

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1253/98 91

New Delhi this the 29th day of February, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, VC(J)
Hon'ble Mrs. Shanta Shastry, Member (A)

Ranbir Singh
S/o Shri Puran Singh
R/o C-44/185, Gamrigonda,
Delhi-110053.

...Applicant

(By Advocate: Dr. J.C. Madan proxy for
Shri A.K. Behera)

Versus

1. The Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi-110 002.
2. The Dy. Commissioner of Police,
5th Battalion,
Delhi Armed Police, Delhi.
3. The Sr. Addl. Commissioner of Police,
Police Headquarters, I.P. Estate,
New Delhi-110 002.

...Respondents

(By Advocate Sh. D.S. Jagotra, proxy counsel
(with SI Harbans Lal, Departmental
representative)

ORDER (Oral)

By Reddy, J.-

Pleadings are complete. The applicant
was alleged to have been absented himself
unauthorisedly and wilfully without any prior
permission of the competent authority on the
following occasions:-

D.D. No. vide which marked absent.	DD No. vide which resumed duty.	Period of absence	Days	Hrs.	Min.
1. 127, dt. 17.10.90	21, dt. 22.10.90	4 9 45			
2. 86, dt. 1.11.90	148 dt. 2.12.90	30 16 15			
3. 11, dt. 4.12.90	29 dt. 19.12.90	11 1 10			
4. 25, dt. 19. 2.91	53,dt. 4. 3.91	13 5 -			
5. 28, dt. 5. 3.91	165,dt. 7. 3.91	1 21 35			
6. 38, dt. 8.10.91	6,dt. 11.10.91	2 23 35			
7. 68, dt. 4.11.91	99,dt. 15.11.91	11 5 12			
	Total	75 10 32			

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2. A departmental enquiry was conducted against the applicant and the Enquiry Officer found that the above charge has been established. The Disciplinary Authority agreeing with the findings of the Enquiry officer passed the impugned order Annexure A-1 dated 28.4. 1993, removing the applicant from service. The Disciplinary Authority also, however, regularised the period of absence of the applicant as leave without pay. The appeal filed by the applicant was also rejected.

3. The OA is filed challenging the order of removal of the applicant. The applicant has raised several grounds but mainly it has been urged that ~~as~~ the unauthorised absence having been regularised as leave without pay, the misconduct of unauthorised absence would no longer survive and hence the applicant is not liable for any penalty.

4. Learned Counsel for the applicant and the respondents are absent. Applicant also has not appeared. Learned proxy counsel for the parties request adjournment on the ground of the advocates' abstaining from courts. We do not consider the request as tenable. Hence the request is rejected. Perused the pleadings and Annexures filed.

5. The only question that has to be decided in this case is whether the misconduct of unauthorised absence would cease to exist when once the period of absence was regularised. It was clearly stated in the impugned order that the

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11

period of absence was regularised as 'Leave without Pay'. In the counter also it has been stated that the applicant's absence has been decided as leave without pay vide order dated 28.4.1993 which is Annexure A-1.

6. We are of the view that this case falls within the ratio of State of Punjab Vs. Bakshish Singh, (1998) 8 SCC 222, wherein it has been clearly held that once the misconduct of unauthorised absence has been regularised, the delinquent was entitled for acquittal on the ground that the basis of the misconduct disappears.

7. In the circumstances, the OA is allowed. The impugned orders are quashed. The respondents are directed to reinstate the applicant into service within 3 months from the date of receipt of a copy of the order. In view of the facts and circumstances, we direct payment of 50% back wages. No costs.

Shanta
(Mrs. Shanta Shastry)
Member (A)

Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)

CC.