

(US)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

Original Application No.2118 of 1999

This the 15th day of March, 2011

HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN

HON'BLE SHRI L. K. JOSHI, VICE-CHAIRMAN (A)

Ram Niwas, Ex-constable,
Village & P.O. Chakathale,
District Aligarh (UP).

... Applicant

(By Shri Saurabh Ahuja, Advocate)

Versus

1. Union of India through
Ministry of Home Affairs,
New Delhi.
2. Commissioner of Police,
Police Headquarters,
IP Estate, New Delhi.
3. Additional Commissioner of Police,
IP Estate, New Delhi.
4. Deputy Commissioner of Police,
III Bn., DAP, Vikas Puri,
New Delhi.

... Respondents

(By Shri Amit Anand, Advocate)

O R D E R

Justice V. K. Bali, Chairman:

The applicant was a constable in Delhi Police. He was dismissed from service sequel to a departmental enquiry, where the charges leveled against him were held proved. His appeal, revision and mercy petition were dismissed. He filed

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Original Application No.2118/1999 in this Tribunal, which was allowed vide order dated 1.2.2001 on technical ground.

While setting aside the impugned orders and remitting the matter to the concerned authority, the only reason mentioned by the Tribunal was that the authority ordering initiation of the disciplinary proceedings was not the competent authority.

This order has since been set aside by a Division Bench of the High Court of Delhi vide orders dated 7.12.1999, and the matter has been remitted to this Tribunal for hearing on other issues that may be raised by the applicant. The facts as may be relevant for deciding this OA have been bodily lifted from the earlier order dated 1.2.2001 passed by the Tribunal, thus:

“Applicant impugns the Disciplinary authority’s order dated 28.11.94 (pages 29 to 32 of the O.A.) and the Appellate Authority’s order dated 8.11.95 (pages 46 to 48 of the O.A.).

2. Applicant was proceeded against for unauthorized absence from duty for various spells, as a result of which the Inquiry Officer in his findings dated 31.1.92 (pages 41 to 44 of the O.A.) held the charges of willful and unauthorized absence from duty for various spells to be proved.

3. A copy of the I.O. report was furnished to applicant who submitted his representation, and upon receipt of the same the Disciplinary Authority, after considering the representation as well as other materials on record, and agreeing with the I.O.’s findings, imposed the penalty of dismissal from service vide order dated 14.10.92 (pages 33 to 36 of the O.A.).

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4. Thereafter applicant filed an appeal against the aforesaid order, and the Appellate Authority vide his orders dated 27.4.93 set aside the Disciplinary Authority's order on the ground that the same had been passed by the FRRO who was not competent to pass the same. The appellate authority recorded that applicant was transferred from FRRO to DAP 3rd Bn. Vide PHQ orders dated 29.5.91 and was relieved on 14.6.91 but the impugned order was passed by FRRO on 14.10.92 i.e. after applicant had reported for duty in DAP 3rd Bn. It was, therefore, clear that Disciplinary authority would be the authority under whom the applicant was working at the time final orders were passed in the D.E. In view of the above, the orders dated 14.10.92 were set aside by the Appellate Authority and applicant was directed to report for duty.

5. Thereafter the Dy. Commissioner of Police, 3rd Bn., DAP as the Disciplinary Authority passed orders dated 28.11.94 dismissing applicant from service.

6. Applicant submitted an appeal against the aforesaid order which was rejected by Appellate Authority vide orders dated 8.11.95 (pages 46 to 48 of the O.A.).

7. Thereafter applicant submitted a revision petition which was also rejected by order dated 27.1.97 (page 54 of the O.A.).

8. A memorial was also submitted by applicant which was also rejected by order dated 8.5.98 as stated by respondents although it on behalf of applicant that he has received no rejection letter."

