

Central Administrative Tribunal  
Principal Bench

(10)

O.A. No. 2523 of 1999

New Delhi, dated this the 17<sup>th</sup> APRIL, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Ex-Const. Shri Niwas No. 7727/DAP,  
S/o Shri Balbir Singh  
R/o 1987/155, Trinagar,  
Delhi-110035.

.. Applicant

(By Advocate: Shri Rajiv Kumar)

Versus

1. Union of India through  
the Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi.
2. Commissioner of Police,  
Police Headquarters,  
I.P. Estate,  
M.S.O. Building, New Delhi.
3. Sr. Addl. Commissioner of Police,  
AP&T,  
Police Headquarters,  
I.P. Estate,  
M.S.O. Building,  
New Delhi.
4. Dy. Commissioner of Police,  
6th Bn., D.A.P.,  
Model Town, Delhi. .. Respondents

(By Advocate: Mrs. Meera Chhibber)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the disciplinary authority's order dated 4.4.97 (Annexure A-1), the appellate authority's order dated 30.6.97 (Annexure A-2) and the revision order dated 12.10.98 (Annexure A-3). He seeks reinstatement with consequential benefits.

2. Applicant was proceeded against

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departmentally on allegation of wilful and unauthorised absence from duty on various occasions. Applicant's previous record of wilful and unauthorised absences from duty for which he had been punished and which made him out to be a habitual absentee were specifically made a part of the memo of allegations (Annexure A-6) and charge (Annexure A-7).

3. The I.O. in his report (Ann. A-4) held the charge to be proved beyond any shadow of doubt and observed that it was clear that applicant was a habitual absentee.

4. Tentatively agreeing with the I.O's findings, a copy of his report was furnished to applicant on 30.6.96 for representation if any. Applicant submitted his representation which was received by respondents on 20.11.96.

5. Upon going through the material on record, including applicant's representation, the disciplinary authority agreed with the I.O's findings. He noted that although applicant had been granted opportunity for a personal hearing, he did not avail of the same. Accordingly, after holding that applicant conduct showed his incorrigibility and his complete unfitness to be retained in service, the disciplinary authority by order dated 4.4.97 dismissed applicant from service, which order was upheld in appeal on 30.6.97 and in revision on 12.10.98, giving rise to the present O.A.

6. The first ground taken is that applicant was denied a defence assistant. Respondents have categorically denied this contention. They have specifically stated that the E.O. gave opportunity to applicant to engage a defence Assistant but he did not avail of the same for reasons best known to himself. This categorical assertion has not been specifically denied by applicant in his rejoinder, which is couched in general terms. Hence this ground fails.

7. It has next been contended that the summary of allegations is illegal because applicant has been ordered to be dealt with departmentally for alleged absence for about 66 days, but in the summary of allegations, the previous absentee record of applicant was wrongly taken into consideration which was not a reference of the D.E.

8. It is the charge which applicant has to answer, and the charge (Annexure A-7) refers to applicant's wilful and unauthorised absence from duty for 66 days, as also applicant's previous unauthorised and wilful absences from duty which made him out to be a habitual absentee. The charge is fully in consonance with Rule 16 (x) Delhi Police (Punishment & Appeal) Rules. It was open to applicant to deny any or all the previous absences from duty cited in the charge. Hence this ground also fails. 2

(13)

9. The next ground taken is that the 7 previous absences from duty mentioned in the charge had already been regularised by grant of leave of the kind due and as such the charge of remaining absent from duty on those occasions did not survive and could not have been taken into account by the authorities while inflicting the punishment. This contention is baseless. We note that 7 previous absences from duty have been mentioned in the charge sheet. Even if applicant was granted leave of the kind due for the period, it is clear that applicant was in the habit of remaining frequently absent from duty in the past, which clearly indicates an adverse record of being a habitual absentee. This ground fails.

10. The next ground taken is that there is no allegation of wilful absence from duty, and mere absence from duty on medical grounds does not amount to misconduct. This ground is without merit because absence from duty without proper authorisation/permission amounts to misconduct, more so in a disciplined, uniformed force such as Delhi Police.

11. The next few grounds seek to justify applicant's absences from duty. It is contended that he was ill and was sending intimation about the same through postal communication as well as through his relatives, none of which were considered by the authorities. It is further contended that the genuineness of his illness is supported by the medical records, which also were not considered by the

2

authorities. These grounds have been carefully considered by the disciplinary authority as well as the appellate and revisional authority. As pointed out by the disciplinary authority, applicant failed to inform the department and to obtain prior permission of the competent authority to avail of medical rest according to Rule 19(1)(ii) and Rule 5 CCS (Leave) Rules for the period of his wilful/ unauthorised absence, and furthermore the medical papers submitted by him did not indicate any such incapacitating and serious illness as would warrant his being bedridden or unable to meet the Dy. Commissioner of Police of the unit for explaining the same and obtaining prior permission or leave sanctioned in accordance with rules/instructions. Hence these grounds also fail.

12. It has been contended that applicant was temporarily posted in N.E. District and was under the disciplinary control of the Dy. Commissioner of Police, N.E. District, but the impugned order dated 4.4.97 has been passed by the DCP VI Battalion, DAP who had no due control over him. Respondents have denied this assertion and state that despite applicant's temporary posting in N.E. District, from the strength of VI Battalion, overall disciplinary control continued with DCP, VI Battalion, DAP. We have no reason to doubt this assertion of respondents and hence this ground also fails.

2

13. Lastly it has been contended that the order of the disciplinary authority as well as the appellate authority are excessive, harsh and perverse, besides being non-speaking and arbitrary. A bare persual of the impugned order show that they are reasoned and speaking orders. In state of U.P. Vs. Ashok Kumar Singh 1996 (32) ATC 239 the Hon'ble Supreme Court has held that absence of a police officer from duty on several occasions was wrongly held by the Allahabad High Court to be not such a grave misconduct as to warrant removal from service. Applying the aforesaid ruling to the facts and circumstances of the present case, it is clear that the impugned orders warrant no interference.

14. The O.A. is dismissed. No costs.

A. Vedavalli  
(Dr. A. Vedavalli)  
Member (J)

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(S.R. Adige)  
Vice Chairman (A)

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