

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1107/1998

New Delhi this the 29th day of November, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Ex. Constable Bhag Chand No. 1407/N
S/O Jhansi Ram,
R/O Vill. Patankawas, P.O. Patan,
Teh. Rajgarh, Distt. Alwar,
Rajasthan.

... Applicant

(By Shri Rajeev Kumar, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi.
2. Addl. Commissioner of Police,
Northern Range, Police Hqrs.,
I.P.Estate, New Delhi.
3. Addl. Dy. Commissioner of Police,
North District, Civil Lines,
Delhi. ... Respondents

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

For misconduct of unauthorised absence for a continuous period of 84 days by the applicant who was a constable in Delhi Police, a penalty of removal from service has been imposed upon him by the Additional Deputy Commissioner of Police on 22.5.1996 who is his disciplinary authority. Appeal filed by the applicant against the aforesaid order has been dismissed by the Additional Commissioner of Police on 31.3.1997. Aforesaid orders are impugned by the applicant in the present OA.

2. It is first contended by the counsel appearing in support of the OA that the aforesaid absence has been treated by the disciplinary authority

in the aforesaid impugned order as leave without pay; the moment leave is granted for the aforesaid period, the same can no longer be treated as unauthorised absence. In order to buttress the argument, reliance is placed on a circular issued on 23.9.1996 by the Deputy Commissioner of Police at Annexure A-9 wherein this is what has been observed :

"The Hon'ble C.A.T. in O.A. No. 219/90 - Mange Ram vs. C.P. & Ors. has observed that "It was held that once the leave is sanctioned of whatever character it might be, the sting from the absence is taken away. That in such a case the disciplinary authority cannot impose punishment on the Govt. servant concerned."

Therefore, it is advisable that the observation passed by the C.A.T. may be kept in mind while deciding the absence cases."

In our judgment, aforesaid circular which is in the nature of an advice based on an order passed in a particular O.A., will not render the aforesaid absence as not being unauthorised. Whether a particular absence ceases to be unauthorised on account of leave having been granted is for the Tribunal to decide and not for the Police by issue of a circular of the nature referred to above. It is true that at one point of time the Tribunal in various decisions on placing reliance on a decision of the Supreme Court in the case of State of Punjab v. Bakshish Singh, JT 1998 (7) SC 142, has found such absence not to be unauthorised on the ground that the said period has been treated as a period of leave. Aforesaid decision of the Supreme Court in the case of Bakshish Singh (supra), we find, no longer holds the field in view of an earlier decision of a larger Bench of the Supreme

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Court in the case of State of M.P. v. Harihar Gopal, 1969 SLR 274 wherein it has been observed as follows:

"The order granting leave was made after the order terminating employment and it was made only for the purpose of maintaining of correct record of the duration of service and adjustments of leave due to the respondent and for regularising his absence from duty. Our attention has not been invited to any rules governing the respondent's service conditions under which an order regularising the absence from duty subsequent to the termination of employment has the effect of invalidating the termination."

"We are unable to hold that the authority after terminating the employment of the respondent intended to pass an order invalidating the earlier order by sanctioning leave so that the respondent was to be deemed not to have remained absent from duty without leave duly granted."

Aforesaid decisions both in the case of Harihar Gopal and Bakshish Singh were considered by the High Court in C.W.P. No. 4883/99 ^{and} ~~where~~ a contention similar to the one raised ~~had~~ been rejected. In view of the foregoing reasons, we find that the present contention is devoid of merit. The same is accordingly rejected.

3. Counsel has next contended that as far as unauthorised absence of the applicant is concerned, applicant had timely intimated to the concerned authorities about his being unwell; applicant, in the circumstances, cannot be found guilty of the aforesaid charge. In order to understand this contention, it will be useful to reproduce the charge framed against the applicant and the attendant facts of the case. The same are as under :


"Constable Bhag Chand, No. 1407/N (PIS No. 28881419) (hereinafter called the

defaulter) while posted in North Distt. Line proceeded on 2-3 days casual leave w.e.f. 16.11.94. He was due back on 21.11.94 but he did not turn up. However he got recorded a D.D. entry vide No.26 dated 21.11.94 North Distt. Lines about his 7 days medical rest. He was even then due back on 28.11.94. But the Const. neither resumed his duty nor sent any intimation. As such he was marked absent vide DD No.28 dated 28.11.94 North Distt. Lines. Thereafter two absentee notices vide No.12455-57 SIP/North dated 2.12.94 and 943-45/SIP-North dated 18.1.95 were issued to the const. through SSP Alwar as well as through registered post. The constable acknowledged both the notices but he neither resumed his duty nor sent any intimation and remained absent unauthorisedly and wilfully. The Constable resumed his duty vide DD No.57 dated 20.2.95 after absenting himself for a period of 94 days 12 hours and 30 minutes."

4. Aforesaid charge and ^{attendancy} facts reveal that though applicant had intimated his inability on 21.11.1994, no further intimation has been given till he resumed duty on 20.2.1995. After taking into account the seven days' leave sought on 21.11.1994, applicant was expected to resume duty on 28.11.1994. He did nothing of the sort. Two absentee notices were issued - one on 2.12.1994 and the other on 18.1.1995. The same were duly served upon the applicant and he acknowledged receipt of the said notices. Despite this, he failed to resume duty till 20.2.1995. If one has regard to the aforestated facts, the aforesaid contention of the learned counsel, we are clear, also deserves to be rejected.

5. No other contention has been advanced in support of the OA. The same is accordingly summarily rejected.

/as/

(S. A. T. Rizvi)
Member (A)

(Ashok Agarwal)
Chairman