

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.No.644/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)  
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 2nd day of November, 2000

Shri Bishamber Dayal  
Ex. Constable No.564/DAP(1823/E)  
s/o Shri Gopal Dass  
r/o Village Roopvas  
P.O. Dairy Farm  
P.S.Alwar  
District Alwar, Rajasthan. .... Applicant

(By Shri R.K.Sharma, Advocate)

vs.

1. Commissioner of Police, Delhi  
Representing Lt. Governor  
Delhi & Union of India  
Delhi Police Headquarters  
M.S.O.Building, I.P.Estate  
New Delhi.
2. Sr. Additional Commissioner of Police  
(A.P. & T.) Delhi Police Headquarters  
M.S.O.Building  
I.P.Estate  
New Delhi.
3. Dy. Commissioner of Police  
IST Bn., Delhi Armed Police  
New Police Line,  
Kingsway Camp.  
Delhi. .... Respondents

(By Mrs. Neelam Singh, Advocate)

O R D E R (Oral)

Justice V. Rajagopala Reddy:

While the applicant was working as Constable in the Delhi Police, he was served with a summary of allegations during 1995 alleging that he was unauthorisedly absent on four spells, i.e., from 20.6.1994 to 29.6.1994, 7.7.1994 to 12.7.1994, 13.7.1994 for about 50 minutes and 19.7.1994 to 25.7.1994 for a total period of nearly 19 days. It was also alleged that he had remained absent on 44 earlier occasions. The applicant pleaded not guilty,

an enquiry has been ordered and after conducting the enquiry, the enquiry officer found him guilty of the charge. Agreeing with the findings of the enquiry officer, the disciplinary authority has imposed the punishment of dismissal from service, which has been confirmed by the appellate authority as well as the revisional authority. These orders are impugned in this OA.

2. The learned counsel for the applicant raises a question of law contending that as the period of absence was decided as leave without pay, and thus the period of unauthorised absence was regularised, the alleged misconduct would no longer survive. The learned counsel relies upon State of Punjab Vs. Bakshish Singh, 1999(3) SLJ 1 where it was held that no misconduct could be found proved and once the period of absence was treated as leave without pay. But in three Judges Bench case in State of Madhya Pradesh Vs. Hari Hari Gopal, 1969 SLR SC 274, the Supreme Court held that the granting of leave for the period of absence which was the alleged misconduct in a case, an order granting leave was passed only for the purpose of maintaining the correct record of service. It was further held that it was not possible to hold that the authority after terminating the employment of the respondents were inclined to pass an order invalidating the earlier order holding that the officer was unauthorisedly absent. In view of the larger Bench decision, which was not noticed by the Supreme Court in Bakshish Singh's case the ratio in

(b)

the latter case cannot be held as the correct law. It is also brought to our notice that the High Court in two identical matters had followed Hari Hari Gopal's case. In view of the above, the applicant's contention cannot be accepted.

3. The learned counsel for the applicant strenuously contends that the absence of the applicant from duty was not wilful as due to the unavoidable circumstances, he could not resume duty. The ill health of the applicant's son and wife were not taken into consideration by the enquiry officer. The defence plea was rejected without giving proper reasons. Learned counsel argues that rules of enquiry have not been followed. The principles of natural justice were also violated by the enquiry officer. The proceedings being of quasi judicial nature, they will have to be rigidly followed and any violation would result in vitiation of the order.

4. We have perused the enquiry officers report. The enquiry officer has examined four witnesses on behalf of the prosecution. The applicant had not produced any witnesses on his side. Considering the evidence of PW1 to PW4 and the defence statement, the enquiry officer did not accept the plea of the applicant. Learned counsel however contends that the plea of the defence statement has neither been extracted by the enquiry officer nor considered except rejecting the same on the ground it was an

alibi, This contention is also wholly baseless. The enquiry officer has noticed the defence statement. In his report, he has stated as under:

"..... He has simply concocted and after thought story to justify his absence for such a long period. It is evident that the defaulter Const. did not join the DE proceedings and remained absent willfully and from the statements of PWs, it is clear that he remained absent on his own and even did not bother to inform the department. His wife told that this husband has gone to his duties.

On 10.7.95 a special messenger was sent to his home address alongwith the copy of the charge, but the defaulter Const. has refused clearly to accept it and the same was pasted to his house."

5. It is therefore not possible to accept the contention that the defence statement was not considered. Learned counsel also placing reliance upon Anil Kumar Vs. Presiding Officer and Others, 1985 (3) SLR SC 26, argues that it is the bounden duty of the enquiry officer to discuss the evidence of the prosecution and it was not enough merely to extract the same and leave it at that. But in the present case, on the contrary, we find that after extracting the evidence of PW1 to PW4 the charge has been framed against the applicant and the applicant was asked to file his defence statement. The defence statement has been considered as stated supra, <sup>yet the E.O</sup> ~~he~~ has came to the conclusion on the basis of that evidence that ~~his~~ the applicant's guilt was clearly established. We find no violation or infraction of the principles of natural justice or the rules of enquiry have been violated.

6. It is then contended that Rule 16(xi) of the Delhi Police (Punishment and Appeal) Rules have

been followed only in breach. Rule 16 (xi) reads thus:

(8)

"if it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him and he shall be given opportunity to defend himself as required by rules."

7. It contemplates that if the previous bad record was to be taken into consideration for awarding severe punishment, the previous bad record shall form the basis of definite charge against the applicant and he should be given opportunity to defend himself as required by rules. In the summary of allegations as well as in the charge, the 44 previous occasions of which he was penalised was mentioned, which thus found part of the charge. It is also seen from the defence statement that the applicant had not disputed the earlier bad record. He only pleaded that because of the earlier punishment, he should not be again proceeded against as it would amount to double jeopardy. Thus, the applicant had not disputed his bad record, the allegations remained unrebutted. Hence the question of giving further opportunity to the applicant to rebut the same by filing the documents in the enquiry would not arise. His contention is therefore rejected. Thus all the contentions are rejected.

8. The OA, therefore, fails and is accordingly dismissed. No costs.

/RAO/

(GOVINDAN S. TAMPI)  
MEMBER(A)

*Reddy*  
(V.RAJAGOPALA REDDY)  
VICE CHAIRMAN(J)