

Central Administrative Tribunal
Principal Bench

OA 91/2001

Hon'ble Shri Govindan S.Tampi, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the day of 13th December, 2001

Shri Amrit Lal Meena,
Ex.Const.(Driver) No.4230/PCR
S/o Shri Jamuna Lal Meena,
R/o Vill.Ranoli Bama Shri Mahavir Ji
P.O. Ranoli, P.S.Shri Mahavir Ji
District Swai Madhopur(Rajasthan) ...Applicant.
(By Advocate: Shri Sama Singh)

Versus

1. Commissioner of Police,
Delhi Police Headquarters
M.S.O.Building, I.P.Estate
New Delhi-2.
 2. The Addl Commissioner of Police/
PCR and Communications, Delhi
Delhi Police Headquarters
M.S.O.Building, I.P.Estate
New Delhi-2.
 3. The Addl. Dy. Commissioner of Police/PCR
Police Control Room, Delhi,
Delhi Police Headquarters
M.S.O.Building, I.P.Estate
New Delhi-2.
- ...Respondents.
(By Advocate: Shri R.K.Singh proxy counsel of
Shri A.K.Chopra)

ORDER (Oral)

By Hon'ble Shri Shanker Raju, Member(J)

Applicant who was a Constable (Driver) in Delhi Police has challenged an order passed on 29.2.96 whereby respondents, after proceeding the enquiry ex-parte, have dismissed the applicant from service, on the allegations of unauthorised absent from duty for a period of more than one year. The appeal preferred by the applicant was also rejected by an order dated 19.8.1999, wherein the appellate authority has held that though it has been filed beyond the period of limitation.

Yet in the interest of justice, considered the case of the applicant on merits. After going through proportionality of punishment keeping in view the incorrigibility of the applicant, rejected the appeal. Hence this OA challenging the above orders.

2. The learned counsel of the applicant, at the outset, stated that the applicant has sent a communication to the concerned officer as well as competent authority for grant of leave and to continue the leave on account of illness of his son but the same has not been considered. It is further stated that none of the communications sent by the respondents have been served upon him. Placing reliance, on various orders passed by the appellate authority in similar circumstances, it is contended that officers who remained absent from duty for more than one year, and were initially removed from service later on the punishment has been reduced to lesser punishment. In this back ground, the applicant contends that he has been arbitrarily discriminated by the respondents in violation of Articles 14 and 16 of the Constitution of India.

3. On the other hand, the respondents in their reply strongly rebutting the contentions of the applicant stated that they have followed the rules and regulations on the subject and taken a firm decision after considering the proportionality of punishment. The respondents have stated that the applicant has misrepresented the facts as the departmental enquiry

proceedings have been conducted within the ambit of law and the applicant was provided reasonable opportunities to defend himself at every stage but he did not avail the same on his own accord and preferred to remain absent from duty and as such the punishment awarded to applicant is fully commensurate to the misconduct proved against him on the basis of the evidence and material brought on record. It is further stated that there is no violation of Rules 8 and 10 of the Delhi Police (Punishment & Appeal) Rules, 1980 while awarding the punishment of dismissal to the applicant. In this back ground, it is stated that the grounds urged by the applicants are wrong, as he misconceived the facts, and there is no documentary evidence produced which could justify the same. It is lastly contended that appellate authority has also dealt with all the contentions raised in the appeal and considered the same as per rules on the subject and rejected the appeal. Hence, the OA is liable to be dismissed.

4. We have considered the rival contentions of both the parties and perused the material on record. As provided under Rules 7 and 19 of the CCS (Leave) Rules 1972, the applicant cannot claim leave as a matter of right. It is only when the explanation of the Government servant is found to be justified the competent authority may in its discretion grant the leave of the kind due. As the applicant despite receipt of the communications and after given an undertaking in writing to appear before enquiry officer has not participated the defence now taken

is nothing but an after thought. The applicant despite opportunities also to file representation before disciplinary authority despite receipt of the communication tends to show that he has nothing to say in his defence before the disciplinary authority as well. Mere production of medical record would not be sufficient for accord of leave to the government servant. As per standing Orders No. 111 the applicant in case of illness has to inform the competent authority and to await the decision. Despite acknowledgement of the communications and an undertaking to appear before the enquiry officer on 23.3.95, the applicant without any valid and legal cause has abandoned and did not appear and ~~take~~^W participation in the enquiry with the result, the same has been proceeded ex parte in accordance with the provisions of Rule 18 of the Delhi Police (Punishment and Appeal) Rules, 1980. We find no legal infirmity ~~resorting to~~^W in the action of the respondents to resort to Rule 18 *ibid*. The applicant having been accorded sufficient opportunity to participate in the enquiry and having failed to do the same without any proper justification cannot take advantage of his own wrong. Apart from it, the applicant has not sent any information to the competent authority and no ~~any~~^W medical record was produced. The applicant has also failed to avail of medical rest by submitting proper ~~make~~^W application along with certificate. The applicant has also not responded to the communication of the respondents ^W ~~have~~ ^{for being} subjected to the second medical examination. Keeping in view the fact the applicant has only seven years of

service and has absented himself for more than one year with ~~check~~^{chequered} history of previous absence which makes him an incorrigible person ~~and~~^{as} he was absent from duty unauthorisedly in a disciplinary force such as the Delhi Police to the extent of remaining absent for period of more than one year without any valid justification. In our considered view, the misconduct for which the only punishment prescribed under Rule 10 ibid vide is removal or dismissal and as such the penalty of dismissal imposed by disciplinary authority for wilful of unauthorised absent of the applicant is valid is legally sustainable. The contention of the applicant that the period of absent having been treated as leave without pay, the charge of remaining absent from duty does not survive and the contention that his absence has been regularised as leave is legally not sustainable and cannot be countenanced and liable to be rejected. We are fortified in our view by the decision of the Apex Court in State of M.P. Vs. Harihar Gopal SLR 1969 SC 274.

5. As regards the discrimination is concerned the applicant has drawn our attention to the various orders passed by the authorities wherein the punishment has been reduced from removal to lesser punishment would not be applicable in the present case as in the matter of punishment there cannot be application of Articles 14 and 16 and each case has to be considered on its facts and circumstances. In the order passed, the applicant therein was having excellent service of 10 years without any punishment. The applicant who has remained absent without

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permission of the competent authority for more than one year having completed a qualifying service of only seven years, certainly indicates towards incorrigibility of the applicant as per Rule 10 of the Rules *ibid*. In this view of the matter we do not find any discrimination meted out to the applicant. The appellate authority after considering the facts and circumstances of the case as well as the proportionality maintained the punishment upon the applicant, which cannot be found fault with and is legally sustainable.

6. In the result and having regard to discussion made above and reasons recorded, we do not find any ground to interfere in the matter, the OA is accordingly dismissed. No costs. Before parting with, we express our displeasure as to the casual approach of the respondents. We have been deprived of their assistance by non production of relevant record. Let a copy of this order be sent to the Commissioner of Police for information and to ensure that in all cases, where matter is listed after completion of pleadings, the relevant record is kept ready for perusal of the court.

S. Raju
(Shanker Raju)
Member(J)
/kd/

Govindan S. Tampi
Member(A)