
P.S. Dharuhera  
Distt. Rewari, Haryana.

....Applicant

(By Advocate: Sh. Bharat Bhushan with Sh. Harish Sharma and  
Sh. B.K.Saini) Versus

1. Union of India  
Through Secretary Home  
Ministry of Home Affairs  
Govt. of India  
New Delhi.
2. Addl Commissioner of Police  
Armed Police  
Delhi.
3. Deputy Commissioner of Police  
IX, B.N. DAP  
Delhi.
4. Sh. Prem Singh, Inspector  
IX, B.N. DAP  
Delhi.

....Respondents

(By Advocate: Sh. George Paracken)

ORDER

By Sh. Shanker Raju, Member (J)

Applicant, an Ex Constable assails an order of removal dated 3.12.99 as well as appellate order dated 31.5.2000 upholding the punishment.

2. Applicant has been proceeded against in a departmental enquiry on the charge that while posted in 9th Bn. DAP performing temporary duties at P.S. Vasant Kunj remained unauthorisedly and wilfully absent for a period of 5 days and 23 hours and thereafter again absented on 18.7.98. Applicant was ordered to be relieved during this period from South-West Distt. vide D.D. entry No.37 dated 1.12.98. Despite absentee notices issued to the applicant to resume

14

✓ duty and in case of sickness to report for second medical examination, applicant had not responded and ultimately after remaining absent for a period of 157 days reported back on 22.12.98. Applicant has been further alleged to have been absented from duty w.e.f. 23.12.98 for a period of 5 hours and 25 minutes and his past record indicated his habitual absenteeism, for which he has been imposed two major punishments. He has also been observed to be a habitual absentee. Enquiry officer observed that during the course of departmental enquiry applicant has not cross-examined the prosecution witnesses but in his defence, produced two witnesses who are his relatives and have stated that Applicant was taken to a Nursing Home on 7.7.98 and further on 18.7.98 he was taken to his native place for treatment. Applicant has also produced the record from Goel Nursing Home as well as from Medical Officer, Govt. Hospital Rewari to indicate that he was suffering from Haepatitis which incapacitated him from attending duties. The enquiry officer through his finding dated 24.9.99 held the applicant guilty of the charge.

3. In response to the finding, the applicant has not filed his representation. Disciplinary authority declaring him unfit removed him from service and treated the period of absence as dies non which has been upheld by the appellate authority, giving rise to the present OA.

4. Learned counsel of the applicant assails the orders on the ground that the enquiry officer during the course of enquiry has assumed the role of prosecutor by issuing the chargesheet himself with close mind and has not acted fairly. It is also stated that the defence of the applicant was not taken into

consideration and the defence witnesses have been observed to be interested witnesses. It is also stated that the medical record of the applicant was not taken into consideration and the punishment of removal is highly disproportionate, severe and harsh to the charge. It is also stated that the applicant has not been served upon the absentee notice. In support of his contentions the learned counsel of the applicant refers the ruling of the apex court in **Malkiat Singh vs. State of Punjab & others 1996 (7) SCC 634** to conduct that if the absence is unavoidable on medical grounds that would not be a misconduct and further placing reliance on the decision of apex court in **Munshi Prasad & others vs. State of Bihar AIR 2001 SC 3031**, contended that, while appreciating the evidence, rejection of the same on the ground that the witnesses are interested is not justifiable. It is also stated that the applicant on 7.7.98 has suddenly fell ill and was admitted. Simultaneously his brother had taken him to his native place where he was treated in Goel Nursing Home. It was also stated that one of the DW Bhim Singh who is his relative has taken him to hospital on 18.7.98 and thereafter had come to inform the Duty Officer at P.S. Vasant Kunj but his request was not entertained. In this view of the matter the applicant has produced a genuine medical record and the same should have been considered and as the absence was neither wilful nor unauthorised, the punishment imposed is not legally sustainable.

5. On the other hand, the learned counsel of the respondents, Sh. George Paracken took exception to the contentions of the applicant and stated that an absentee notice was sent on 8.12.98 and the applicant despite noting the contents neither reported for duty nor subjected himself for second medical

16

✓ examination. It is also stated that the enquiry officer has rightly observed the defence witnesses as interested because on being asked questions they have failed to show that despite being seriously ill why the applicant has been taken for treatment to Rowari and also on being reported the illness of the applicant to Duty Officer the witness has not lodged any information with DCP 9th Bn. DAP. It is stated that the leave cannot be claimed as a matter of right and enquiry proceedings have been held in accordance with the rules. Enquiry officer has acted fairly and has not assumed the role of a prosecutor. It is stated that during the period of absence the applicant has not signed any information or the medical record and the medical record produced does not inspire confidence and is managed to cover up the absence period. Failure of the applicant to report for second medical examination shows that his medical record was manipulated and produced later on as an afterthought. It is stated that the finding of the enquiry officer is reasoned one where the defence of the applicant was taken into consideration. The order passed by the disciplinary authority is absolutely legal keeping in view the bad record of the applicant where he has continued to commit misconduct leading award of two major punishments and despite opportunities to correct himself, his continued absence for 157 days in a disciplined force is conclusively indicating towards his incorrigibility and grave misconduct for which the only punishment referred to in Rule 10 of the Delhi Police (Punishment and Appeal) Rules is either removal or dismissal. It is also stated that despite being accorded an opportunity the applicant has not filed any representation against finding as such he cannot be allowed to raise defence as an afterthought now. Lastly it is contended

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17

✓ that the appellate authority has passed a reasoned order after meticulously dealing with all the contentions of the applicant.

