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Central Administrative Tribunal
Principal Bench

O.A. No. 2656 of 1999

New Delhi, dated this the 31st AUGUST 2001

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

Shri Anoop Singh,
Ex-Constr. No./ 7941/DAP
(PIS No. 28861687)
S/o Shri Hukam Singh,
R/o Vill. & P.O. Dighal,
Distt. Rohtak, Haryana. Applicant

(By Advocate: Mrs. Avnish Ahlawat)

Versus

1. Union of India through
the L.G.,
Govt. of NCT of Delhi,
Delhi.
2. Commissioner of Police,
Police Hqrs., I.P. Estate,
MSO Building,
New Delhi.
3. Sr. Addl. Commissioner of Police,
A.P.&T, New Delhi.
4. Dy. Commissioner of Police,
6th Bn., D.A.P., Delhi.
5. Shri Gajender Singh,
Inspector,
Enquiry Officer,
6th Bn., D.A.P.,
Delhi. Respondents

(By Advocate: Shri George Paracken)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the findings of the Enquiry Officer dated 26.11.96 (Ann. A); the disciplinary authority's order dated 31.12.96 (Ann. B); the appellate order dated 16.6.97 (Ann. C); and the revisional order dated 31.12.98 (Ann. D). He seeks reinstatement with consequential benefits.

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2. Applicant was proceeded against departmentally by order dated 12.6.96 (Ann. F) on the allegation/ charge that he was detailed for induction course at Main Security Lines, New Delhi w.e.f. 22.5.96 but even though the said course was over on 2.6.96 and he was relieved on 2.6.96 from there to report at "E" Block, New Delhi, instead of reporting there he absented himself w.e.f. 3.6.96. It was learnt that he was arrested in a case FIR No. 236 dated 3.6.96 u/s 25/54/59 Arms Act P.S. City Bahadurgarh, Haryana. He failed to inform his parent office about his arrest in the said case, and also left the station without any prior permission of the competent authority. Prior to this he had absented himself from 10.5.96 to 21.5.96 and his previous record mentioned in Appendix A showed that he was a habitual absentee and an incorrigible type who was unfit for police service.

3. Meanwhile he was placed under suspension w.e.f. 3.6.96 i.e. the date he was arrested vide order dated 7.6.96 (Ann. E).

4. The E.O. in his report dated 26.11.96 stated that he had to proceed ex-parte, because despite his repeated notices, applicant did not participate in the D.E., and did not produce any DWs. The E.O. held the charge as proved.

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5. A copy of the E.O's findings was furnished to applicant on 29.11.96 for representation, if any, but applicant did not submit any representation.

6. Thereupon after going through the materials on record and agreeing with the E.O's findings the disciplinary authority by order dated 31.12.96, after holding that applicant was totally unfit for police service, ordered his dismissal from service vide impugned order dated 31.12.96 and by the aforesaid order also directed that applicant's absence period would be treated as leave without pay for all intents and purposes.

7. Applicant's appeal was rejected by order dated 16.6.97 and his revision petition was rejected by order dated 31.12.98 giving rise to the present O.A.

8. A perusal of the grounds taken in the O.A. reveal that applicant's main contentions are that he never concealed the fact of his arrest in the criminal case from the authorities; that permission had been given to him to go to his residence at Bahadurgarh after the conclusion of the induction course; and his previous as well as recent absences having been regularised by grant of leave without pay, they no longer remained unauthorised, so as to establish incorrigibility.

9. In our view none of these contentions advance applicant's case. On the basis of the materials on record applicant has not been able to rebut successfully the disciplinary authority's conclusion that he did not take any permission from the competent authority for proceeding to Bahadurgarh on completion of the training course on 2.6.96; he did not inform the concerned authorities immediately about the circumstances surrounding his arrest under the Arms Act; he took his own time in reporting back to the department after his arrest; and he did not obtain permission of the competent authority for availing of medical rest.

10. During the course of hearing, our attention was invited to the Tribunal's order dated 7.8.2000 in O.A. No. 2337/97 Constable Mahinder Singh Vs. Union of India and others wherein the Bench after noticing that in similar cases the punishments of dismissal/removal had been reduced, set aside the penalty of dismissal and remanded the case back to the appellate authority to reconsider the quantum of punishment. In this very connection, the appellate order passed in disciplinary proceedings instituted against Ex-Constable Sukhbir Singh and Ex-Constable Narender Singh were also cited when the penalty of dismissal for unauthorised absence was subsequently reduced.

11. None of the aforesaid cases laying down law on the subject, and each case has to be treated in the light of ^{its} ~~the~~ surrounding facts and

circumstances. In none of those cases were those police officials arrested under the penal provisions of any law, as applicant was arrested in the present case. Applicant's misconduct is, therefore, much more serious and those orders cited by him which were passed in the particular facts and circumstances of those cases do not advance his case.

12. It was also contended that as applicant's previous and recent absences had been regularised by grant of leave without pay, applying the Hon'ble Supreme Court's ruling in State of Punjab Vs. Bakshish Singh's case 1998 (7) JT 142, the impugned orders were required to be quashed and set aside. However, the Delhi High Court in its judgment dated 18.4.2000 in CWP No. 4883/99 Dy. Commissioner of Police Vs. Ex-Constable Karan Singh have held the judgment of the Hon'ble Supreme Court in Bakshish Singh's case (supra) is per incurium and does not overrule nor differentiate their earlier judgment in State of M.P. Vs. Harhar Gopal 1969SLR 274. We are informed that the Hon'ble Supreme Court separately is seized of this apparent conflict of decisions between Bakshish Singh's case (supra) and Harhar Gopal's case (supra), and notices have been issued so that the matter could be heard and the matter resolved, but till then we would be required to follow the Delhi High Court's ruling in Karan Singh's case (supra) which has also been followed by the Principal Bench of the Tribunal in several recent

orders. Under the circumstances the ruling in Bakshish Singh's case (supra) does not avail the applicant.

13. Under the circumstances applicant has not been able to make out a case which would warrant judicial interference. However, nothing contained in this order will preclude respondent themselves from reducing the penalty of dismissal from service imposed on applicant if they are so disposed to do, on any representation that applicant may chose to file.

14. The O.A. is disposed of in terms of Para 13 above. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

S.R. Adige

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

Karthik