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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 116/99

New Delhi: this the 22nd day of March, 2000.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Ex. Constable Harvir Singh,
S/O Sh. Ram Kumar,
R/O 444, Nangal Raya, Janakpuri,
New Delhi

..... Applicant.

(By Advocate: Ms. Jasvinder Kaur)

Versus

1. Lt. Governor,
Raj Niwas,
Raj Niwas Marg,
Delhi-52.

2. Commissioner of Police,
Police Hqs.
I.P. Estate, ITO.,
New Delhi.

3. Dy. Commissioner of Police,
II BN, DAP,
Delhi.

4. Addl. Commissioner of Police,
Police Hqs./AP & T,
I.P. Estate,
New Delhi

..... Respondents.

(By Advocate: Shri Vijay Pandita)

ORDER

HON'BLE MR. S. R. ADIGE

Applicant impugns the disciplinary authority's order dated 7.8.95 (Annexure-B); the appellate authority's order dated 17.1.96 (Annexure-C); the revisional authority's order dated 12.11.96 (Annexure-D) and the order of the Commissioner of Police dated 14.3.98 (Annexure-A). He prays for reinstatement with payment of arrears of pay and allowances and other consequential benefits.

2. Applicant was proceeded against departmentally on the allegation that he was in the habit of absenting himself from duty wilfully and unauthorisedly. 17

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such instances of irregular and unauthorised absence from duty stretching from a few hours to as many as 63 days were enumerated. The Inquiry Officer in his findings dated 4.4.95 held the charge proved.

A copy of the Inquiry Officer's findings was furnished to applicant, but he failed to submit any representation despite further time being granted to him to do so.

Thereupon he was asked to appear before the Disciplinary Authority.

3. The Disciplinary Authority gave applicant a hearing upon which after agreeing with the Inquiry Officer's findings imposed the punishment of forfeiture of 2 years of approved service with cumulative effect vide impugned order dated 7.8.95.

4. Disagreeing with the Disciplinary Authority's impugned order dated 7.8.95, the appellate authority vide show cause notice dated 30.10.95 (Annexure-E) directed applicant to show cause why he should not be removed from service. Applicant was required to submit his reply to the show cause notice by 11.12.95, but till 11.1.96 he had not submitted his reply upon which the appellate authority by order dated 17.1.96 ordered that applicant be removed from service, but at the same time directed that the absence period be treated as leave without pay.

5. The aforesaid order was upheld in revision vide order dated 12.11.96 and by the Commissioner of Police vide order dated 14.3.98.

6. We have heard applicant's counsel Ms. J. Kaur and respondents' counsel Shri Vijay Pandita.

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7. Applicant's counsel has asserted that the appellate authority and revisional authority have themselves directed that absence period be treated as leave without pay, ~~and~~ the charge of absence from duty does not survive, and the impugned order is fit to be quashed and set aside. Reliance has been placed on Hon'ble Supreme Court's decision State of Punjab Vs. Bakshish Singh JT 1998 (7) 142 and Delhi High Court's order in S.P. Yadav Vs. UOI & Ors. 71 (98) Delhi Law Times 68. There is merit in these contentions of applicant's counsel and we are satisfied that the aforesaid rulings fully cover the facts and circumstances of the present case.

~ The OA succeeds and is allowed and ~

8. In the result, the impugned orders of the appellate authority and the revisional authority, as well as the order of the Commissioner of Police dated 14.3.98 are quashed and set aside. The order of the Disciplinary Authority dated 7.8.95 will be deemed to have merged with the orders of the aforementioned superior authorities. Applicant should be reinstated within two months from the date of receipt of a copy of this order. The period between the date of applicant's removal from service and the date of his reinstatement as well as such consequential benefits as accrued to applicant upon his reinstatement shall be determined by the respondents in accordance with rules, instructions and judicial pronouncements on the subject. It will be open to respondents to proceed against applicant in accordance with law. No costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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(S. R. ADIGE)
VICE CHAIRMAN (A)

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