

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 540/99

New Delhi the 19th day of August 1999

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VC (J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Ex. Inspector Lakhminder Singh Brar
No. D/673
S/o Shri Gurdev Singh,
R/o Quarter No. E-2,
Police Colony, Kalkaji,
New Delhi.

...Applicant

(By Advocate: Shri Shankar Raju)

Versus

1. Union of India, through
through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. The Commissioner of Police,
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi.
3. The Addl. Commissioner of Police
Armed Police,
New Police Lines, Kingsway Camp,
Delhi.

...Respondents

(By Advocate: Shri Vijay Pandita)

ORDER (Oral)

By Reddy, J.-

The applicant, an Inspector of Police in the Delhi Police, was found to have been unauthorisedly absent from 24.1.90, without obtaining leave. A departmental enquiry has been initiated against him on the aforesaid alleged misconduct. An Enquiry Officer was appointed who submitted his report, holding that the misconduct was established. The Disciplinary Authority, after going through the report, accepted the finding. The applicant was dismissed from service by

CAB

the impugned order of 23.5.91. The Disciplinary Authority, by the same order, however, has held that his period of absence from 24.1.90 from the date of issue of the impugned order would be treated as leave without pay and that the suspension period would also be decided later. The appeal filed against the impugned order was also rejected vide order dated 23.2.99. The OA is filed challenging the validity of the above orders of disciplinary authority and the Appellate Authority.

2. The only contention that is raised in the OA is, since the absence from duty from 24.1.90 having been regularised as leave without pay, It would be extinguishing the misconduct of unauthorised absence and hence it was not permissible for the authorities further to award any penalty on the applicant on the basis of the said unauthorised absence.

3. Heard the learned counsel for the respondents who resisted the contention.

4. The operative portion of the order passed by the Disciplinary Authority reads as follows:-

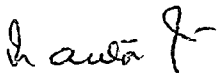
"Therefore, Inspr. Lakhminder Singh Brar, No. D-673 is dismissed from Delhi Police Force from the date of issue of this order. His absence period from 24.1.90 till the date of issue of this order will be treated as leave without pay. His suspension period will be decided later on".


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5. It is evident from the above that the penalty of dismissal was awarded but simultaneously the period of absence was regularised. In State of Punjab & Others Vs. Bakshish Singh, JT 1998 (7) SC 142, it was held that once the absence was regularised by granting of leave of any kind, the disciplinary authority has no power to impose penalty and such a penalty is void.

6. We also find from the order of the appellate authority that this point was raised by the applicant but was rejected by the appellate authority.

7. In view of the aforementioned decision of the Hon'ble Supreme Court, the impugned orders have to be set aside. Accordingly, we allow the OA and set aside the impugned orders of disciplinary authority and appellate authority dated 23.2.99 and respondent is directed to reinstate the applicants in service with continuity of service, forthwith. However in view of the pendency of the litigation in the High Court since 1991, we direct the payment of half back wages. No costs.


(Mrs. Shanta Shastri)
Member (A)


(V. Rajagopala Reddy)
Vice-Chairman (J)

cc.