

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1975/99

HON'BLE SHRI V. RAJAGOPALA REDDY, VICE CHAIRMAN(J)
HON'BLE SHRI R.K. AHOOJA, MEMBER(A)

New Delhi, the 17th January, 2000

Karambir Singh, S/o Shri Mange Ram
R/o Village Jaurasi, P.S. Samalkha
Distt. Panipat (Haryana)

...Applicant

(By Advocate: Shri Deepak Bhardwaj)

Versus

1. Union of India through
Lt. Governor of India
Govt. of G.N.C.T. of Delhi
 2. Commissioner of Police
Police Headquarter
I.P. Estate, New Delhi
 3. Additional Commissioner of Police
Northern Range, Police Headquarter
I.P. Estate, New Delhi
 4. Additional Deputy Commissioner of Police
North Distt. Police Headquarter
I.P. Estate, New Delhi
- ...Respondents

(By Advocate: Shri S.K. Gupta)

O R D E R

By Reddy, J.

The applicant was appointed as Constable in Delhi Police on 7.11.1989. While posted at P.S. Subji Mandi in North District, he was transferred to P.S. Kotwali by order dated 11.6.1993. The applicant, however, did not join duty and absented himself. Though several notices were served upon the applicant, he did not resume his duty. A departmental enquiry was initiated against him on 2.2.1994. Even though notice of the enquiry had been served upon the applicant, he did not participate in the enquiry, hence an ex-parte enquiry was held by the enquiry officer and the enquiry officer found that the applicant was unauthorisedly absent from 11.6.1993,

CAD

and thus the charge had been established against the applicant. The disciplinary authority, agreeing with the findings of the enquiry officer, dismissed the applicant from service by order dated 20.4.1995. The appeal filed by the applicant was rejected by order dated 19.6.1997. The applicant challenges the order of dismissal and the appellate order. (5)

2. Though several grounds were raised by the applicant in the O.A., the learned counsel for the applicant advanced the sole contention. He submits that the applicant's alleged unauthorised absence was treated as "leave without pay" by the disciplinary authority. He, therefore, contends that when once the period of absence was regularised by grant of leave, the charge of unauthorised absence does not survive.

3. Learned counsel relies upon the case in State of Punjab Vs. Bakshish Singh (JT 1998(7) SC p.142). Learned counsel for the respondents, however, submits that the order of the disciplinary authority cannot be interfered with as it was passed on the basis of the material on record. It was also contended that judgment of the Supreme Court (supra) had no application to the facts of the case.


4. It is true that we cannot appreciate the evidence on record and interfere with the order of the disciplinary authority. But it is clear from the very order of the disciplinary authority dated 20.4.1995 that the disciplinary authority has after giving the finding that the applicant was guilty of unauthorised absence from 15.6.1993 till date and hence he was

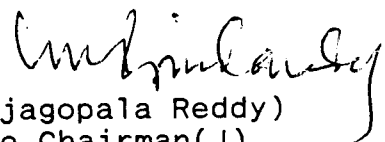
CAL

liable to be dismissed from service, he further stated that "the period of his unauthorised absence from 15.6.93 to date is hereby ordered to be treated as leave without pay". The only charge against the applicant was that he had not joined duty after he was relieved on his transfer on 15.6.1993 at P.S. Kotwali, to which he was transferred. It was, therefore, found that he was guilty of misconduct on account of unauthorised absence and he was dismissed from service. But the same period has been treated as leave without pay, which shows that the unauthorised absence has been regularised by treating it as leave without pay. When once the unauthorised absence was regularised, the alleged misconduct of unauthorised absence would not survive. The Supreme Court in Bakhshish Singh's case (supra) has clearly held that when once the unauthorised absence from duty has been regularised by treating the period of absence as leave without pay, the charge of misconduct does not survive. In the light of the above decision of the Supreme Court, we are constrained to allow the O.A.

(b)

5. In the circumstances, the O.A. is allowed. The impugned order of the disciplinary authority as well as the appellate authority are quashed. In the circumstances, we order no costs.


(R.K. Ahooja)
Member (A)


(V. Rajagopala Reddy)
Vice Chairman(J)

SC*