

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 2275/99

New Delhi this the 20th day of December 2000

Hon'ble Justice V. Rajagopala Reddy, Vice Chairman (J)
Hon'ble Shri G.S. Tampi, Member (A)

Kanhaiya Lal,
S/o Shri Mohru Ram,
R/o Vill. Moyee Bharu,
P.S. Singhana, Distt. Jhunjhunu,
Rajasthan.

Applicant

(By Advocate: Shri Ajesh Luthra)

Versus

1. Union of India,
Through Secretary,
Ministry of Home Affairs,
North Block,
New Delhi
2. The Addl. Commissioner of Police,
(PCR & Commn.),
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.
3. The Addl. Deputy Commissioner of Police,
(P.C.R.),
PHQ MSO Building,
I.P. Estate,
New Delhi.

Respondentgs

(By Advocate: Shri Ram Kanwar)

O R D E R (Oral)

~~Justice V. Rajagopala Reddy, VC (J)~~


While the applicant was a constable in Delhi Police, he was dismissed from service on the charges of unauthorised absence for a period of 138 days w.e.f. 31.7.1997 to 14.12.1997 by order dated 28.5.1998 which has been affirmed by the appellate authority in its order dated 6.8.1999 (Annexure A-1). This order is impugned in this OA.

2. Learned counsel for the applicant Shri Ajesh Luthra submits that as per Rule 25 of the CCS (Leave) Rules, 1972 as the applicant was absent after the



expiry of the sanctioned leave in view of serious illness he could not have been treated as wilfully absent. The learned counsel for the applicant further contends that the medical certificate produced by the applicant has not been considered by the enquiry officer. Learned counsel also submitted that the punishment awarded is harsh. Learned counsel for the Respondents, Shri Ram Kanwar contends that the period of absence for 138 days was rightly found wilful by the enquiry officer while the applicant was away from duty without leave. The certificate produced after he joined the service cannot be taken into consideration and was rightly rejected by the enquiry officer.

3. We have given our careful consideration to the submissions made by the learned counsel for applicant. It is not in dispute that the applicant was sanctioned for 3+2 days casual leave w.e.f. 25.7.1997 and he was due to join on 31.7.1997. He has not reported for duty thereafter. He reported for duty on 16.12.1997. The enquiry officer considering the evidence of the prosecution witnesses and found that the applicant produced the medical papers and fitness certificate from CMO Govt. Hospital, Jhunjhunu, Rajasthan, advising rest for 138 days from 28.7.1997 to 14.12.1997 and also give his explanation for his absence, but he never submitted any leave application along with medical certificate to obtain leave after the casual leave had expired and that he reported about his illness on his arrival from absence. It is seen from the medical certificate



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reported about his illness on his arrival from absence. It is seen from the medical certificate (Annexure A-7) issued by the Government Hospital that he had been examined on 28.7.1997 and was found suffering from Kock's abdomen and hence he was absent from duty from 28.7.1997 to 14.12.1997. Placing reliance of this certificate, the learned counsel strongly urges that as the applicant was suffering from tuberculosis of abdomen he was unable to join duty. He also submits that as he was living alone with his wife and small children he could not send leave letter as per the leave rules to obtain prior sanction of the leave and that the enquiry officer had not considered this aspect of the matter nor to found whether the applicant was wilfully absent or not. But it is seen from the enquiry officer's report that an absentee notice was served on 11.8.1997 through HC Balwant Singh directing him to resume duty at once failing which disciplinary action will be taken against him. We therefore do not understand why the applicant did not send his leave application along with proper medical certificate for obtaining leave or for extension of the leave period sanctioned. A reading of Leave Rules show that an employee cannot be away from duty without sanction of leave even if he was sick. He should send leave letter and obtain leave. Rule 25 of the CCS (Leave) Rules will not be of any help to the applicant. Rule 25 reads as follows:

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Rule 25 reads as follows:

(1) Unless the authority competent to grant leave extends the leave, a Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half-pay leave, to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.

(2) Wilful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.

4. Learned counsel placed reliance on sub-rule (1) to contend that his absence period be treated as extraordinary leave. But sub-rule (2) clarifies this position to show that if an employee is absent from duty after the expiry of leave and that he was liable for disciplinary action. In this case as the applicant did not either submit his leave letter even after an absentee notice was sent through a constable and he was absent after the expiry of leave for more than 160 days, Sub-rule(1) of Rule 25 will not come into play. Sub-rule (2) comes into play. Hence entire period should be treated as wilful absence. Enquiry Officer has rightly found the absence as wilful. He was an habitual absentee as he was earlier found for as many as 13 occasions to be absent. The enquiry officer having noticed the medical certificate (Annexure A-7) rightly rejected the same as it was

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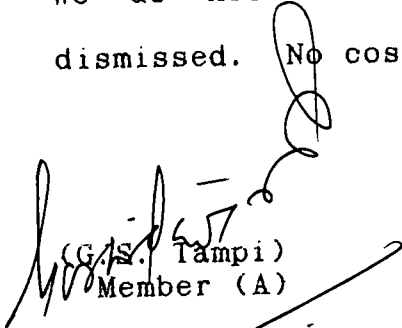
submitted only after he joined service and not during the relevant period for obtaining sanction of leave. Mere submission of the medical certificate after the absence in question at the time of joining did not cure the defect of violation of the Rules. The unauthorised absence without leave would attract the provisions of Rule 25(2) and accordingly the enquiry Officer has rightly found his absence as wilful.

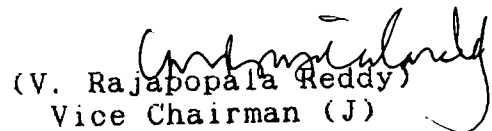
5. The learned counsel relies upon the judgement of Sukhbir Singh Versus State of Haryana & Ors. ind SLP (Civil) No. 25710 of 1995 vide the Hon'ble Supreme Court noticing the medical certificate issued by the consulting physicians of Safdarjung Hospital, New Delhi directed the authorities to reconsider the order of removal of the appellant. But in that case it is not clear whether this certificate had been filed before the enquiry officer during the period of absence or after the appellant joined duty. The facts are not clearly given in the judgement. The decision of the Hon'ble Supreme Court was rendered on facts of that case, the same cannot be of any help to the applicant in view of the facts of the present case and also in view of the fact that no ratio has been laid down in that case to be followed by us in this OA. Learned counsel for the applicant also relies upon the judgement of the Tribunal in Balbir Singh Vs. Commissioner of Police in OA 11675/96 where it was held that the findings of the disciplinary authority that the absence was wilful, was not correct. But that decision was based upon the finding of the enquiry officer who held that the defaulter had been

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ill during the impugned period that the defaulter was not guilty and the said finding had not been taken into consideration by the enquiry officer. This decision cannot be of any help to the applicant.

6. In the facts and circumstances of the case we do not find any merit in the OA and the same is dismissed. No costs.


(G.S. Tampi)
Member (A)


(V. Rajapopala Reddy)
Vice Chairman (J)

Mittal