

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1141/99

New Delhi, this the 4th day of December, 2000

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Ex.Constable Amer Singh No. 2566/DAP
S/o Shri Mardana Ram, aged 30 years
Previously employed in Delhi Police
R/o Vill & P.O. Harsora, Distt: Alwar,
RajasthanApplicant
(By Advocate: Sh. Sachin Chauhan for Sh. Shanker Raju)

VERSUS

1. Union of India
Through its Secretary
Ministry of Home Affairs,
North Block, New Delhi
2. Commissioner of Police,
Police Head Quarters,
I.P. Estate, M.S.O. Buildings,
New Delhi
3. Addl. Commissioner of Police,
Armed Police,
New Police Lines,
Kingsway Camp, Delhi.
4. Dy Commissioner of Police,
3rd Bn, Vikas Puri,
New DelhiRespondents
(By Advocate: Sh. Ram Kanwar)

O R D E R (ORAL)

Shri S.A.T. Rizvi, M (A):-

For unauthorised absence of 186 days extending from 22.8.96 to 24.2.97, the applicant Constable has been dismissed from service vide disciplinary authority's order dated 25.7.97. The dismissal order, on being carried in appeal, has been upheld and the appeal preferred by the applicant has been rejected by appellate authority's order dated 29.4.98. The applicant thereafter went before the revisional authority. However, the revision petition has also been rejected vide revisional authority's order dated 11.2.99.

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2. The learned proxy counsel appearing for the applicant has taken the ground that the entire period of absence aforesaid is fully covered by medical certificates from authorised Govt. doctors and, therefore, the punishment inflicted upon the applicant is bad. Giving details of the aforesaid unauthorised absence, the learned proxy counsel has shown us the medical certificates placed on record and issued by the Sr. Medical Officer, Govt. Ayurvedic Dispensary, Jhunjhun, Haryana. On the point of prior information being given to the respondents about his illness, the learned proxy counsel has shown us the telephone call bills and has claimed that the applicant made as many as five calls on different occasions keeping the respondents informed about his illness. He has also stated that at least once he had informed the respondents when he sought one week leave in the initial stages of his absence. The respondents have nothing to say about these facts.

3. The applicant admits having received absentee notices issued on two different occasions and also admits that beyond telephonic information aforesaid and the intimation about one weeks' leave referred to, he did not make any further attempt to inform the respondents about his remaining on leave on the ground of illness nor did he seek and obtain formal permission to stay out on leave.

4. The respondents' contention that the applicant did not opt for second medical opinion even after being directed to do so is sought to be met by the learned counsel by contending that the notice in question dated

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3.9.96 directing the applicant to go in for second medical opinion before the C.M.O. Alwar was never received by him and he came to know about it only after he had resumed his duty on 24.2.97. Soon thereafter, he proceeded for second medical opinion from the said authority and the certificate issued by that authority has been placed on record which certifies the applicant's illness and also certifies his fitness to be on duty. The learned proxy counsel has taken us through the report of the EO to establish that the aforesaid notice dated 3.9.96 was actually not received by him. We find that in the report of the EO there is no mention about the service of the aforesaid notice on the applicant, although the service of the other notices aforesaid has been proved during the course of enquiry.

5. We are, therefore, faced with a situation in which the applicant has covered himself fully by medical certificates issued by Govt. doctors for the entire period of unauthorised leave and the respondents have nothing to say about these certificates. At the same time, we are also aware that the applicant did not make any effort to obtain formal sanction of the competent authority to remain on medical leave and further that he also did not prefer formal applications for sanction of leave in the manner he should have done in accordance with the rules governing the grant of leave. We have also noted that while he could go to a distance of 175 KM from wherever he was residing during his illness in search of medical assistance, he did not make any effort to approach the respondents in person for sanction of leave. These

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are the factors which do not exactly favour the applicant but at the same time in regard to his illness, we are unable to dis-believe the medical certificates issued by the authorised Govt. doctors and are, therefore, unable to hold him guilty of unauthorised absence except in a purely technical sense.

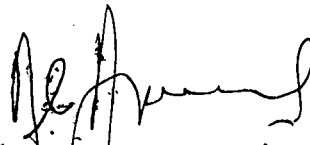
6.. In the peculiar circumstances of this case outlined in the preceding paragraphs, it appears to us that the punishment inflicted upon the applicant is out of all proportion to the failing of the applicant which is limited to not obtaining of appropriate permission and sanction for availing medical leave even though he can claim to have remained ill throughout. According to us, it is, in the circumstances, one of those cases where our judicial conscience is shocked at the severe penalty imposed on the applicant. We are, therefore, inclined to quash and set aside the order of dismissal as also the orders passed in appeal and by the revisional authority. The disciplinary authority will review the scale of punishment keeping in view the observations made in this order and pass an appropriate order, in any event, within a period of two months from the date of receipt of a copy of this order. It is clarified that while re-considering the scale of punishment to be inflicted in this case, the orders of dismissal and removal from service will be treated on par and any punishment other than these two should, in our view, meet the ends of justice. The period from the date of dismissal upto the date of reinstatement will be dealt with in accordance with the rules and regulations on the subject.

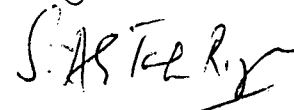
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7. The OA is thus disposed of without any order as to costs, with the direction contained in the above paragraph.


(ASHOK AGARWAL)
CHAIRMAN


(S.A.T. RIZVI)
MEMBER (A)

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