CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(6)

O.A.NO. 2189/1999

Tuesday, this the 23rd day of January,2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Ex. Constable Mahesh Kumar No.
2249/DAP
S/o Shri Bhagmal Singh aged, 31 years,
Previously employed in Delhi Police,
R/o Vill. & PO Chirodi,
P.O. Loni,
Distt. Gaziabad,
Uttar Pradesh .... Applicant
(By Advocate: Shri Sachin Chauhan)

VERSUS

1. Union of India through its
Secretary,
Ministry of Home Affairs,
North Block, New Delhi

2. Addl. Commissioner of Police,
Armed Police,
New Police Lines, Kingsway Camp,
New Delhi

3. Dy. Commissioner of Police,
3rd Bn D.A.P.,
Janakpuri,
New Delhi ..... Respondents
(By Advocate : Shri R.K. Singh, Proxy for
Shri Anil Chopra)

O R D E R (ORAL)

Hon'ble Shri S.A.T. Rizvi :

On the charge of unauthorised absence spread over a period of 143 days plus, the disciplinary authority has imposed the punishment of removal from service on the applicant by his order dated 1.5.1998. The aforesaid order has been carried in appeal and has been affirmed by the appellate authority by his order of 15.1.1999. Aggrieved by these orders, the applicant has filed this OA.

2. The learned counsel appearing for the applicant has raised two contentions, one relating to the illness of the applicant and the other taking into account of extraneous matter by the enquiry officer as well as the disciplinary authority and the appellate authority.

3. On the question of illness, he places reliance on the statements of PWs 1, 2 and 6, who visited the applicant in connection with the service of absentee notices and who had, in their cross-examination, made statements to the effect that, according to them, the applicant was sick. However, the fact remains that though advised ~to approach the Chief Medical officer for a second opinion, the applicant never tried to do that. The learned counsel's contention that the applicant had approached the CMO, but was not entertained by him in the absence of a communication from the respondents, cannot be accepted inasmuch as if that was the case the applicant could have thought of bringing the said CMO as his defence witness. He has not done so. In fact, he has not brought any defence witness nor has he submitted any defence statement. Despite the service of absentee notices, he has also not cared to seek proper sanction of leave on medical or any other ground. The plea of illness, therefore, is found to be untenable and is rejected.

4. In regard to the plea of extraneous matter having been taken into account by the enquiry officer, we find that there is a mention in the report of the

enquiry officer about 22 previous absences. The said report has been taken into account by the disciplinary authority, but we find that in the order passed by him, he has, at no place, specifically taken into account the aforesaid 22 absences and, therefore, it is not possible to argue that while deciding to impose the punishment of removal from service, the same was taken into account. The disciplinary authority, we find, was only generally in agreement with the enquiry officer's report and not specifically in the context of the past absences and, therefore, the aforesaid argument advanced by the learned counsel is rejected.

5. There is a mention, of course, of the aforesaid 22 absences in the order of the appellate authority. The said authority has made a mention of the aforesaid 22 previous absences in the following terms:-

> "In the past he has absented on 22 different occasions and has been awarded minor and major punishments. But he did not mend himself. Not learning from the penalties he continued to absent from duty which indicates of incorrigible character of the applicant"

If one has regard to the aforesaid observation of the appellate authority, it is clearly seen that he has fully and consciously taken into account the aforesaid 22 absences in up-holding the order passed by the disciplinary authority. Inasmuch as the same constitutes extraneous matter as it was not brought up as a specific charge against the applicant, the order passed by the appellate authority cannot be said to be

in order in that clearly again there is breach of the principle of natural justice involved here. The applicant should have been given an opportunity to state his case if the aforesaid absence on 22 occasions was to be taken into account while deciding the appeal. What we ultimately find, therefore, is that the order passed by the appellate authority is liable to be quashed and set aside. The same is accordingly quashed and set aside. In the circumstances mentioned above, we would like to direct the appellate authority to reconsider the matter and pass a fresh order, if so advised, after excluding the charge of the past absence of the applicant on twenty two (22) occasions.

6. The OA is disposed of in the aforestated terms. No costs.

(ASHOK AGARWAL)
CHAIRMAN

(S.A.T. RIZVI)
MEMBER (A)

(pkr)