6. We have carefully considered the rival contentions of the parties and perused the material on record.

7. As regards the contention of the applicant regarding bias of the enquiry officer and assumption of his role as a prosecutor in the course of departmental enquiry is concerned and his resort to assail the vires of Rule 16 is concerned we find that no such prayer is made in the OA but yet we are of the considered view that Rule 16 of the Delhi Police Rules *ibid* is within the parameters of the Constitution and is not arbitrary or suffers from any legal infirmity. We had already upheld the vires of this rule in OA-2098/2001 Ompal Singh vs. Union of India and others. As regards the contention of the learned counsel by referring to the decision of the apex court regarding absence on medical ground is concerned we find that the decision is distinguishable and would not apply to the facts and circumstances of the present case. Before the apex court the Constable has absented for one day in 31 years and in this conspectus the discharge was set aside, but here the applicant has absented for 157 days and his past record is also not clean.

8. Regarding the observation of the enquiry officer that the defence witnesses were interested and the resort of the learned counsel for the applicant to the decision of the apex court in Munshi Prasad's case (*supra*) the same would have no application as the apex court has dealt with a criminal case whereas under Rule 20 of the Delhi Police Rules *ibid* the

provisions of Cr.PC evidence are not applicable and the rule to govern the proceedings is pre-ponderance of probability. It is the finding of the enquiry officer which cannot be found fault with as the applicant has been taken on 7.7.98 by his brother and thereafter he joined back the duties on 14.7.98 thereafter he again fell ill in the same manner and was taken by one of his relatives. On being asked questions these defence witnesses could not specifically explain as despite availability of CGHS facility at Delhi why the applicant in that serious condition had been taken to Rewari. Apart from it in absence of any postal communication regarding the information of illness of the applicant and in the event the duty officer refused to record the information the witness has not been able to explain that why they had not reported the matter to DCP despite his availability. This, in our considered view, is sufficient to impeach the creditability of these witnesses who are related to the applicant and the conclusion of the enquiry officer does not suffer from any legal infirmity.

9. We have carefully perused the defence statement and the appeal of the applicant. Nowhere the applicant has stated that he has not received the absentee notices. On perusal of the record, we find that an absentee notice was sent to the applicant but was returned with the report of the local police for further necessary action. It appears that the applicant has noted down the contents and even thereafter he has neither responded by sending any information nor subjected himself to second medical examination.

10. In this view of the matter and the fact that the absentee notices have been proved in the enquiry is sufficient to establish that despite opportunity and information the applicant has neither reported back on duty nor informed the respondents through any written communication. The applicant has failed to bring to our notice any such communication sent in writing.

11. From the perusal of the medical record, we find that the applicant has undergone treatment in Goel Hospital from 7.7.98 to 13.7.98 and his disease has been referred to as PUV wherein the outdoor ticket submitted by the applicant and the evidence of the medical officer, Government Hospital Rewari, he has been reported to have been under treatment in the hospital for Viral Hepatitis from 18.7.98 to 20.12.98. Nowhere in the OPD ticket it is demonstrated that the applicant has been advised bed rest. Even from the certificate issued it can not be transpired that the applicant was advised bed rest. Failure of the applicant to report his illness to the respondents and non-compliance of the orders of respondents for second medical examination, the medical record does not inspire confidence and is certainly an afterthought with a view to cover up the absence.


12. The enquiry officer has on the basis of evidence has recorded a categorical finding of guilt against the applicant and the disciplinary authority without any reply by the applicant has taken a decision to remove the applicant from service keeping in view his incorrigibility on the basis of past record and in this process the applicant's contentions have been taken care of. Being in a disciplined force the absence of the applicant without any justified explanation and

without following the procedure for a long period of 164 days and his previous conduct where he has absented for one year 5 months and 18 days for which he has been awarded two major punishments certainly indicates towards his continued misconduct and incorrigibility being a grave misconduct for which the punishment imposed, in our considered, view is commensurate with the misconduct.

13. In the result and having regard to the reasons recorded above, this OA lacks merits and dismissed without any order as to costs.

S. Raju

( SHANKER RAJU )  
Member (J)

  
( M.P. SINGH )  
Member (A)

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