

Central Administrative Tribunal
Principal Bench

O.A. No. 1377 of 1999

New Delhi, dated this 2nd November, 1999

(b)

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri Vipin Kumar,
S/o Shri Banwari Lal,
R/o Vill. Barbar,
P.O. P.S. Gonda,
Dist. Aligarh,
Uttar Pradesh. Applicant

(By Advocate: Shri Bhaskar Bhardwaj)

Versus

1. Union of India through
the Commissioner of Police,
Police Headquarter, I.P. Estate,
New Delhi.
2. Commissioner of Police,
Police Headquarter, I.P. Estate,
New Delhi.
3. Addl. Commissioner of Police,
Armed Police,
Delhi Police Headquarters,
I.P. Estate, New Delhi.
4. Dy. Commissioner of Police,
1st BN., Delhi Armed Police,
New Delhi. Respondents

(By Advocate: Shri A.K. Singh proxy
counsel for Shri Raj Singh)

O R D E R

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

Applicant impugns Respondents' orders dated 18.11.97 (Annexure A-1); dated 27.4.98 (Annexure A-2) and 8.3.99 (Annexure A-3). He prays for reinstatement in service with all consequential benefits.

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2. Applicant was proceeded against departmentally on the allegation that while posted in 1st BN., D.A.P., C.P. Reserve Vijay Ghat and performing light duty, he was found absent at 10.00 A.M. on 23.7.96. He was searched in C.P. Reserve Camp, but could not be found anywhere, as such he was marked absent vide D.D. No. 21 dated 23.7.96. An absentee notice was sent on 30.7.96 to him at his home address with direction to resume his duties, failing which disciplinary action would be taken against him. He resumed duty only on 29.7.96 after absenting himself for a period of 6 days 3 hours and 50 minutes wilfully and unauthorisedly. It was also alleged against applicant that he was directed to attend the UAC course vide order dated 28.8.96 but he absented himself from IV BN. DAP vide D.D. No. 20 dated 30.9.96 and resumed duty on 10.12.96, after absenting himself for a period of 71 days 4 hours and 20 minutes unauthorisedly and wilfully. It was also alleged that on scrutiny of his past performance it was found during the past that he had absented himself on 22 different occasions, and those absences had been regularised by competent authority by awarding him two major punishments, censure, punishment drills, leave without pay and warning etc., but the same had had no effect on the applicant and his conduct showed him to be a habitual absentee.

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3. The I.O. in his finding dated 4.8.97 (Annexure A-7) held the charge of applicant's unauthorised absence from duty from 23.7.96 to 29.7.96 and from 30.9.96 to 10.12.96 as proved, and also concluded that applicant was a habitual absentee and incorrigible person.

4. A copy of the I.O's report was served on applicant for submitting representation, if any which he submitted on 12.2.97.

5. Upon going through the materials on record the Disciplinary Authority by impugned order dated 18.11.97 (Annexure A-1) concluded that applicant was unfit for retention in the Police force and accordingly dismissed him from service with immediate effect and further directed that the aforesaid mentioned absent periods be treated as leave without pay. The aforesaid dismissal was sustained in appeal vide order dated 27.4.98 and his revision petition was also rejected vide order dated 8.3.97.

6. We have heard applicant's counsel Shri Bhaskar Bhardwaj and Shri A.K. Singh proxy counsel for Shri Raj Singh for respondents.

7. Shri Bhardwaj has stated that as

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Respondents themselves have regularised the applicant's aforesaid absence from duty from 23.7.96 to 29.7.96 and again from 30.9.96 to 10.12.96, by directing that the above mentioned absences be treated as leave without pay and as applicant's previous absences on 22 occasions have also been regularised as is clear from the impugned order dated 18.11.97 itself, the charge itself does not survive and hence the impugned orders should be quashed and set aside. In this connection he relies upon Hon'ble Supreme Court's judgment in State of Punjab Vs. Bakshish Singh JT 1998 (7)SC 142 as well as on the Delhi High Court's decision in S.P. Yadav Vs. UOI 71(1998) Delhi Law Times.

8. These averments of Shri Bhardwaj are not disputed by Respondents' proxy counsel.

9. It may be mentioned that the aforesaid judgments in Bakshish Singh's case (Supra) and Shri ^{relied upon} Yadav's case (Supra) have been ~~cited~~ by the Tribunal in several orders in the recent past, some of them being order dated 29.9.99 in O.A. No. 1134/94 Narinder Kumar Vs. Commissioner of Police; order dated 25.8.99 in O.A. No. 1444/94 Rajesh Kumar Vs. Govt. of NCT, Delhi & others; order dated 13.8.99 in O.A. No. 1359/94 Rishi Pal Vs. Commissioner of Police & Anr. and order dated 16.7.99 in O.A. No. 1536/94 in Dharam Pal Vs. L.G., Delhi & Others.

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10. In the facts and circumstances of the case the O.A. succeeds and is allowed this extent that the impugned orders are quashed and set aside and Respondents are directed to reinstate applicant within two months from the date of receipt of a copy of this order. Upon reinstatement the period of absence from the date of dismissal till the date of reinstatement together with such consequential benefits as accrue to applicant upon his reinstatement shall be determined by respondents in accordance with rules and instructions and judicial pronouncements. No costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)

Member (J)

S.R. Adige

(S.R. Adige)

Vice Chairman (A)

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