

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

OA.No.142 of 1999

New Delhi, this 1st day of February 2001

HON'BLE SHRI KULDIP SINGH, MEMBER(J)
HON'BLE SHRI M.P.SINGH, MEMBER(A)

Subhash Chand
S/o Shri Sukhbir Singh
R/o Village & P.O. Bhinda
Dist. Muazaffar Nagar
Uttar Pradesh

... Applicant

(By Advocate: Shri George Paracken - not present)

versus

1. The Additional Commissioner
of Police (Armed Police)
Delhi.

2. The Deputy Commissioner of Police
9th Bn., Delhi Armed Police
Delhi.

... Respondents

(By Advocate: Shri Ajay Gupta)

ORDER(Oral)

By Shri Kuldip Singh

In this OA the applicant has challenged the impugned order by which he has been awarded punishment of withholding of three years service increments with cumulative effect.

2. The facts in brief are that the applicant had been proceeded departmentally on the allegation that he had unauthorizedly absented himself from duty. The applicant had gone on 60 days' Earned Leave with effect from 4.12.1995 and on his request his leave was extended for a further period of 20 days. He was due to resume his duty on 21.2.1996. But he did not turn up on that date. However, his brother informed telephonically to the concerned Duty Officer

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regarding his medical rest up to 8.3.1996. The applicant was directed to resume his duties on 21.6.1996 and thus he is alleged to have absented himself wilfully and unauthorizedly for a period of 4 months 25 hours and 15 minutes upon which an enquiry was conducted in accordance with the Delhi Police (Punishment and Appeal) Rules, 1980. However, the enquiry officer, while recording his findings held the applicant guilty of the charges and submitted his report to the disciplinary authority on which the disciplinary authority passed the impugned order dated 15.5.1997 (Annexure-A) imposing the penalty of withholding of three years' service increments with cumulative effect and the period of his absence from duty was treated as unauthorised resulting in loss of pay and allowances on the principles of "no work no pay." The applicant submitted an appeal and the same was rejected vide order dated 31.12.1997 (Annexure-B). To challenge the same, the applicant has taken up the grounds that the defence submitted by him was not considered by the enquiry officer and the enquiry officer in a mechanically manner recorded his findings holding him guilty of the charges. It was also alleged in the grounds, to challenge the findings of the enquiry officer, that the enquiry officer did not assess the defence statement at all and that amounts to violation of principles of natural justice. It is also stated

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that the findings of the enquiry officer are in violation of Rule 16 (IX) of the Delhi Police (Punishment and Appeal) Rules, 1980 inasmuch as the enquiry officer has not given any reason for his findings and without proper reasons the conclusions arrived at are arbitrary and violative of the principles of natural justice. The applicant has also stated that the absence was not wilful as the PW1 had stated that the applicant's brother had telephonically informed the Duty Officer that the applicant could not resume duty due to his illness and the necessary medical certificate would be submitted later on. So, on these grounds the applicant has assailed the impugned orders.

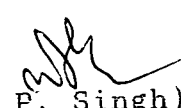
3. We have heard the learned counsel for the respondents and have gone through the records.

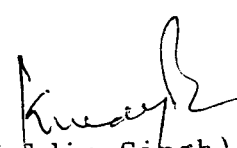
4. On a perusal of the findings recorded by the enquiry officer, we find that the enquiry officer, while arriving at the conclusion, has not given any reason as to why he has held the applicant guilty of the charges. The perusal of the charge itself shows that the applicant had informed telephonically to the Duty Officer about the medical rest up to March 1996. When such type of statements are given in defence, it was the duty of the enquiry officer to record in the findings why the request received from the

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applicant had not been accepted and what was the reason to still hold the applicant guilty of the charges of wilful absence. In the absence of the reasons recorded by the enquiry officer, we are also unable to appreciate as to how the enquiry officer had reached the conclusion. It is well settled law that the Tribunal, while exercising the power of review, is not supposed to reappreciate the evidence. But it can go into the process of enquiry and how a particular conclusion arrived at. But on going through the conclusion arrived at by the Enquiry Officer, it transpires that there is nothing to indicate that on what basis enquiry officer has arrived at this conclusion. Thus he has reached the conclusion without applying his mind. So, we find that the findings of the enquiry officer cannot be sustained in the eyes of law and the same are liable to be quashed.

5. Accordingly, we hereby quash the findings of the enquiry officer and consequently set aside the orders passed by the disciplinary and appellate authorities. However, it will be open to the departmental authorities to pass fresh order giving reasons in accordance with rules and instructions on the subject if they so like. No order as to costs.


(M. P. Singh)
Member(A)


(Kuldeep Singh)
Member(J)