

Central Administrative Tribunal, Principal Bench

Original Application No.745 of ~~2000~~ 1999

New Delhi, this the 2nd day of February, 2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)
Hon'ble Mr.Shanker Raju, Member(J)

Rishi Pal, Constable No.75/RB (PIS
No.28823435), S/o Sh.Mahender Singh, R/o
229, East Jawahar Nagar, Loni Road, Loni,
GHAZIABAD (UP) - Applicant

(By Advocate Shri N.Safaya)

Versus

1. The Commissioner of Police, Police Head
Quarters, MSO Building, IP Estate, New
Delhi.
2. Sr. Addl. Commissioner of Police,
Rashtrapati Bhawan (Sec) New Delhi.
3. Dy. Commissioner of Police, Rashtrapati
Bhawan, New Delhi. - Respondents

(By Advocate Shri Devesh Singh through proxy
counsel Shri Amit Singh)

O R D E R

By V.K.Majotra, Member(Admnv) -

The applicant has assailed punishment of forfeiture of two years' approved service permanently for a period of two years bringing down his salary from Rs.1200/- to Rs.1150/- per month and that he would not earn his future increments of pay during the period of reduction and after expiry of this period the punishment would have the effect of postponing future increments of pay. The period of absence from 14.4.1996 to 9.8.1996 and the suspension period from 10.8.1996 to 8.1.1997 were also treated as not spent on duty (dies non) for all intents and purposes.

2. According to the applicant he had proceeded on casual leave on 4.4.1996 for 7+3 days. During this period he fell ill and intimated the respondents regarding his illness and inability to attend duty. He submitted medical certificates for the period of illness. However, departmental proceedings were instituted against him. The applicant has alleged that

although the enquiry officer had found that the applicant was ill, ^{yet} it was held that the absence in question was wilful and deliberate. The respondents doubted the authenticity of the medical certificates ^{but} did not subject himself to a second medical opinion. The applicant has maintained that provisions of SO No.111 should not have been made applicable to his case. He has sought quashing of the disciplinary authority's order dated 16.5.1997 and the appellate order dated 27.3.1998 imposing afore-stated punishment, with consequential benefits.

3. In their counter reply the respondents have stated that request of the applicant conveyed through telegram dated 15.4.1996 that he was unwell and unable to attend duties was rejected by the disciplinary authority. He was directed to resume his duty immediately but he failed to do so. Accordingly, he was placed under suspension with effect from 10.8.1996. The applicant reported for duty on 6.12.1996 after remaining absent wilfully and unauthorizedly for a period of 7 months, 22 days and 15 minutes. The respondents have stated that the OA is time barred. According to the respondents the applicant had not taken prior permission to avail medical rest. The respondents further state that the medical certificates do not confer upon an individual any right to avail leave unless leave is granted by the competent authority. On a perusal of medical papers it was found that each time the doctor had mentioned a separate ailment which created doubt about the genuineness of the medical certificates. According to the respondents, the charge against the applicant of wilful and unauthorised absence for a long period of over 7 months was established and accordingly

the punishment awarded to the applicant is justified.

4. We have heard the learned counsel of both sides and perused the material on record.

5. As to the objection regarding limitation we find that whereas the order of the disciplinary authority Annexure-A is dated 16.5.1997 the appellate order is dated 27.3.1998. The OA was filed by the applicant on 26.3.1999 which is within the limitation period. Thus, this objection is not sustainable.

6. The learned counsel of the applicant contended that although in the charge the allegation of wilful and unauthorised absence is not there, ~~per~~^h the enquiry officer and the disciplinary authority have established the guilt of wilful and unauthorised absence for a period of 7 months, 22 days and 15 minutes against the applicant. The following charge was levelled against the applicant-

"I, Inspr, Man Mohan Sharma (Enquiry Officer) charge you Const. Rishi Pal No.75/RB that on 4.4.96 you proceeded on 7+3 days casual leave and due back on 14.4.96. You did not turn up on due date and marked absent vide DDNo.3 dated 14.4.96 PPG Lines R.P.Bhavan on 15.4.96 a telegramme was received in the office of DCP/RB Bhavan in which you had intimated that you were ill and unable to attend duty. Your request was considered and rejected by the Worthy DCP/RB and you were informed vide letter No.2206/ ASIP/ RB dated 24.4.96 and directed to resume your duty immediately but you did not report for duty. When you did not join your duty you were placed under suspension (sic) vide order No.4252-4259/ HAP/DCP/RB dated 12.8.96 w.e.f. 12.8.96. You join your duty on 6.12.96 vide DDNo.33 after absenting yourself for a period of 7 months 22 days 15 minutes".

In the above charge the learned counsel of the respondents was not able to point out the element of wilful and unauthorised absence. When the ingredients of wilful and unauthorised absence had not been alleged against the applicant in the charge, the question of establishment of such charge cannot arise at all.

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7. The learned counsel of the respondents stated that the applicant could have produced in his defence the doctor in the enquiry who had issued the medical certificates to him. The disciplinary authority has stated that "on each time the doctor has mentioned separate ailment in respect of the defaulter in his medical certificates". In this context the disciplinary authority doubted the genuineness of the medical certificates. The learned counsel of the ~~applicant~~ ^{applicant} contended that if the authorities doubted the genuineness of the medical certificates they could have subjected the applicant for second medical examination. We are inclined to agree with the learned counsel of the ~~applicant~~ ^{applicant} that the respondents cannot be allowed to doubt the genuineness of the medical certificates arbitrarily. If they had any suspicion about the genuineness of the medical certificates, which were issued by the doctors of Government hospitals, they could have resorted to second medical opinion on the ailment of the applicant. The fact that the respondents did not do so, the medical certificates submitted by the applicant in proof of his illness have to be accepted as such. It is true that under normal circumstances an official has to obtain prior permission/ sanction of leave from the competent authority under the provisions of SO No. 111, however, in the present case, where the applicant had proceeded on sanctioned casual leave of 7+3 days basically it was a case of over stayal due to illness for which he had submitted his medical certificates issued by the Government doctors, which in our view, as stated above, could not have been brushed aside arbitrarily without subjecting the applicant to a second medical examination.

8. Having regard to the reasons and discussion

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given above, the OA is allowed. The impugned orders are quashed and set aside with consequential benefits. The respondents are directed to regularise the period of absence of the applicant by granting him medical leave and if necessary leave of the kind due. It is clarified that the period of suspension of the applicant shall be treated as duty period and he should be paid the consequential benefits within a period of three months of the date of communication of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (Admnv)

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