

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1787/1999

New Delhi this the 3rd day of August, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Ex. Constable Chander Mani
S/o Shri Ram Kishore
R/o Village Makhan Pur Bangar
P.O. Dhankaur, District
Gautam Budh Nagar
(Bullandsher)
Uttar Pradesh.

.... Applicant

(By Advocate Shri Shanker Raju)

-Versus-

1. Union of India through
Its Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Special Commissioner of Police
Intelligence
Police Head Quarters, I.P.Estate
M.S.O. Building
New Delhi.
3. Dy. Commissioner of Police
Special Cell (Special Branch)
Police Head Quarters, I.P.Estate
M.S.O. Building
New Delhi.

..... Respondents

(By Shri Vijay Pandita, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

By an order passed by the disciplinary authority on 11.3.1999, a penalty of dismissal from service on the ground of unauthorised absence has been imposed on the applicant. Aforesaid order has been maintained by the appellate authority in its order passed on 25.5.1999. Aforesaid orders are impugned in the present OA.

2. As far as the unauthorised absence is concerned, the charge framed against him shows that

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the applicant was alleged to have unauthorisedly absented himself for the period 16.3.1998 to 1.5.1998. He was further charged of having unauthorisedly absented himself on 19 earlier occasions which according to the prosecution show that that he was a habitual absentee. As far as the aforesaid unauthorised absence of the applicant is concerned, the enquiry officer by his order passed on 5.1.1999 has concluded as under:-

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"Conclusion :- From the perusal of the statements of PWs and evidences on record it is clear that he is a habitual absentee but in this case he had sent his relative to inform the deptt. on 3.3.98 vide D.D.No.44 Operation Cell, Lodhi Colony and again on 25.3.98 he had sent an information to DCP through regd. letter about his illness

Therefore, I hold that charges framed against Const. Chander Mani No.7794/PCR (PIS No.28861813) are partly proved.

Moreover DWs stated that his wife is a serious cancer patient and her treatment is going on in L.N.J.P. Hospital Delhi. Therefore, his case may be decided sympathetically."

3. Aforesaid conclusion as we read it, has exonerated the applicant of his absence during the period 16.3.1998 to 1.5.1998. He has, however, been held partly guilty of the charge on the basis of his having been absented on earlier occasions thereby styling him as a habitual absentee. Aforesaid charge of absence during the period 16.3.1998 to 1.5.1998 has been dealt with by observing that the applicant had on two occasions sent information to the Deputy Commissioner of Police through registered letter in respect of his illness. The disciplinary authority, however, we find has found the applicant guilty on

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both the counts, namely period of absence during 16.3.1998 to 1.5.1998 as also absence on 19 earlier occasions. The disciplinary authority in respect of the absence for the period of 47 days has observed:-

"I have carefully gone through the findings of the E.O. and representation submitted by Const. Chander Mani, No.7794/PCR and other material on the DE file. I have also heard him in O.R. on 5.3.99. He has not put-forward any fresh plea to prove his innocence except what he has already stated in his defence statement which has been discussed by the E.O. in his findings. The defaulter Const. was permitted to avail medical rest from 3.3.98 to 8.3.98 and 9.3.98 to 15.3.98. He was supposed to resume his duty on 16.3.98. No further information was received from him as such he was marked absent vide D.D. No.19 dated 16.3.98. Subsequently he informed the department vide letter on 30.3.99 that he will resume his duty after obtaining fitness. He joined duties on 2.5.98 after absenting himself for a period of 47 days. He has taken plea that since he has informed the department regarding his illness leave of kind due should be granted to him. He submitted medical papers regarding his illness from Mittal Clinic, Ballabagarh that he was suffering from Pneumonia from 3.3.98 to 7.3.98 then from Bhatia Nursing Home, Ballabagarh, he submitted medical certificate that he was suffering from fever and was advised medical rest from 8.3.98 for one week and then he submitted two medical certificates from Dr.K.L.Singhal Rabupura, Bullandshehr U.P. that he was suffering from hepatitis, one from 15.3.98 to 30.3.98 and another from 31.3.98 to 17.4.98, then submitted another medical certificate from Primary Health Centre Jowar, Bulandshahr that he is suffering from Hepatitis from 18.4.98 to 1.5.98. The defaulter it must be stated is a resident of Village Makan Pur, P.S. Dhankaur, Distt. Bullandshahr, U.P. and had requested Casual Leave for treatment of his mother. It is extremely surprising to note that he has submitted medical certificates regarding his illness of Pneumonia, fever and Hepatitis from two different States from Ballabgarh, in Haryana and from Bullandshahr in U.P. It is crystal clear that defaulter has obtained medical certificates from different Doctors from different States for different types of diseases to cover up his absence. It is obvious that the medical certificates are manipulated. Thereby Const. has violated 19.5. of CSS Leave Rules 1972 and provisions of S.O. No.111/88. He has remained absent for the period of 147 days wilfully and unauthorisedly."

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4. As regards the previous absence, ~~absence~~,
the disciplinary authority has observed as under:-

"His previous record shows that he has been warned for absence four times, sanctioned leave without pay thrice and also been awarded major penalty of forfeiture of three years approved service. This clearly shows that the defaulter is an incorrigible type of Constable. Habitual absenteeism in disciplined force is a grave act of indiscipline which cannot be tolerated. Therefore, I Ashok Chand, DCP/Special Cell (S.B), Delhi hereby order dismissal of Const.Chander Mani, No.7794/PCR from service with immediate effect. His absence period from 16.3.98 to 1.5.98 is decided as "Dies Non" on the principle of "No Work No Pay"."

5. Disciplinary authority, it is clear, has disagreed with the findings of the enquiry officer in respect of the charge of absence during the period 16.3.1998 to 1.5.1998. Whereas the enquiry officer has absolved him of the aforesaid charge and has held him only partly guilty, the disciplinary authority has held him guilty after disbelieving medical evidence produced by him in support of his illness. Disciplinary authority has thereafter proceeded to agree with the enquiry officer in regard to the earlier absence and has found the applicant guilty on both the counts and has proceeded to impose the penalty of dismissal from service.

6. In our judgement, aforesaid order of the disciplinary authority which has expressed a note of dissent from the ~~opinion~~ in conclusion given by the enquiry officer in regard to the absence of the applicant for 47 days (from 16.3.1998 to 1.5.1998) which decision has been arrived at without issuing a notice to him and without affording an opportunity to

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the proposed dissent

him to represent against, is liable to be quashed on the ground that the same has been passed in violation of Rule 16(xii) of the Delhi Police (Punishment & Appeal) Rules, 1980. Aforesaid finding which has been arrived at by the disciplinary authority in violation of the principles of natural justice is accordingly quashed and set aside. Since the order of the disciplinary authority is being set aside, it follows that the order of the appellate authority dated 25.5.1999 is also set aside. The present disciplinary proceedings are now remitted back to the disciplinary authority who will take further steps from the stage of the issue of the report of the enquiry officer. Disciplinary authority will be at liberty to pass appropriate orders in accordance with law.

7. In view of the order of the disciplinary authority dismissing the applicant from service is set aside, applicant is held entitled to reinstatement though without backwages. Disciplinary authority will initiate further proceedings within a period of three months from the date of service of this order failing which the applicant will be entitled to be paid his backwages.

8. Present OA is allowed in the aforesaid terms but without any order as to costs.


(V.K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

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