2. The charge that came to be framed against the applicant by the enquiry officer reads as follows:

"I, S. K. Bhatnagar, Inspector F.R.R.O. charge you Ct. Ram Niwas No.334/P that while posted in F.R.R.O. unit and working as personal orderly to Sh. R. N. Meena

ACP/FRRO absented yourself from duty, unauthorisedly, willfully and without intimation/permission on the following occasions for the period as mentioned against each. Besides it has also been found that you generally availed of medical rest without obtaining prior permission of the competent authority:

1	20.10.90 to 31.10.90	DD No.15 dt.21.11.90 Line	For 3 days
2	1.11.90 to 21.12.90	DD No.11 dt.6.12.90 DD No.41 dt.21.12.90	For 52 days
3	4.1.91 to 6.1.91	DD No.7 dt.6.1.91 DD No.17 dt.6.1.91	For 3 days
4	11.2.91 to 7.4.91	DD No.12 dt. 20.3.91 DD No.22 dt. 8.4.91	For 56 days
5	19.5.91 TO 7.4.91	Dd No.11 dt. 19.5.91 DD No.37 dt. 31.5.91	For 12 days

The abovementioned act on your part amounts to gross misconduct, dereliction in the discharge of your duties and is a violation of CCS (Conduct) Rules which make you liable for departmental action u/s 21 of Delhi Police Act 1978.”

The applicant would not appear before the enquiry officer. Number of attempts to secure his presence proved abortive. *Ex parte* proceedings were thus initiated against the applicant and the department after recording evidence, oral and documentary, came to a firm conclusion that the charge against the applicant stood proved. The disciplinary and appellate authorities have passed speaking orders. The appellate authority took into consideration every aspect of the case as highlighted by the applicant and rejected his appeal.

[Signature]

We may reproduce the relevant part of the order of the appellate authority:

"I have carefully gone through the appeal, comments and all the relevant records in the D.E. file. First contention of the appellant has no force because the dismissal order passed by the F.R.R.O. had already been set-aside by the appellate authority vide order dated 20.4.94. Hence it will be incorrect to say that he was punished twice for the same misconduct. Rest of the plea is also not admitted because the disciplinary authority has passed the order in pursuance of order of the appellate authority after hearing the appellant in orderly room which is legal and justified. As far as his second contention, as per latest instructions there is no legal bar not to proceed further in the D.E. proceedings at the same place where it was initiated, if the delinquent officer has been transferred to some other Unit. Rest of the plea is also not admitted because the final order was passed/issued by the disciplinary authority as per the directions of appellant authority as well as guidelines of Law Department of Delhi Administration, Delhi issued vide letter dated 31.5.94. Second contention of the appellant is, therefore, not tenable. As regards his third contention, the appellant was posted as personal orderly to Sh. R. N. Meena, AFRRO, after obtaining his written consent. Rest of the plea is also not admitted at this stage because in case there was any such problem with the appellant, either he should have brought the facts into the notice of senior officer or refuse to obey the orders of the officer. But he did not do so. For the fourth contention, the present punishment of dismissal has been awarded to the appellant for his present absence from absences from duty and there is no concern for the same to his previous bad record. Hence the fourth contention of the appellant is baseless and devoid of force. Fifth contention of the appellant is not tenable because Shri R. N. Meena, AFRRO clearly deposed during the

D.E. proceedings that the appellant remained absent from duty without any information/permission of the competent authority. As regards last contention, the allegation leveled against the appellant was fully proved during the D.E. proceedings without shadow of doubt. The appellant remained absent from his duty without any information/permission of the competent authority which is a serious misconduct in the disciplinary force. Hence, it will be incorrect to say that the punishment awarded to him by the disciplinary authority is disproportionate and excessive in nature. There is no force in any of the contentions advanced by the appellant in his appeal. I, therefore, see no reason to interfere with the order of punishment awarded to him by the disciplinary authority. Hence the appeal is rejected."

3. There is absolutely no scope to interfere with the firm finding of facts recorded consistently by all authorities. Shri Saurabh Ahuja, learned counsel representing the applicant would, however, contend that the respondents have taken extraneous material into consideration, which would aggravate the delinquency of the applicant, and inasmuch as, the circumstance, i.e., absence of the applicant during the course of enquiry, was not subject matter of charge, the impugned order would be illegal. It may be true that the concerned authorities have made mention of the applicant remaining absent during the course of enquiry as well and that was not subject matter of the charge against the applicant, but that circumstance has been mentioned only in appreciating the evidence showing careless attitude of the

applicant. Insofar as, the charge against the applicant of remaining unauthorisedly absent from duty is concerned, it is proved to the hilt. In our considered view, the circumstance taken into consideration by the authorities as continued absence of the applicant even after he was put to departmental trial cannot be said to be extraneous material.

4. There is absolutely no merit in this Original Application and the same is liable to be dismissed. So ordered. There shall, however, be no order as to costs.

L. K. Joshi
(L. K. Joshi)
Vice-Chairman (A)

V. K. Bali
(V. K. Bali)
Chairman

/as/