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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 1744/1999

New Delhi this the 16th day of January, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Ex. Constable Su Kumaran T.R.
No. 33/R.B
S/O Shri Raman T.P.
R/O Thazhathu House
Village Teruzottukurussa
P.S. Coyalmanam, Distt. Palghat, ... Applicant
Kerala.

(By Shri Rajeev Kumar, Advocate)

-versus-

1. Union of India through
its Secretary,
Ministry of Home Affairs
North Block
New Delhi.
2. Joint Commissioner of Police
Rastrapati Bhawan
Rastrapati Bhawan
New Delhi-1
3. Dy. Commissioner of Police
R.P. Bhawan
Rastrapati Bhawan
New Delhi-1 ... Respondents

(By Advocate Shri Ajesh Luthra)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Applicant, at the material time, was a Constable employed in Delhi Police. Disciplinary proceedings were initiated against him on a charge of misconduct of unauthorised absence. Following charge was framed against him:-


"I, Insp. Jai Kumar Sharma charge you
Const. Sukumaran T.R. No. 33/RB (PIS

No. 28870392) that you were found absent from duty on the following occasions without any permission/information of the competent authority wilfully and unauthorisedly:-

S1.	DD No. & date No. of absence	DD No. & date of arrival	Period Days Hrs. Mints
1.	44 4.12.97	55 5.12.97	1 4 30
2.	34 23.11.97	26 28.11.97	4 19 5
3.	47 10.12.97	23 2.1.98	22 19 5
4.	70 2/3.1.98	13 23.1.98	20 11 15

You are further charged that on perusal of your previous absentee record it revealed that you had absented yourself on 35 different occasions wilfully and unauthorisedly and the punishment so awarded to you had no effect on you. You did not improve your habits despite giving repeated chances which established that you are a habitual absentee incorrigible type of person and unbecoming police officer, which renders you liable for departmental action under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

Applicant was thus charged with unauthorised absence on four different occasions for a period of about 47 days. He was shown to have absented himself on 35 earlier occasions also and was punished for the said absence. The enquiry officer, on perusal of the facts adduced in the enquiry, has found the aforesaid charge proved against him. A copy of the order of the enquiry officer dated 16.9.1997 is annexed at Annexure A-3. The disciplinary authority by his order of 11.9.1998 at Annexure A-1 has accepted the aforesaid finding of the enquiry officer and has proceeded to impose a penalty of dismissal from service. Aforesaid order of the disciplinary authority was carried by the applicant in appeal and the appellate authority by his



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order of 25.1.1999 at Annexure A-2 has affirmed the order of the disciplinary authority and has dismissed the appeal. Aforesaid orders are impugned by the applicant in the present OA.

2. Counsel for the applicant has raised only one contention in support of the OA. According to him, the period of absence which has been made the basis of the charge, has been treated as leave without pay. Aforesaid period, according to the learned counsel has been regularised. In addition, applicant has been paid and he has received his salary ~~after~~ for a period after 23.1.1998 which is ~~the~~ period of the aforesaid absence. The absence, according to the learned counsel, has been regularised on this ground also.

3. In our judgement, there is no merit in the aforesaid contention.

4. The first limb of the argument, we find is based on a decision of the Supreme Court in the case of **State of Punjab and others v. Bakshish Singh**, 1998 (7) JT 142 which had taken the view that once the period of absence is treated as leave without pay, the same amounted to regularisation of the period of absence. The decision, in our view, no longer holds the field in view of an earlier decision of a Larger Bench of the Supreme Court in the case of **State of Madhya Pradesh v. Harihar Gopal**, 1969 SLR 274. Both



the aforesaid cases were considered by the Delhi High Court in its judgement dated 18.4.2000 rendered in the case of Deputy Commissioner of Police v. Ex-Constable Karan Singh & Anr. in Civil Writ Petition No. 4883 of 1999 wherein the High Court has found that the decision rendered in the case of Bakshish Singh (supra) cannot hold good in view of the earlier decision of the Larger Bench of the Supreme Court in the case of Harihar Gopal (supra). In Harihar Gopal's case (supra), the Supreme Court in no uncertain terms has held as under:-

"The order granting leave was made after the order terminating employment and it was made only for the purpose of maintaining of correct record of the duration of service and adjustments of leave due to the respondent and for regularising his absence from duty. Our attention has not been invited to any rules governing the respondent's service conditions under which an order regularising the absence from duty subsequent to termination of employment has the effect of invalidating the termination".

The court furher held:

"We are unable to hold that the authority after terminating the employment of the respondent intended to pass an order invalidating the earlier order by sanctioning leave so that the respondent was to be deemed not to have remained absent from duty without leave duly granted".

In view of the aforesaid decision, the first limb of the argument of the learned counsel stands rejected.

5. As far as the second limb of the argument is concerned, all that has been done is payment of salary for the period when the applicant was on duty pending

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the disciplinary proceedings. Applicant has not been suspended pending enquiry and hence was on duty. ^{payment of salary for the said period} We fail to see how the ^{same} can regularise the period of absence which is the subject matter of the disciplinary proceedings. Aforesaid contention is also in the circumstances rejected.

6. No other contention has been advanced in support of the OA which is accordingly dismissed. No costs.

(S.A.T.Rizvi)

(S.A.T.Rizvi)
Member (A)

sns

(Ashok Agarwal)

Chairman