

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2077/99

New Delhi : dated, this the 22nd day of MAY, 2001

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALI, MEMBER (J)

Rajdev,
(936/NW)
S/o Sh. Sumer Raj,
R/o H.No. 49, P.S. Model Town,
New Delhi

.....Applicant.

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT Delhi,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.

2. Addl. Commissioner of Police,
(Northern Range) Delhi,
Police Headquarter,
I.P. Estate,
New Delhi.

3. Addl. Dy. Commissioner of Police,
(North West Distt.),
P.S. Model Town,
New Delhi

.....Respondents.

(By Advocate: Mrs. Meera Chhibber)

ORDER

S. R. Adige, VC (A):

Applicant impugns the enquiry report (Annexure-1) issued by the disciplinary authority's order dated 24.12.96 (Ann.-1) and the appellate authority's order dated 11.10.97 (Ann.-2). He seeks reinstatement with consequential benefits.

2. Applicant was proceeded against departmentally on the charge dated 16.5.95 (Annexure-0) that while detailed for duty at Mukherjee Nagar Bandh on 16.11.93 for 8 p.m. to 6 p.m. he did not turn up for duty and as such was marked absent. He resumed duty on 22.5.94 at PS Mukherjee Nagar after unauthorisedly absenting himself from duty for over 6 months and 5 days.

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3. The Enquiry Officer in his findings held the charge as proved.

4. A copy of the Enquiry Officer's report was furnished to applicant on 6.5.96 for representation, if any, but applicant did not submit any representation. Thereafter applicant was given an opportunity of being heard in person, but the Disciplinary Authority's order records that applicant absented himself. Thereupon after going through the materials on record, and agreeing with the Enquiry Officer's findings, the Disciplinary Authority by impugned order dated 24.12.96 removed applicant from service, which order was upheld in appeal, giving rise to the present OA.

5. At the outset we note that this OA has been filed beyond the period of limitation and the grounds taken by applicant in MA No. 2050/99 seeking condonation of delay are unsatisfactory. However, we are also examining the grounds taken by applicant on merits.

6. The first ground taken is that applicant's absence was not wilful, even if it was unauthorised, and hence his removal from service is illegal and arbitrary. Applicant admits his absence was unauthorised. He claims that the absence was not wilful, because he was unwell, but no medical certificate has been shown to us during hearing, and even if applicant claims to have been unwell during the aforesaid period, he has failed to explain why he did not apply for leave, supported by medical certificate for the relevant period. The fact that applicant was suffering from depression does not make his absence any less wilful. This ground therefore fails.

7. The next ground taken is that applicant's previous bad record was taken into consideration by the authorities without making it a specific charge. In this connection

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we note that the charge against applicant was that he had absented himself from 16.11.93 and resumed duty on 22.5.94 after absenting himself from duty for over 6 months 5 days. The Disciplinary Authority in his order records that applicant was called to the orderly room on 23.7.96 and 31.10.96 to give him an opportunity of being heard in person, but applicant was reported to be absent from duty, and even when the disciplinary passed impugned order on 24.12.96 applicant was absent from duty. Applicant's absence from duty in 1996 cannot be said to be his previous bad record relevant to his absence in 1993-94, which required it to be made a specific charge, and hence this ground does not avail the applicant.

8. It has next been contended that the Enquiry Officer's report is not a reasoned one. This contention is baseless. It is not applicant's case that he was on duty during the period 16.11.93 to 22.5.94, and in any case he failed to produce any defence witness to give evidence in his favour.

9. The next ground taken is that the disciplinary authority has not recorded a finding of grave misconduct recording applicant unfit for police service. It is now well settled in a Full Bench decision of the Tribunal that it is not necessary for the purposes of Rule 8(a) Delhi Police (P & A) Rules for an explicit finding of grave misconduct to be recorded before imposing the penalty of removal from service on a delinquent, and it is sufficient for the purposes of this rule, if a perusal of the impugned order reveals that the competent authorities had kept the provisions of this

rule squarely in view when imposing the penalty of removal from service. A perusal of the disciplinary authority's order dated 24.12.96 reveals that he had kept applicant's total disinterestedness in service squarely in view, while imposing the penalty of removal from service. In State of UP Vs. Ashok Kumar Singh 1996 (32) ATC 239 the Hon'ble Supreme Court has held that absence from duty of a police constable on several occasions was wrongly held by the High Court to be not such a grave misconduct as to warrant removal. In the present case, the absence is no doubt on a single occasion but that absence stretches for over 6 months from 16.11.94 to 22.5.94 and hence the ratio of that ruling is squarely applicable. Hence this ground also fails.

10. It has next been contended that the appellate authority's order does not deal with applicant's defence. This argument is also without merit because applicant's contention has been discussed by the appellate authority in his order dated 11.10.97.

11. It is therefore abundantly clear that the OA warrants no judicial interference, and the rulings relied upon by applicant's counsel Shri Shyam Babu, including 1987 (2) SCC 107; 1989 (7) SLR 350; and 1985 (3) SLR 26 which were handed down in the particular facts and circumstances of those cases do not advance applicant's claim in the facts and circumstances of this particular case.

12. Before parting with this case, we may note that the disciplinary authority by his impugned order dated 24.12.96 has directed that the period of absence be treated as leave without pay, and applying the ratio of the Hon'ble Supreme Court's ruling by a 2 Judge Bench in State of Punjab Vs. Bakshish Singh 1998 (8) SCC 222 it

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could be argued that as the period of absence has been regularised by grant of leave, no penalty could be imposed. However the Delhi High Court in its order dated 18.4.2000 in Dy. Commissioner of Police Vs. Ex. Constable Karan Singh CWP No. 4883/99 has held that the aforesaid judgment of the Hon'ble Supreme Court in Bakshish Singh's case (supra) is per incurium and does not over rule or differentiate the earlier 3 Judges' Bench judgment of the Hon'ble Supreme Court in State of M.P. In Harihar Gopal 1969 SLR 274 in as much as the regularisation of the absence period as leave without pay is only for the purpose of maintaining a correct record of service and does not interfere with or obliterate the penalty of removal from service. Various Benches of the Tribunal have followed the Delhi High Court's order dated 18.4.2000 in Karan Singh's case (supra). In this connection, we note that the Hon'ble Supreme Court by its order dated 18.9.2000 in SLP (C) No. 14378/2000 arising out of CWP No. 876/99 Maan Singh Vs. UOI & Ors. has ordered issue of notice on the apparent conflict of decisions between Bakshish Singh's case (supra) and Harihar Gopal's case (supra), but final decision on the same has not been shown to us.

13. In the result the OA warrants no interference. It is dismissed. No costs.

A. Velamam
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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