

Central Administrative Tribunal, Principal Bench

G.A. 21/1999

New Delhi, this the 15th day of November, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. M.P. Singh, Member (A)

H.C. Satya Prakash
S/o Shri Rameshar Dayal
R/o Village & P.O. Katewara,
Delhi.

...Applicant

By Advocate Mrs. Sumedha Sharma.

Versus

1. Union of India
Through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
 2. Dy. Commissioner of Police,
Prov. & Lines, Delhi,
Old Police Lines, Delhi.
 3. Joint Commissioner of Police,
Rashtrapati Bhawan (SEC),
New Delhi.
- ... Respondents

By Advocate: Shri Rajinder Pandita.

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this case had been proceeded departmentally on the allegations that while posted in Communication Unit he did not report for duty on 6.1.1997 (Annexure-D) and was, therefore, marked absent vide D.D. No.29 dated 6.1.1997 (Communication Unit()) and he only reported on 9.1.1997 vide D.D. No.15 (Communication Unit) and thus remained absent unauthorisedly for a period of 2 days and 22 hours (3 days). On resuming his duties, he also submitted his medical certificate and fitness from a private doctor but he was charge-sheeted and a departmental enquiry was started against him.

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2. In addition to that certain previous absences were also found part of the charge and after the enquiry, the applicant was held guilty and vide order dated 11.3.98, a punishment of reduction by three stages from Rs.3455/- to Rs.3200/- per month for a period of 3 years with immediate effect was imposed upon him. It was also ordered that he will not earn increment of pay and the reduction will have the effect of postponing all future increments also. Against this order, an appeal was also filed which was dismissed. Assailing the order of punishment as well as the order of appeal, the learned counsel for the applicant submitted that first of all the punishment awarded to him was a double jeopardy and such type of punishment cannot be imposed upon him. Besides that the counsel for the applicant submitted that as for as his earlier absences are concerned, the same had been allowed and had been treated as Earned Leave by the respondents themselves. So once the past absences had been treated as Earned Leave and no charges were framed for those absences, the same could not found part of the present absence.

3. As regards the three days absence is concerned, the applicant submitted that he had fallen ill and immediately on resuming the duty, he had submitted his medical certificate and for the past absences also he had been submitting necessary information to his superiors. Thus, the findings arrived at by the Enquiry Officer, is quite contrary to the principles of natural justice as the applicant had not absented himself wilfully nor it was a prolonged absence and the period for these 3 days absence

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has been treated as leave without pay, which itself indicate that the disciplinary authority has regularised the absence period and in view of the Hon'ble Supreme Court's judgment in the case of State of Punjab Vs. Bakshish Singh, the punishment awarded to the applicant is liable to be quashed.

4. The department in reply to this stated that a departmental enquiry was initiated against the applicant since he did not report for duty and he absented himself for 2 days and 22 hours (3 days) wilfully and unauthorisedly, though on resuming the duty he had submitted the medical certificate but since he had not availed the prior permission from the competent authority so enquiry was properly instituted.

5. It is also denied that for the past absences E.L. had been sanctioned.

6. It is further submitted that on the dates of his absence he was detailed for VVIP route arrangement but he did not report for duty and was, therefore, marked absence in the D.D. No.29 dated 6.1.1997.

7. It is also submitted that the submitting of medical certificate does not itself confer upon the employee any right to leave. The medical certificate should be forwarded to the competent authority and final orders for grant of leave of the authority should be awaited. But in this case the applicant had never informed about his illness nor he had obtained any prior

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□ permission to avail the medical rest, which is in clear violation of SO 111 on the part of the applicant and as such the punishment awarded to him was justified.

8. We have heard the learned counsel for the parties and have gone through the records of the case.

9. The main contention advanced by the learned counsel for the applicant is that the penalty imposed upon the applicant is a double penalty and cannot be sustained and in support of his contention the learned counsel for the applicant referred to a judgment given by a Co-ordinate Bench in OA 1612/94 on 22.9.98 wherein an employee has been imposed a punishment of forfeiture of 5 years approved service permanently entailing reduction in pay with the condition that he will not earn increment during the period of reduction and on the expiry of this, reduction will have the effect of postponing his future increments. This penalty had been held to be double jeopardy like misconduct and the order imposing penalty was quashed and the OA was allowed. But in view of the judgment in OA No. 2225/93 by Full Bench in ASI Chander Pal Vs. Delhi Administration and Another, this contention has no merits and has to be rejected.

10. Besides this, the learned counsel for the applicant has also submitted that as far as sickness is concerned, nobody is sure as to when one will fall sick and in certain circumstances it is not possible to send prior information, so mere absence for 2 days and 77 hours (3 days) cannot be said to be a wilful absence to avoid any duty.

11. The learned counsel for the applicant further

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submitted that as far as past absences are concerned, on each and every occasion the applicant had either submitted the medical certificate or he had been sanctioned leave, but no action had ever been taken nor any leave had ever been refused. So the applicant had been unnecessarily punished for his absence for 2 days and 22 hours.

12. In reply to this, the learned counsel for the respondents submitted that the applicant was detailed for VVIP duty and he in order to avoid the said duty, had absented himself and since his absence has been found to be wilful and unauthorised as he had not sent any information in advance, so he had been rightly held guilty. Besides that, it is submitted that this Court should not reappreciate the evidence. Merely a second conclusion is possible and that should not weigh in favour of the applicant and the court should not upset the findings recorded by the Enquiry Officer.

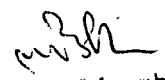
13. We have given our careful thought to the issue involved in the present case. The facts and circumstances of this case are quite peculiar which constraints us to hold that the findings arrived at by the Enquiry Officer are quite perverse to show that for a short illness for a period of 2 days and 22 hours (3 days) the applicant should have obtained permission for sick leave before proceeding on leave appears to be quite unreasonable because one can never expect as to when one should fall sick. The respondents have quoted in counter, leave rules as well as SO 111 which provides how the medical leave is to be applied and sanctioned and clause (4) is quite significant which says that the authority competent to grant leave may at its discretion waive the production of medical certificate in case of application for leave for a

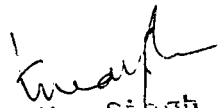
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period not exceeding 3 days. In this case the absence was only for 2 days and 22 hours (maximum 3 days) and for such like absence when the applicant has submitted a medical certificate from a doctor, in ordinary course the leave should have been granted. When the competent authority to grant leave could waive the production of medical certificate not exceeding 3 days, then as per SO 111 this three days' leave when it is accompanied by medical certificate should have been allowed. But in this case the E.O. returned the finding that the applicant was a willful absentee. An element of wilfulness cannot be attributed to the applicant since he was compelled for the reasons of his sickness to remain away from duty.

14. Hence we find that the findings arrived at by the Enquiry Officer being perverse cannot be sustained and the OA deserves to be allowed. Accordingly the impugned order dated 11.3.98 and the appellate order dated 1.9.98 are quashed and set aside and applicant be restored his original pay as if the impugned orders were not passed. These directions should be complied with within a period of 2 months from the date of receipt of a copy of this order. No costs.


(M.P. Singh)
Member (A)


(Kuldip Singh)
Member (J)

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