

Central Administrative Tribunal, Principal Bench

Original Application No. 144 of 1999

New Delhi, this the 21st day of March, 2000

Hon'ble Mr. S. R. Adige, Vice Chairman(A)  
Hon'ble Mr. Kuldip Singh, Member (J)

Raj Pal  
S/o Shri Sultan Singh  
R/o Village Bajghera  
P.O. Palam Vihar,  
District Gurgaon,  
Haryana.

- Applicant

(By Advocate: Shri S.M. Rattanpal, proxy for  
Mrs. Meera Chhibber, Counsel for the  
applicant)

Versus

1. Union of India,  
through Lt. Governor,  
Raj Niwas, Delhi.

2. Addl. Commissioner of Police,  
Northern Range, P.H.Q.,  
M.S.O. Building, I.P. Estate,  
New Delhi.

3. Addl. Commissioner of Police,  
Central District,  
Darya Ganj,  
New Delhi.

- Respondents

(Represented By: Constable Shri Ranvir Singh)

O R D E R (ORAL)

By Hon'ble Mr. S.R. Adige, Vice Chairman(A)

1. Applicant impugns the disciplinary authority's order dated 11.2.98 dismissing him from service (Annexure P-1) and the appellate authority's order dated 12.3.99, rejecting his appeal.

2. Applicant was proceeded against departmentally for being absent from duty unauthorisedly and wilfully with effect from 27.11.96 and in the disciplinary authority's impugned order dated 11.2.98, it was stated that he was still running

absent till that date. The disciplinary authority's impugned order also states that applicant had been dealt with departmentally for unauthorised and wilful absence from 27.11.96 under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980.

3. The Enquiry Officer in her report dated 22.10.97 requested for an ex-parte order against the defaulter as he did not participate in the departmental proceedings and was also continuing to remain absent. Permission was granted vide order dated 24.10.97 but despite two absentee notices issued to applicant to resume his duties, which were served upon his father as well as his brother, he did not participate in the enquiry and accordingly, the Enquiry Officer submitted her findings on 26.12.97 concluding therein that the charges framed up against the applicant stood proved.

4. Tentatively agreeing with the findings of the Enquiry Officer, a copy of the same was sent to the applicant for representation, if any but applicant did not submit any reply or representation and despite being called for personal hearing on 12.1.98, he did not avail of that opportunity either. Thereupon, the disciplinary authority by the impugned order dated 11.2.98, held the applicant to be a habitual absentee and incorrigible type of officer and dismissed him from the force but at the same time, directed that the absence period be treated as leave without pay.

5. Applicant submitted an appeal dated 15.3.98 which was also rejected by order dated 12.3.99.

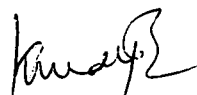
6. As noted above, the disciplinary authority while dismissing applicant from service by impugned order dated 11.2.98, has directed that the absence period is decided as leave without pay.

7. The Hon'ble Supreme Court in State of Punjab and ors. vs Bakshish Singh, JT 1998(7) SC 142 has held that in a case where the period of absence from duty has been regularised and converted into leave without pay, the charge of absence from duty does not survive. Similarly in Satya Pal Yadav vs. Union of India & ors. 71(1998) Delhi Law Times 68, it has been held that where the absence has been regularised by grant of leave, the charge of unauthorised and wilful absence from duty, does not survive.

8. We are satisfied that the aforesaid two rulings squarely apply to the facts and circumstances of the present case because the disciplinary authority while dismissing applicant from service, has himself by impugned order dated 11.2.98, directed that the absence period be treated as leave without pay. Under the circumstances, neither the disciplinary authority's impugned order dated 11.2.98 nor the appellate order dated 12.3.99 rejecting the appeal, can be legally sustained.

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9. This OA, therefore, succeeds and is allowed to the extent that the impugned order of the disciplinary authority as well as the appellate authority are quashed and set aside. Applicant should be reinstated in service within two months from the date of receipt of a copy of this order. The period from the date of applicant's dismissal from service till the date of his reinstatement and such consequential benefits as will flow to him upon his reinstatement, shall be determined by 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, if so advised. No costs.

  
(Kuldip Singh)  
Member(J)

  
(S.R. Adige)  
Vice Chairman(A)

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